
(1987) 09 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2862 of 1979

Harsharan Singh and Others

APPELLANT

Vs

Murti Shri Banke Behari Ji and Another

RESPONDENT

Date of Decision : 29-09-1987

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 4

Citation : (1988) 2 RCR(Rent) 263

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; H.L. Sarin Miss Ritu Bahri, Miss Jai Shree Thakur and Mr. A.S. Grewal, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Sehgal, J.—The tenant-Petitioners filed an application u/s 4 of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") for determination of the fair rent of the shop in dispute situated in Katra Amar Singh, Amritsar, which is owned by the landlord-Respondents. It was averred therein that the Petitioners are paying Rs. 50/- per month to the Respondents as rent. It was also mentioned that prior to 15.7.19(sic)9 the rate of rent of the shop was Rs. 30/- per month but under the threat of eviction proceedings the Respondents got the rent enhanced to Rs. 50/- per month. It was alleged that in the year 1938, within a period of 12 months prior to 11 1939, the rate of rent of the shop in dispute and of similar shops was Rs. 10/- per month, which according to Section 4 of the Act is to be treated as the basic rent of the premises in dispute. Enhancement over the basic rent can be allowed up to 50% under the aforesaid provision. Therefore the fair rent of the shop should be fixed at Rs. 15/- per month. The application was opposed by the Respondents They admitted that the rate of rent of the shop in dispute was Rs. 50/- per month They further averred that improvements in the shop were carried out in the year 1969 and by an agreement of the parties the rate of rent was fixed at Rs. 50/- per month. It was

denied that the rate of rent was increased under the threat of eviction. It was further asserted that the rate of rent prevalent for similar shops in the locality in the year 1938 was not less than Rs. 60/- per month. It was further stressed that enormous improvements and developments had taken place in the locality where the shop in dispute is situated after 1.1.1939. It has become a very important commercial centre. Therefore, the fair rent of a similar shop in the locality can in no case be less than Rs. 150/- per month

2. The learned Rent Controller received the evidence of the parties and reached at a finding that the basic rent of similar shops in the locality as on 1.1.1939 was Rs. 7/- to Rs. 10/- per month. Therefore, allowing 50% increase on the basic rent he fixed the fair rent of the shop in dispute at Rs. 15/- per month vice his judgment dated 30-5-1978. The Respondents being aggrieved against the fair rent so fixed by the Rent Controller filed an appeal u/s 15(2) of the Act before the learned Appellate Authority, Amritsar, which has been allowed by it. It has been held by the learned Appellate Authority that there is no evidence on the record from which it can be established as to what was the basic rent of the shop in dispute or of similar shops in the locality for a period of 12 months proceeding 1.1.1939. Therefore, relying on *Ranjit Singh v. Krishan Kumar* (1977) 79 P.L.R. 734, it held that the contractual rate of rent between the parties i.e. Rs. 50/- per month, is to be treated as fair rent between them and determined the fair rent of the shop thus. This is how the tenant-Petitioners have approached this Court by way of the present revision petition.

3. I have heard the learned Counsel for the parties and have also gone through the record of the Rent Controller. The learned Counsel for the Petitioners could not assail before me the finding recorded by the Appellate Authority that no evidence on the record is available from which it could be ascertained as to what was the basic rent of the shop in dispute or of similar shops in the locality during the period of 12 months preceding 1.1.1939 I have also perused the evidence on the record and find that there is no evidence worth the name which might show the rate of rent of similar shops in the locality in the year 1938. I, therefore, affirm the finding of the learned Appellate Authority that the basic rent of the shop in dispute as on 1 1.1939 cannot be determined with the aid of the material on the record.

4. The learned Counsel for the Petitioners, however, vehemently contended that there is ample evidence on the record that prior to 15 7.1969 the rate of rent of the shop in dispute agreed between the Petitioners and the Respondents was Rs. 30/- per month. He therefore, submitted that the same should be treated as the fair rent by applying the ratio of *Ranjit Singh's* case (supra). On the other hand, the learned Counsel for the Respondents, submitted that it has been established by the evidence on the record that after making considerable improvement in the shop the same was let out to the Petitioners on 15 7 1969 at the rate of Rs. 50/- per month. Therefore, the Petitioners cannot fall back on the rate of rent of the shop prior to 15.7.1969 He further stressed that it is evident from the

statements of different witnesses that Katra Amar Singh is one of the premier commercial localities in the city of Amritsar. Therefore, unless the basic rent of the shop could be determined in accordance with the statute, the present agreed rate of rent is to be treated as the fair rent.

5. I have considered the rival submissions of the learned Counsel for the parties. I am of the considered view that since the basic rent of the shop in dispute as on 1.1.1939 could not be fixed in accordance with Section 4 of the Act. the rule laid down in Ranjit Singh's case is to apply. This rule finds further support from Avnash Chander v. Mulk Rai Anand (1984) 86 P.L.R. 148. Thus, the agreed rate of rent between the parties is to be treated as the fair rent in respect of the premises in dispute. The agreed rate of rent since 15.7.1969 is Rs. 50/- per month. I cannot choose to fix the fair rent of the shop in dispute at Rs. 30/- per month. which according to the Petitioners they were paying to the Respondents prior to 15.7.1969. If I go by the contention of the learned Counsel for the Petitioners, I shall not be determining the fair rent on any settled principle of law. The principle as laid down in the authorities cited above is that firstly an effort should be made to ascertain the basic rent of the demised premises If that cannot be done, then the prevailing agreed rate of rent between the parties should be treated as fair rent It is not possible to take resort to the rate of rent which was settled between the landlord and the Petitioner during some earlier given time. It is the prevailing agreed rate of rent which in the absence of evidence regarding basic rent is to be treated as the fair rent I, therefore, affirm the finding of the learned Appellate Authority that the fair rent of the shop in dispute is Rs. 50/- per month.

6. Consequently, finding no force in this revision petition, the same is dismissed. The parties are, however, left to bear their own costs.