(1997) 12 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9391 of 1994

Ram Chander and Sons APPELLANT

Vs

Union Territory of Chandigarh and Another RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:
Constitution of India, 1950 — Article 14, 226

Citation : (1998) 118 PLR 742 : (1998) 2 RCR(Civil) 287 : (1998) 1 RCR(Civil) 475

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : M.L. Sarin and Anand Chhibbar, for the Appellant; Subhash Goyal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether the decision of the Chandigarh Administration to renew the lease of the properties i.e. S.C.Os. (Shop-cum-offices) which are in possession of the petitioners, subject to their agreeing to pay rent @ Rs. 14,000/- + Rs. 1,824/- (total Rs. 15,824/- per month) is arbitrary, oppressive, unconscionable and ultra vires to Article 14 of the Constitution and the Capital of Punjab (Development & Regulation) Act, 1952 (hereinafter referred to as ''the Act of 1952''), is the common question which arises for adjudication in these petitions?

2. At the outset, we deem it appropriate to mention that an almost identical issue was raised in C.W.P. No. 10521 of 1996, Dr. Sahib Singh and Sons v. Chandigarh Administration through Administrator and Ors., which was dismissed by us on July 31, 1997 subject to some directions and the Petition for Special Leave to Appeal (Civil) No. 18466 of 1997 filed against the order of the High Court has been dismissed by the Apex Court on 29.9.1997. In view of the dismissal of similar petition by this Court and affirmation of that order by the Supreme Court, these petitions merit rejection. Nevertheless, we deem it

appropriate to notice the relevant facts and examine the contentions urged on behalf of the petitioners.

3. All the petitioners except M/s New Rajan Watch Company which has filed C.W.P. No. 630 of 1993 were granted lease of S.C.Os., booths etc. in Section 17-E in the years 1963 and 1964. M/s New Rajan Watch Company was granted lease in the year 1990. The tenure of the lease granted to each of the petitioners was five years and it was renewable for another five years subject to the payment of rent increased by 20%. The petitioners continued to occupy the properties leased out to them by paying the rent which was increased from time to time. In the year 1976, the respondents informed the lessees that the monthly rent has been enhanced to Rs. 2,671/-. Some of them filed writ petitions before this Court. By an order dated August 4, 1988, passed in C.W.P. No. 3583 of 1993, Cloth Palace v.. Union of India and Ors., a Division Bench negatived the challenge to the validity of notification dated March 5, 1985 by which the buildings and rented lands belonging to the government were exempted from the provisions of the East Punjab Urban Rent Restriction Act, 1949 read with the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974. The Court also rejected the contention urged on behalf of the petitioners that the rent of Rs. 2,671/- was unreasonable or arbitrary. However, relief was given to the petitioner by giving an option to it to execute the lease on the revised term offered by the Chandigarh Administration.

4. In these petitions notices issued by the Estate Officer, Union Territory, Chandigarh calling upon the petitioners to accept the terms and conditions incorporated therein for renewal of the lease have been challenged on the ground of arbitrariness, violation of Article 14 of the Constitution and the provisions of 1952 Act. The petitioners have averred that the decision of the Administration to charge rent @ Rs. 15,824/- per month w.e.f. 13,1992 is unreasonable, oppressive and unconscionable because there is no baas for six fold increase in the amount of monthly rent. They have also averred that rent being charged from other lessees is substantially less and as such the demand raised by the respondents is ex facie discriminatory and violative of their fundamental right to equality guaranteed by Article 14 of the Constitution.

5. The respondents have justified their decision to charge rent @ Rs. 14,000/- per month along with other amount on the basis of the order passed by the Division Bench in the case of M/s Cloth Palace (supra). Their contention is that the petitioner is free to accept or not to accept the lease of the premises by paying the revised rent. They have also pleaded that the petitioner cannot invoke writ jurisdiction of the High Court for compelling the respondents not to revise the rate of rent in respect of the property belonging to the Administration.

6. In the additional affidavit dated 27.9.1997 filed in C.W.P. No. 9391 of 1994 the petitioner has given the details of other premises teased out by the respondents at much lower rent. On the basis of the averments made in the writ petition and the replication, the petitioner M/s Ram Chander and Sons has reiterated its plea

that the decision of the respondents to charge rent at the revised rate is arbitrary and discriminatory.

7. The first contention urged by Shri M.L. Sarin and Shri Anand Chhibbar is that the demand of increased rent @ Rs. 15, 824/- is without jurisdiction because in terms of the original lease agreement the rent cannot be increased by more than 20%. The second contention urged by the learned counsel is that the enhancement of monthly rent from Rs. 2,671/- to Rs. 15,824/- is wholly arbitrary, unreasonable and unconscionable. Learned counsel submitted that there is no tangible reason to bring about six fold increase in the monthly rent and, therefore, the impugned demand should be ''declared unconstitutional. Shri Sarin relied on the instructions issued by the Government of India to support his contention that the proposed increase in the amount of rent is unreasonable and arbitrary. The third and the last contention urged by the learned counsel is that the impugned notices are discriminatory inasmuch as other lessees have not been called upon to pay the increased rent. Shri Subhash Goyal urged that this Court should not exercise writ jurisdiction in the matter which lies in the realm of contract. Shri Goyal argued that the petitioners are not entitled to invoke jurisdiction of the High Court under Article 226 to restrain the respondents from laying down the terms and conditions for renewal of the lease of the properties which belong to them. He submitted that the petitioners have the absolute choice not to accept the terms and conditions on which the lease has been offered to them and as such they should not be given any relief by quashing the notices issued by the Estate Officer. Shri Goyal relied on the order dated 31.7.1997 passed in C.W.P. No. 10521 of 1996, Dr. Sahib Singh and Sons v. Chandigarh Administration through Administrator and on the order dated 4.8.1988 passed in C.W.P. No. 3583 of 1993, Cloth Palace v. Union of India and Ors. (supra).

8. A bare perusal of the deed of lease executed on 10.5.1968 between the President of India and Shri Sudhir Sundra, Proprietor of M/s Ram Chander and Sons (petitioner in C.W.P. No. 9391/94) shows that the property belonging to the Chandigarh Administration was leased out to the petitioner subject to the conditions incorporated in the deed, one of which was that the lease shall be governed by the provisions of 1952 Act and the rules made thereunder from time to time. The tenure of lease was five years. It could be renewed only once for another term of five years. Similar lease deeds were executed by the Administration in respect of the properties leased out to other petitioners. It is thus clear that the petitioners were granted lease only for a period of five years which was renewable for another term of five years. It, however, appears that after the expiry of ten years period the petitioners continued to occupy, the premises by paying the rent in terms of the demand raised by the respondents. Some of the similarly situated persons unsuccessfully challenged the levy of revised rent @ Rs. 2,671/- While dismissing C.W.P. No. 3583 of 1993, Cloth Palace v. Union of India and Ors., the Division Bench observed as under:-

"In the writ petition, he has questioned the constitutional validity of the notification dated March 5, 1985 published in the Gazette Extraordinary of that date which read as follows :-

"In exercise of the powers conferred by Section 3 of the East Punjab Urban Rent Restriction Act, 1949 read with East Punjab Urban Restriction Act (Extension to Chandigarh) Act, 1974 (Act No. 54 of 1974) and Govt. of India notification No. S.O. 22(E) dated the 8th January 1975, the Administrator of the Union Territory of Chandigarh is pleased to direct that the provisions of aforesaid Act shall not apply to buildings and rented lands belonging to the Govt."

This exemption of the Government premises was challenged on the ground that it offends Article 14 of the Constitution and the provisions of Section 3 Of the East Punjab Urban Rent Restriction Act also is invalid as amounting to excessive delegation of power. This point is no longer available. The point is concluded by a number of judgments. In Sadhu Singh S. Mulla Singh Vs. District Board, Gurdaspur and Another, , the power of delegation given to the Government to exempt particular building or class of buildings from the applicability of a statute was questioned on the ground that it was excessive delegation. It was held in that case that Section 3 does not suffer from the vice of excessive delegation of legislative power. Constitution validity of Section 3 was again considered in Punjab Tin Supply Co. v. Central Government and Ors. AIR 1984 SC 8, wherein it was held that neither it suffers from the vice of excessive delegation nor it violates Article 14. That case related to exemption of newly constructed buildings from the operation of the Act. Sadhu Singh''s case (supra) was taken up to the Supreme Court by way of an appeal after obtaining certificate of fitness from the High Court and the Supreme Court in Sadhu Singh and Anr. v. District Board, Gurdaspur 1969 R C R 156, upheld the validity of the notification exempting the property from the provisions of the Act This point, therefore, does not survive for consideration."

9. The Court also rejected the challenge to the demand of enhanced rent and held:-

" The other question that has been raised by the learned counsel for the petitioners is that the cancellation of the lease with effect from March 1, 1982 and claiming damages at the rate of Rs. 2,671/- for unauthorised occupation from that date was illegal. If the contention of the learned counsel was that before assessing the damages for use and occupation, notice should have been issued as to why the particular amount should not be recovered and the damages should have been assessed only after hearing the petitioner, we might have considered remanding the matter for fresh consideration, but the contention of the petitioner was that the Government shall not be permitted to unilaterally raise the rent. We are unable to agree with this contention. Notice has been issued specifically stating that unless he pays a sum of Rs. 2671/- per month from March 1, 1982, the lease shall stand terminated with effect from that date. There is no evidence to show that rent of Rs. 2671/- per month is in any way unreasonable and arbitrary. In fact we had a feeling that this is much lower than the fair payable rent in respect of such premises."

10. It appears that after the rejection of the writ petitions filed by M/s Cloth Palace and others, the respondents undertook an exercise for revision, of rent of the government properties leased out to different parties and they decided to offer renewal of lease subject to the payment of rent @ Rs. 15,824/- per month w.e.f. 1.3.1992. Consequently, notices were issued by the Estate Officer requiring the petitioners to give their consent for renewal of the lease on the terms and conditions incorporated in the notices, the relevant extract of which is reproduced below:-

"Whereas the monthly rent of the S.C.O. No. 41 (Ground Floor only) in Sector 17-E, Chandigarh leased out to you on monthly rent basis was determined as Rs. 2671/- per month as per instructions of the Administration w.e.f. 1.3.82. This enhancement for rent was appealed against by three allottees in the Hon''ble High Court of Punjab & Haryana, Chandigarh vide Civil Writ Petition Nos. 3581, 3582 & 3583 of 1993 which were decided in favour of the Chandigarh Administration on 4.8.1988, wherein it was clearly decided that Estate Officer is competent to revise the rent w.e.f. 1.3.91 as per existing rules of the Estate Administration.

Whereas you had agreed to pay the monthly rent at the earlier rates of Rs. 2671/- per month and undertaking on stamp papers was executed by you duly attested by Executive Magistrate whereby you have undertaken to pay the monthly rent at the rates determined by the Administration from time to time.

Now whereas the Government has decided to renew the period of lease of the said S.C.O. No. 41, Sector 17-E, Chandigarh upto 28.2.94, subject to the fulfillment of following terms and conditions :-

i) That you agree to pay an enhanced rent the rate of Rs. 14,000/- + Rs. 1824/- = Rs. 15,824/- per month w.e.f. 1.3.92 pending decision of the Chandigarh Administration for the intervening period i.e. 1.3.91 to 29.2.92 for the energing of rent as enhanced rates which will be binding on you as and when received.

ii) That you agree to execute a fresh lease deed in favour of the undersigned containing the terms and conditions within such period fixed for the purpose by the undersigned.

iii) You will not make any addition or alteration in the premises existing at the time of granting this lease or by way of adding new partner except with the previous permission of the undersigned in writing.

iv) That you will make the payment of pending arrears simultaneously with current rent as per your undertaking given in the Court of undersigned on dated 8.8.1992.

v) That your willingness/consent for the renewal of lease of SCO No. 41, Sector 17-E, Chandigarh on above conditions reaches the undersigned within 15 days from the receipt of this notice by you.

Therefore, in case you fail to give your consent/agreement for the renewal of lease on the above terms and conditions within the period stipulated in sub para (v) above, the lease of the said SCO No. 41, Sector 17-E, Chandigarh shall be treated as terminated and you would be required to hand over the vacant possession of the premises to the S.D.O. (Maintenance) concerned failing which action as warranted by law shall be taken against you."

11. Dr. Sahib Singh and Sons challenged similar notice issued by the Estate Officer for renewal of lease on the basis of the revised terms and conditions. While dismissing the writ petition, this Court held as under :-

" The petitioner''s grievance against the enhancement of rent on the ground of arbitrariness deserves to be rejected on the short ground that identical challenge has been negatived by this Court while deciding C.W.P. No. 3583 of 1983 etc. which were filed by the persons to whom similar properties were leased out in Sector 17-E. Even otherwise, the details given in the affidavit of Shri Krishanjit Singh disclose rational basis for fixing the rent at the rate of Rs. 14,000/- per month.

The learned counsel for the petitioner made strenuous efforts to support his argument of arbitrary fixation of the rent by the respondents by relying upon memo dated 24.4.1970 written by the Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi and office memorandum No. 16013(l)-72-4-PCL-IV(VII) dated 1.9.1982 issued by the Directorate of Estates, Government of India for re-assessment of the reasonable rent of private buildings leased out by the Government. However, we are unable to agree with Shri Kataria that these documents can be made bask for sustaining the petitioner''s plea that the Administration of the Union Territory has acted arbitrarily in fixing the revised rate of rent. The Court has to bear in mind that in such like matters the decision taken by the executive authorities can not lightly be interfered with. It is the prerogative of the competent authority to determine the rate of rent after considering the relevant factors and unless the decision is shown to be malicious or contrary to the Act or the rules, the Court cannot intervene and hold that the tenant/lessee should be charged lesser rent

Another reason for not accepting the petitioner''s plea against the enhancement of the rent is that the initial term of the lease granted to the petitioner was for a period of five years and the term of the fresh lease granted to it from time to time came to an end. Vide Annexure-P.10, the petitioner was given an option to get renewal of the lease subject to the fulfillment of the terms and conditions incorporated in that communication. One of the conditions related to the payment of enhanced rent at the rate of Rs. 14,000/- per month with effect from 1.3.1992. If the petitioner did not want to avail the benefit of grant of fresh lease in respect of the disputed Shop-cum-Office it was free to convey its decision to the respondents and hand over possession of the property to the Administration.

Admittedly, that was not done by the petitioner. Instead, it continued to occupy the premises. Even during the course of hearing the learned counsel for the petitioner stated that his client does not want to give up the possession of the property. In view of this, we find little justification in the petitioner''s insistence of not paying rent at the rate on which the leased property was offered to him by the Administration. In a contractual matter of this nature the petitioner had the absolute freedom to accept or not to accept the lease offered by the Estate Officer on the terms and conditions incorporated in Annexure-P.10 and there is no reason why should the Court intervene and reduce the rate of rent at the behest of one of the parties.

The argument of Shri Kataria regarding violation of the principles of natural justice merits summary rejection. It is too much for the petitioner to invoke natural justice to relieve itself of the rigour of the conditions on which the Administration offered the property on lease. Otherwise also, the petitioner has no role to play in the matter of fixation of the rent. If the rate of rent is not palatable, to the petitioner it can always refuse to accept the same without incurring any liability except handing over the possession of the site. Hence, we do not find any ground to nullify the condition No. 1 contained in the letter Annexure P.10."

12. In our opinion, the principles laid down in the above mentioned two decisions are directly attracted in the present cases and relying on the same we hold that the terms and conditions on which the renewal of the lease has been offered to the petitioners are not arbitrary, unreasonable, oppressive or unconscionable or violative of Article 14 of the Constitution. The right of the petitioners to remain in possession of the properties leased out to them stood extinguished on the date of the expiry of tenure of the lease. They can retain the possession only by executing the fresh lease on the terms and conditions offered by the respondents. They are free to accept or not to accept the conditions on which renewal of the lease is being offered by the Administration. If the petitioners are not willing to accept the terms and conditions offered by the respondents, they can convey their refusal to the Administration. In that event the only thing which the petitioners will be required to do will be to hand over the possession of the properties leased out to them.

13. The principles laid down in the judgments of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, on which reliance has been placed by Shri Sana and Shri Chhibbar do not have any bearing on these cases. In the first of those two cases a two Judges Bench of the Apex Court dealt with challenge to the constitutional validity of the provisions contained in the service regulations which empowered the employer to terminate the services of permanent employees by giving three months notice. After a detailed examination of the issue, the Supreme Court held that the employer does not have the absolute right to terminate the services of a

permanent employee simply by giving notice of specified duration. Their Lordships declared the impugned regulation as ultra vires to Article 14 of the Constitution and Section 23 of the Contract Act by holding that the conditions incorporated in the regulations were wholly arbitrary and unconscionable and opposed to public policy. In the second case the challenge to the validity of order passed by the State Government terminating the services of government counsel was considered by the Supreme Court. One of the grounds on which the respondents contested the plea of the petitioners was that the engagement of the government counsel was contractual in nature and as such the Court has no right to intervene. Their Lordships rejected this argument and held that every action of the public authority including those falling in the realm of contract are amenable to judicial review.

14. In these cases the terms and conditions on which the renewal of lease has been offered to the petitioners cannot be termed as arbitrary, capricious, oppressive or unreasonable. What should be the rate of rent to be paid by the petitioners in respect of the properties leased out to them primarily depends on the agreements entered into between the parties. How the rate of rent should be determined depends on consideration of various factors one of which is the prevalent market rent. The respondents are not expected to continue the tenure of lease by offering renewal to the petitioners ignoring the fact that rent of other similarly situated properties have registered steep rise. In such like commercial matters the Administration is not expected to give charities to the petitioners.

15. In the context of the petitioners'' challenge to the increase in the amount of rent, we can take judicial notice of the fact that the rent of similarly situated private properties is much more than the sought to be charged by the Administration. Within Sector 17 rent of the similar private properties is between Rs. 30,000/- to Rs. 50,000/- per month.

16. Action of the respondents to lease out the properties to the petitioners or others has nothing to do with the sovereign function of the State nor it pertains to the field of public law obligation so as to warrant exercise of jurisdiction by the High Court to compel the respondents to modify the terms and conditions on which renewal of lease is being offered to the petitioners.

17. We also do not find any substance in the plea of the petitioners that they are being discriminated vis-a-vis other similarly situated persons. No doubt in some cases the rent being charged by the respondents is on lower side but that only calls for enhancement of the rent by the Administration of such other properties and not the reduction in the rate of rent specified in the impugned notices. In our opinion, the Ad-ministration should enhance the rent of other properties as well in larger public interest.

18. For the reasons mentioned above and also for the reasons incorporated in the order dated 31.7.1997 passed in C.W.P. No. 10521 of 996, Dr. Sahib Singh and Sons v. Chandigarh Administration (supra), which stands affirmed by the

Supreme Court by dismissal of SLP (Civil) No. 18466 of 1997, the writ petitions are dismissed. However, we direct that if the petitioners convey their consent to the terms and conditions incorporated in the impugned notices within three months from today, the respondents may renew the lease granted to such of the petitioners subject to their paying the arrears of rent within six months. We also direct that the respondents shall be free to charge appropriate interest on the amount of arrears of rent between 1.3.1992 to the date the stay order(s) was/were passed by the High Court. For the period during which the payment of rent at the rate specified in the impugned notices remained stayed by the Court, the petitioners shall have to pay interest @18% per annum. The amount of interest shall be paid by the petitioners within six months from today. Those of the petitioners who fail to give their consent in terms of this order or who fail to pay the arrears alongwith interest within the specified time shall forfeit their right to remain in possession of the properties leased out to them and the respondents shall be absolutely free to recover possession thereof in accordance with law. We also hope that the respondents will take urgent steps to enhance the rent of other similar properties situated in Sector 17.

