

(1988) 08 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No 2868 of 1979

Parbhu Dayal (Died) Represented by his Lrs. Om parkash and others APPELLANT

Vs

Ram Kishan (Deceased) Represented by his Lrs. Ram Kishan and orhers RESPONDENT

Date of Decision : 25-08-1988

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 15

Citation : (1988) 08 P&H CK 0140

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : V.K. Jain and Mr. Sanjay Vij, for the Appellant; O.P. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Jai Singh Sekhon, J.—The tenant has directed this revision petition against the order dated 30th October, 1979 of the Appellate Authority, Gurgaon, fixing the fair rent of the shop in in dispute at Rs. 62.50 Paise per month.

2. In brief, the facts are that the shop in dispute was rented out to Parbhu Dayal tenant, on 18th July. 1955 at the monthly rent of Rs. 30/. On an earlier application of the tenant, the fair rent of the shop was fixed by the Rent Controller at Rs. 22/- per month vide order dated 22nd November, 1960. This position was upheld by the Appellate Authority as well as by the High Court on the revisional side. The landlord then filed the present application on 30th September, 1974 for fixation of fair rent The Rent Controller vide its order dated 26th March 1976. fixed the fair rent at Rs. 125/- Per month, but without determining the basic rent The Appellate Authority vide its order dated 3rd August, 1971, directed the Renu Controller to determine the basic rent and submit report. Against that order of the Appellate Authority the landlord went in revision which was dismissed by the Financial Commissioner. Revenue, Haryana,

on 3rd May, 1978. The Rent Controller then submitted the report dated 11th September, 1979 fixing the basic rent at Rs. 20/- per month. The Appellate Authority vide its impugned, order, however, on the objection filed by the landlord determined the basic rent as Rs 50/- per month and fair rent at Rs. 62.50 paise.

3. The learned Counsel for the tenant-Petitioner has assailed the findings of the Appellate Authority on the ground that once the basic rent of the shop in dispute was fixed by the Rent Controller on 22nd November, 1960, the same could not be revised by the Appellate Authority. Reliance in this regard was placed on the findings of the Punjab and Haryana High Court in *Raj Kumar v. Mangu Ram* (1987) 92 P. L R 575. On facts, it was contended that the basic rent of Rs. 50/- was wrongly fixed on the basis of shops located in Sabzi Mandi, while the testimony of Gobind Ram, A.W.1., pertaining to the rent of his shop at Rs. 35/- per month was ignored though the latter's shop was located in the same locality as the shop in dispute. The learned Counsel has also relied upon the findings of the Supreme Court in *Mrs. Mohini Suraj Bhan v. Vinod Kumar Mittal* (1986) 89 P. L. R. 275 in support of the proposition that this Court can appraise the evidence while sitting on the revisional side under the provisions of Section 15 of the East Punjab Urban Rent Restriction Act, 1949. The learned Counsel for the Respondent, on the other hand, supported the findings of the Appellate Authority, contending, that the ratio of *Raj Kumar's* case (*supra*) is not attracted to the facts of the case in hand as in that case on an earlier application the basic rent was fixed in the year 1962 under the provisions of the East Punjab Urban Rent Restriction Act, 1949.

4. There is no dispute that at the revisional stage the Court can appraise the evidence if the Appellate Authority had not properly done so and had differed with the view of the Rent Controller on facts. The findings of the Supreme Court in *Mrs Mohini Suraj Bhan's* case (*supra*) can be safely referred in this regard. The perusal of the impugned order of the Appellate Authority reveals that the evidence of Gobind Ram, A.W.1, regarding the rent of his shop being at Rs. 35/- per month was ignored, as it related to the period prior to the year 1962. There is no dispute that under the amended provisions of Section 4(2)(a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 the relevant year for fixing the basic rent is 1962 in respect of buildings which were in existence or completed on or before 31st day of December, 1961, the rent prevailing in the locality for similar building etc. let out to a new tenant during the year, 1962. In other words, it can be well said that the rent prevailing in the locality for similar buildings or rented land let out to a new tenant during the year, 1962, would determine the basic rent of the building. Thereafter the increase or decrease in the rent has to be worked out in accordance with the average of All India whole-sale price index, as per provisions of Sub-section (3) of this section. Under these circumstances, it can not be said that the Appellate Authority had wrongly ignored the evidence of Gobind Ram, A.W.1 in this regard because he had hired the shop earlier to 1962. On the other hand, the perusal of evidence of Ram

Avtar, A.W. 6, owner of one of the two shops as depicted in the site plan, A.W. 5/1. got prepared from Sat Narain, Draftsman, clearly shows that the shop was constructed in the year 1962 and rented out at Rs 50/- per month. He further stated that the said shops fall at a distance of 1/2 furlong from the shop in dispute. The testimony of Suraj Bhan, A.W. 7, a marginal witness of the rent-note A W. 7/1 and A-W7/2 relating to the two shops depicted in the plan Ex. A.W. 5/1 further proves that the rent of these two shops was at Rs 50/- per month, and that these were rented out in the year 1962 No doubt these two shops are located in Sabzi Mandi at Gurgaon Cantt. whereas the shop in dispute is located in Sadar Bazar, Gurgaon Cantt, but all the same their intervening distance being 1/2 furlong, it can be said that these shops are not located in the same locality Admittedly, the shop in dispute covers large area and is a spacious one as compared to the shops, subject matter of rent notes Ex.AW-7/2, though the above referred two shops located in Sabzi Mandi are better constructed than the construction of the shop in dispute, but all the same the difference in construction would be set off by the large size of the shop in dispute than the two shops located in the Sabzi Mandi. Under these circumstances, it cannot be said that the findings of the Appellate Authority are erroneous in this regard.

5. In Raj Kumar's case (supra), D. V. Sehgal, J, had held that where the basic rent of the property in dispute was fixed in the year 1962 under the Punjab Act earlier, there is no justification in re-fixing the basic rent of the property, but those findings are not applicable to the facts of the present case as herein the earlier application for fixing the fair rent was moved by the tenant much earlier to 22nd November, 1960, the day the Rent Controller passed the order though there is no specific evidence for ascertaining the date of filing such application. It is apparent from the certified copy of the judgment, Exhibit AA/I of the District Judge that the Kent Controller had decided that application prior to 22nd November, while he had dismissed the appeal on 22nd February, 1961-Obviously, the determination of the basic rent will relate to the date of filing an application u/s ,4 of the Haryana Rent Act. Thus the basic rent fixed some where prior to November 22, 1960 of the shop in dispute is not of much consequence as it will have no material bearing on the prevalent rent of a newly constructed building in the year 1962. The situation would have been otherwise if on the earlier application the basic rent had been fixed in the year 1962.

6. For the foregoing reasons, this revision petition merits dismissal. It is ordered accordingly However, there is no order as to costs in view of the peculiar circumstances of the case