

(1995) 12 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13296 of 1992

Gurminder Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 3
Punjab Panchayat Samities and Zila Parishads (Sale, Lease and other Alienation of Property and Public Places) Rules, 1964 — Rule 3

Citation : (1996) 112 PLR 749 : (1996) 3 RCR(Criminal) 155

Hon'ble Judges : V.S. Aggarwal, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : S.P. Jain and Rajesh Gumber, for the Appellant; H.S. Bajwa, for the Respondent

Judgement

V.S. Aggarwal, J.—The Panchayat Samiti, Pathankot owns various properties in Pathankot. Certain shops were authorised by it and were given to the petitioners after completing all the formalities. By virtue of the present petition, the petitioners seek quashing of Rule 3(b) (ii) of the Punjab Panchayat Samitis and Zila Parishads (Sale, lease and other alienations of property and Public places) Rules, 1984 and for a direction to the respondents not to increase the rent of the shops.

2. Petitioners assert that lease deed had been executed between each of the petitioners separately and respondent No.2, Panchayat Samiti vide a notification dated 23.4.1984, the Punjab Panchayat Samitis and Zila Parishads (Sale, lease and other alienations of Property and Public places) Rules were amended. It permitted enhancement of lease money by 10% amount of existing lease per year. The Sub-rule is claimed to be discriminatory and arbitrary pleading that permitting increase of rent by 10% unilaterally is illegal and imposes unreasonable restrictions on the fundamental rights of the petitioners to carry on business and trade. Otherwise also the petitioners allege that they are tenants and, therefore, provisions of East Punjab Urban Rest Restriction Act would be

applicable. The rent cannot be increased except under the provisions of that Act.

3. In the written statement filed, respondent No.2 has contested the petition. It is denied that petitioners are tenants. On the contrary, respondent No.2 claims that they are only licensees. The provisions of Punjab Panchayat Samitis and Zila Parishads were stated to be not applicable, and 10% increase is as per the agreement. Except for petitioners 6 and 14, all other persons were described as licensees. As regards, petitioners 6 and 14, it was claimed that though lease deed were executed, the same are inadmissible being an unregistered document.

4. The Punjab Panchayat Samitis and Zila Parishads Act, 1961 had been enacted to provide for constitution of the Samitis concerning matters connected thereto. The statement of objects and reasons indicate that District Boards had outlived their utility and it is intended to recognise local administration in rural areas. Though the Punjab Panchayat Samitis and Zila Parishads Act is applicable to the State of Punjab, but u/s 4 of the said Act, the Panchayat Samiti shall have authority throughout the tehsil or block for which it is constituted. The proviso makes the position clear that it shall not have authority over any part of such tehsil or block included in a Municipality or a Cantonment or a Notified Area. On the contrary, the East Punjab Urban Rent Restriction Act, 1949 extends to all areas in Punjab. The expression "urban area" has been defined in Section 2(j) of the East Punjab Urban Rent Restriction Act, 1949 which reads as under :-

"20 "Urban Area" means any area administered by a municipal committee, a cantonment board, a town committee or a notified area committee or any area declared (by the State Government) by notification to be urban for the purpose of this Act."

5. The area in question is in Pathankot. It was not disputed that it has a Municipal Committee. However, u/s 3 of the East Punjab Urban Rent Restriction Act, 1949 the State Government can direct that any of the provisions of this Act shall not Apply to any particular building or rented land or class of lands. Vide notification No. 4696-CI (II-CI)-59/17859 dated 3.6.1959 the provisions of the Act has been directed not to apply to the buildings belonging to Municipal Committees, Notified Area Committees, District Boards or Panchayats. u/s 2(1) of the General Clauses Act, 1897 a local authority means a Municipal Committee, District Board or other authority entrusted with the control and management of municipal or local funds. Section 125 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 specifically prescribes that Panchayat Samiti or Zila Parishad shall be deemed to be a local authority for the purpose of any law for the time being in force. Therefore, it is abundantly clear that provisions of East Punjab Rent Restriction Act, 1949 would not be applicable to the property in question.

6. The main question was still agitated as to if it is lease or licence. Respondent No.2 has appended copies of documents executed between each of the petitioners and respondent No. 2. Annexure P-1 is the document executed by petitioner No.1 with respondent No.2. Clauses 1 to 14 reads as under :-

1. That the Licencee shall deposit the Licence fee on the 10th day of every month in advance. In case licence fee is not to be deposited within the stipulated period, in that event he shall have to pay Rs.3/- as penalty for each subsequent date apart from licence fee.

2. -----

3. That the Government shall have total control and supervision on the aforesaid shop. Any officer or servant of the Government shall have a right to enter the shop for doing any type of job.

4. That the licensee shall not have any right to sub-let the total shop or a portion thereof nor he can enter in partnership with any body, for running the business.

5. That in case licensee dies before the stipulated period in that event his legal heirs or workers can take their belongings within one month after making the payment of arrears.

6. That the licensee shall not have any lien over the aforesaid shop nor he shall be considered in possession of the shop. The parties have executed this document after having understood the conditions contained therein.

7. That the licensee can be terminated by the Licencer in case licensee fails to pay licence fee for two months without issuing any notice and is authorised to dispossess the licensee. In case the licensee wants to get the licence cancelled before the stipulated period in that event he shall have to issue one month advance notice to the Executive Officer Panchayat Samiti or in the alternative he shall have to pay licence fee for one month.

8. That Executive Officer Panchayat Samiti, Pathankot shall have a right to auction the belongings of the licensee in order to recover the arrears in case the licensee violates any of the terms and conditions of the licence deeds and does not lodge any claim regarding his belongings within one month from default. Panchayat Samiti, Pathankot can take possession of the shop after dispossessing the licensee without issuing any notice.

9. That the licensee shall have a first right over the property in question after the expiry of the period mentioned in the licence deed and the licence can be issued for any period but the licensee shall have to pay the licence fee in accordance with the terms and conditions earlier agreed between the parties.

10. That the licensee shall not have any objection if the licensee uses the roof or raises construction thereon.

11. That the licensee shall use the front portion of this shop for placing his goods and his customers can only use the same.

12. That the licensee cannot use the shop for residential purposes and can run his business for which the same has been given to him.

13. That on the expiry of the licence period, the licencor increase 10% of the

licence fee every year and the licensee shall not have any objection to the same.

14. That in case neither the licensee executed fresh licence deed nor vacated the shop, in that event action shall be taken u/s 8(i) of the Punjab Panchayat Samitis and Zila Parishad (Sales, Lease and other alienation of Property and public places) Rules, 1984 (first amendment)."

7. On the basis of the said documents, it had been urged that the conditions of documents show that it was only a lease agreement and not a licence. The same has been controverted by the respondents. The difference between lease and licence had been considered more often than once. In the case of Associated Hotels of India Ltd. Vs. R.N. Kapoor, . The following propositions were extended so as to determine if the document is a lease or licence :-

"The following propositions may, therefore, be taken as well-established: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties-whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but it at only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property "prima facie", he is considered to be a tenant, but circumstances may be established which negative the intention to create a lease. Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammelled by the control and free from the directions of she appellants. The covenants, ate those that are usually found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the interest under the document, although with the consent of the appellants, is destructive of any theory of licence."

8. The observations made above have been relied subsequently in different decisions of the Supreme Court which requires no repetition. Suffice to say that subsequently in the case of Capt. B.V. D'Souza Vs. Antonio Fausto Fernandes, these observations were looked with approval.

9. Our attention was drawn to the decision rendered by the Supreme Court in the case of Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others, it was held that duty was cast on the landlord by the Act to maintain the property in a particular manner. Thus duties could not be carried by the landlord and parting with possession in favour of stall holders. On the peculiar facts of the lease. The observations thus reported are :-

"In the case before us, however, while it is true that each stall-holder is entitled to the exclusive use of his stall from day to day it is clear that he has no right to use it as and when he choose to do so or to sleep in the stall during the ? night after closure of the market or enter the stall during the night after 11.00 p.m. at

his pleasure. He can use it only during a stated period every day and subject to several conditions. These circumstances, coupled with the fact that the responsibility for cleaning the stalls, disinfecting them and of closing the market in which the stalls are situate is placed by the Act, the regulations made there under and the licence issued to the landlords is on the landlords would indicate that the legal possession of the stalls must also be deemed to have been with the landlords and not with the stall-holders. The right which the stall-holders had was to the exclusive use of the stalls during stated hours and nothing more. Looking at the matter in a slightly different way it would seem that it could never have been the intention of the parties to grant anything more than a licence to the stall-holders."

10. It goes without saying that these observations were confined to the facts and recitals of the documents in that case. They are very much different from the facts of the present, case.

11. The decision of the Bombay High Court in the case of Aninha D"Costa Vs. Parvatibai M. Thakur, would help in arriving at a conclusion. The terms of agreement in the said case were as under :-

- (1) That the Licensee shall pay monthly compensation for use and occupation;
- (2) that the premises shall be used for residence and business by her and her family;
- (3) that the Licensee .shall deposit Rs.675/- without any interest for the due performance of the terms and indemnifying the Licensor for loss or damage;
- (4) that, the Licensor shall pay all taxes except the Chowkidar"s charges of Rs. 10/- which shall be paid by the Licensee;
- (5) that if the Licensee fails to observe the terms of the agreement or if she commits any nuisance, the licence shall stand revoked and the licensor shall have the right, to eject the Licensee forcibly;
- (6) that the Licensee shall not allow any other person to use and occupy the premises except.....
- (7) that the Licensee shall not claim any right as a tenant; and
- (8) that the Licensee shall not make any additions and alterations in the Hat without the written permission of the Licensor."

12. It was held, when considered with other facts that it was a lease and that there was relationship of landlord and tenant between the parties.

13. No different view was expressed in the case of V.B. D"Sauza (Supra). The documents had been executed. Some of the conditions were that the alleged Licensee will not sub-let or part with the possession on the expiry of the period. The term was renewable at the will of alleged licensee. It was concluded that it was a lease rather than a licence. Conclusions can easily be drawn that the label

given to the document to be a licence or lease is not material. The intention of the parties have to be looked into. If the demise is created in the property, it would be lease rather than a licence. There is no simple litmus test to distinguish a lease from a licence. The distinctive flavor, the deceptive labels and crucial considerations have to be kept in mind.

14. In the instant case, though it was stipulated that Government shall have total control and supervision and rights shall not be heritable, but still there were conditions that petitioner No.1 (likewise others) shall not have any right to sub-let the shop or enter into partnership. Under condition No.9 Licensees have been given the first right after expiry of period of licence subject to his payment of the Licence fee as per the terms and conditions. It is obvious that petitioners were in exclusive occupation and have a right to get the terms renewed, merely because it had been stipulated that effective control shall be that of the Government, will not make it a licence deed. The contents clearly show that a lease had come into being, though in the body of the agreement some of the petitioners were described as Licensees.

15. What is the effect of the findings arrived at above ? Petitioners are lessees and the provisions of East Punjab Urban Rent Restriction Act do not apply. It requires a simple answer that it would be a general law of the land that would be applicable. There is no dispute raised that there was any coercion, fraud or pressure. They had voluntarily executed the agreement and agreed to increase 10 " per cent rent every year."

16. It is urged that increase in rent is "arbitrary and unconstitutional. The argument though raised half heartedly necessarily is without any merit. The land-lord owner would have the right to let the property as per the agreement. Vide notification dated 26.4.1984 the Punjab Panchayat Samitis and Zila Parishad (sales, lease and there alienation of property and public places) Rules, 1964 were amended. A provision was made for increase of 10 per cent of rent every year. The relevant extract for purposes of the present judgment is to the following effect :-

" Provided that the auction shall not be necessary for the grant of lease of property or public place, if-

i) Such property or public place is proposed to be leased but to the Central Government, State Government, Corporation or a Board owned or controlled by the Government, or the a Mahila Mandal and in such a case the amount of lease money shall be assessed by the Executive Engineer, Panchayati Raj working in the Department of Rural Development and Panchayats in accordance with the principles being followed by the Department of Public Works in assessing the rental value of the property.

ii) The person to whom the property or public place is initially leased out by auction agrees, three months prior to the expiry of the lease period, to enhance the lease money by ten per cent of the amount of existing lease money per year."

17. It is these provisions which are being assailed to be arbitrary and unconstitutional. As already referred to above, the agreement was arrived at voluntarily. If keeping in view the same it is provided that rent shall be increased by a particular person every year, it effects no fundamental right of the petitioners. It is not such a steep rise, which could be declared as unconscionable. The said clause does not effect the tenancy qua the possession of the petitioners. A balance has been struck between the rights of the landlord and the tenant by providing for such an increase. Therefore, the said cannot be held to be arbitrary, discriminatory or against the provisions of the Constitution.

18. For these reasons, it is held that the impugned amendment to Rule 3 of the Punjab Panchayat Samitis and Zila Parishad (Sales, lease and other alienation of property and public places) Rules, 1964 is valid. The petition must fail on that count but it is further held that petitioners are tenants in the property. No order as to costs.