
(1982) 09 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3 of 1981

Hari Kishan and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-09-1982

Acts Referred:

Citation : (1982) WLN 303

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Judgement

M.C. Jain, J.—These writ petitions raise a common question, so they are being disposed of by this common order

2. The petitioners in these writ petitions are the tenants of the properties managed by the "Devasthan" Department. They have been paying rent at the agreed rate. The Assistant Commissioner, Devasthan, Jodhpur and Bikaner Divisions, Jodhpur, issued notices to the petitioners whereby he demanded payment of enhanced amount of rent and in case the enhanced amount of rent is not paid eviction proceedings will be initiated against them As the petitioners did not make payment of enhanced amount of rent, by a subsequent notice, their tenancy was terminated, It is these notices, which are under challenge in these writ petitions.

3. The notices have been challenged inter alia on the ground that the respondents have no authority to enhance the rent unilaterally and the enhancement of rent is excessive.

4. Counters to the writ petitions have been filed by the respondents. It is stated that rent has only been enhanced to a reasonable extent and it is not excessive. The demised premises can fetch more rent than what has been demanded from the petitioners through notices, When the petitioners have not deposited the amount of rent demanded, it was legal and justified on the part of the Assistant Commissioner, Devasthan Department, to terminate the tenancy of the

petitioners and no valid exception can be taken into it.

5. The main question, which calls for consideration in these writ petitions, is as to whether the respondents can enhance the amount of rent unilaterally.

6. On behalf of the respondents Shri D.S. Shiihodia, learned Government Advocate, submitted that the respondents are within their right to demand from the petitioners the amount of rent at an enhanced rate, as the same is considered reasonable by the respondents. So demand of enhanced amount of rent through notices, is not in any way, illegal. It is true that simply making of a demand of enhanced rent unilaterally is of no consequence and it does not create any corresponding liability to make payment of enhanced rent. The tenancy is a matter of contract and the amount of rent, which is agreed between the parties, is only realisable under the contract. The contract is always bilateral in character. Unless both the parties agree to effect increase in the amount of rent, no liability for the increased amount of rent arises. Admittedly, in the present case the parties have not agreed to any increase in the amount of rent and it appears that a simple demand has been made by the respondents to make payment of the amount of rent at an increased rate, but the petitioners are nit under any obligation or legal liability to nuke payment at the increased rate of rent demanded by the respondents from the petitioner. This being so, the respondents cannot effect realisation of the enhanced amount of rent through any process. The respondents no doubt can report to termination of tenancy in accordance with law and thereafter Proceed to initiate eviction proceedings in accordance with law, If any eviction proceedings are initiated against the petitioners, the petitioners would be at liberty to raise all objections, which may be available to them in law before the authority before whom the eviction proceedings are initiated by the respondents and in case any constitutional issues are raised, they would be at liberty to move this Court.

7. With the above observations, the writ petitions are partly allowed and it is declared that the petitioners are not under any legal obligation or legal liability to make payment of the increased amount of rent demanded through the impugned notices. There will be no order as to costs.