(1964) 01 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 720 of 1962

Rai Bahadur Sewak Ram Trust Society — APPELLANT

Vs

Mokham Chand — RESPONDENT

Date of Decision : 29-01-1964

Acts Referred:
East Punjab Urban Rent Restriction Act, 1949 — Section 4

Citation : (1964) 2 ILR (P&H) 207

Hon'ble Judges : Capoor, J

Bench : Single Bench

Advocate : Bhagirath Das and A.L. Bahri, for the Appellant; H.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Capoor, J.—Rai Bahadur Sewak Ram Trust Society is the owner of a building consisting of several shops as well as residential quarters in Pathankot. Mohkam Chand is the tenant of one of these shops, the agreed rent being Rs. 45/- per mensem. He filed a petition u/s 4 of the East Punjab Urban Rent Restriction Act, 1919, Act No. 3 of 1949 (hereinafter to be referred to as the Act), for the fixation of fair rent of the shop asserting that the fair rent of another shop at a short distance away was fixed at Rs. 4/8/- per mensem only by the District Judge. The petition was resisted on behalf of the Trust and it Was pointed out in the written statement that the shop had been newly constructed in the year 1956 and as such the Act did not apply to it and the Rent Controller had no jurisdiction to determine its fair rent. It was alleged that the previous shop existing at the site had been demolished and had been newly built at a considerable expense. The Rent Controller, Pathankot, framed the following issues :

(1) Whether the shop in dispute was built in 1955 and the applicant has no locus standi to bring the application ?

(2) What is the basic rent of the shop ?

(3) What is the fair rent of the shop ?

Issue No. 1 was found by him against the Trust and on issue No. 2 be held that the basic rent of the shop was Rs. 10/- per mensem and allowing 50 per cent increase on the basic rent the fair rent was fixed at Rs. 15/- per mensem with effect from the 15th April, 1959, the date of filing that application. No order was made as to costs. Against this order the Trust appealed and the tenant filed cross-objections and the appellate authority under the Act (District Judge Gurdaspur) dismissed the appeal as well as the cross-objections, leaving the parties to bear their own costs in that Court also. The trust has now come in revision to this Court.

Issue No. 1 is the principal issue in the case and its finding in favour of the landlord (the Trust; would result in the dismissal of tenant''s application u/s 4 of the Act.

2. Section 3 of the Act lays down that the state Government may direct that all or any of the provisions of the Act shall not apply to any particular building or rented land or any class of buildings or rented lands. In exercise of the powers conferred by this section, the Governor of the Punjab issued a notification (Notification No. 9185-LB-(Ch) 53(35123 dated 29th December 1955 exempting all buildings constructed during the year 1956, 1957 and 1958 from the provisions of the Act for a period of five years with effect from the date of completion of such building. The case of the Trust was that the block containing the shops was dismantled by it and instead shops were built anew and to every shop one room and a kitchen was added. It must be added here that the room and the kitchen so added are not in the tenancy of Mohkam Chand. On the construction, a sum of Rs. 21,500/- was incurred by the Trust and the evidence on this point has been accepted by both the Courts below. So far as this shop is concerned, the reconstruction was, as would appear from the judgment of the Rent Controller, which finding has been affirmed by the Appellate Authority also as follows: The height of the shop was raised by 3 feet the wooden-batters roof was replaced with a new existing lintel roof, reflooring and replastering were also done; the foundations of some of the walls were dug again and the front wall was built anew though the foundation of the back wall was not re-excavated. Some of the previous building material was used in the new construction also. The Courts below were of the view that whole thing appeared to have been necessitated by the landlord''s desire to add a residential room and a kitchen to each shop to increase the income and in these circumstances it could not be called a new construction.

3. The motive why the landlord incurred considerable capital expenditure during the building operations is, however, immaterial and what we have to see is whether taking a broad view of the case the existing constructions can be termed to be new constructions so as to attract the provisions of the notification referred to above. A recent Division Bench judgment of this Court in Sadhu Singh v. District Board, Gurdaspur and another (1962) 64 P.L.R. 119: contains a

discussion on this matter and Mahajan J. with whom Mehar Singh J. agreed, quoted with a approval the pronouncement of a Division Bench of the Madras High Court in Commissioner of Income Tax, Excess Profits Tax, Madras Vs. Rama Sugar Mills Ltd., Bobbili,

A renewal may be a repair or a reconstruction. Renewal is a repair if it is only restoration by renewal or replacement of subsidiary parts of a whole. If, on the other hand, it amounts to a reconstruction of the entirety or of substantially the whole of the subject matter it is not a repair but a reconstruction. The test, therefore, which decides the question whether a thing is a "repair" or not is to see whether the act actually done is one which in substance is a replacement of defective parts or a replacement of the entirety or a substantial part of the subject-matter.

Thus, in each case it is a question of degree as to when any construction would amount to construction of a building within the meaning of the notification. Here, the central fact is that while the floor area of the shop in dispute remains the same even after the construction made in 1956 yet the height of the shop has been raised by about 30 per cent and this means that there is more storage space in the shop which can be utilised by the construction of shelves etc. In these circumstances, I am of the view that it would not be correct to say that there has been simply extensive repairs made in the shop. The Appellate Authority also observed that "the shop in dispute may appear to have been constructed anew but it cannot be said that the previous structure had been removed by demolition and that it was replaced by a new one.'''' This approach is erroneous. In Lal Chand Aggarwal v. Mukandi Lal and another C.R. No. 112 of 1955, (Civil Revision No. 112 of 1955 decided on the 29th October, 1958) the Bench had occasion to consider a somewhat similar case and observed that while a small alteration in an old building does not make it a newly constructed building, still, if the old building has been pulled down and even though some of the old material is there, the building constructed anew is in its general appearance entirely different from the previous building, then that the notification granting the exemption would be attracted. On the principle laid down by the Bench in this case I am of the view that the construction made anew amounts to a new building and as such the Rent Control Tribunal had no jurisdiction to determine its fair rent.

4. Mr. Hem Raj Mahajan, on behalf of the tenant, has referred to an unreported case in Parmeshri Dass v. Messrs Mulk Raj Muni Lal C.R. No. 667 of 1958 (Civil Revision No. 667 of 1958 decided on the 18th September 1959), in which Bishan Narain J. sitting singly had occasion to consider the case of Lal Chand Aggarwal v. Mukandi Lal Puri and another C.R. No. 112 of 1955, but on the facts before him was of the view that that authority could not apply. He further observed that the view stated by him was in consonance with the decision in British Medical Stores and Others Vs. L. Bhagirath Mal and Others, Presumably he had in mind the observations at page 462, which were relied upon by Mr. Mahajan. These

were as follows :

The landlord submits that the walls were already there and what has been done is that the roof was rebuilt and reflooring was done and the walls have been plastered. These have been held to be new constructions by the learned District Judge. In my opinion they are nothing more than mere improvements and, therefore, they are not premises to which section 7-A of the Delhi and Ajmer Merwara Rent Control Act, 1947, even if valid would be applicable.

However, in appeal against that decision, the Supreme Court in Roshan Lal Mehra v. Ishwar Dass with Roshan Lal Mehra Vs. Ishwar Das, held that the High Court was in error in interfering with the finding of fact by the Rent Controller and the District Judge, in support of which finding there was clear and abundant evidence which had been carefully considered and accepted by both the Rent Controller and the District Judge. The case relied upon by Mr. Hem Raj Mahajan is, therefore of no help to the respondent.

5. Lastly, Mr. Mahajan on the basis of the pronouncement of the Supreme Court, reproduced above, argued that the finding of the Courts below on the question raised in this issue was a finding of fact, which was liable not to be set aside by this Court. That was a case under the Rent Control Act applicable to Delhi. The powers of the High Court u/s 15(5) of the East Punjab Urban Rent Restriction Act have been explained by the Supreme Court in Neta Ram and others v. Jiwan Lal and another (1962) 64 P.L.R. 694.698 and it has been held that if the Rent Controller and the Appellate Authority had examined the facts after instructing themselves correctly about the law, a Court of revision should be slow to interfere with the decision thus reached, unless it demonstrates by its own decision, the impropriety of the order, which it seeks to revise. In the instant case, while accepting the facts as given by the Courts below, the conclusion on the authorities already cited would be that constructions made by the Trust in the year 1956 amount to new constructions for the purpose of the notification issued by the Governor of the Punjab under u/s 3 of the Act.

6. On this view, no other question arises for decision and accepting the revision petition and setting aside the orders of the Courts below, I dismiss the tenant''s application u/s 4 of the Act with costs throughout. Counsel''s fee Rs. 50/-.