

(2003) 01 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3583 of 1986

Sh. Puran Singh and Another

APPELLANT

Vs

Mahant Bhagwan Dass Chela Mahant Narain Dass and
Another

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 15(3), 15(5)

Citation : (2003) 134 PLR 385 : (2003) 1 RCR(Rent) 538

Hon'ble Judges : N.K. Sud, J

Bench : Single Bench

Advocate : J.S. Bhatti, for the Appellant; Arun Palli, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—This civil revision is directed against the order of the Appellate Authority, Amritsar dated 13.10.1986 whereby the application of the respondent-landlord for evicting the petitioner-tenant on the ground of non-payment of rent and subletting has been allowed.

2. Mahant Bhagwan Dass, successor of Mahant Narain Dass, had filed the eviction petition claiming that he had let out two rooms of a building bearing Municipal House No. 1741/5 situated in Kutcha Shaheedan, Chowk Prag Dass, Amritsar to one Mohd. Yunas Sharif with effect from 1.11.1986 for a period of nine months. It was claimed that Mohd. Yunas Sharif was in arrears of rent since 1.10.1972 and that he had transferred his right in the tenancy and sublet it to the petitioner and one Darshan Singh. The petition was contested and the following eight issues were framed.

"1. Whether there exists any relationship of landlord and tenant between the applicant and respondent? OPA.

2. Whether the respondents are liable to ejectment on the grounds mentioned in para 4(a) & (b)? OPA.

3. Whether the rent note by respondent No. 1 in favour of the original landlord is illegal, void and collusive? OPA
4. Whether the respondent No. 2 & 3 had been direct tenants under Mahant Narain Dass. If so, its effect? OPR
5. Whether the present application is not maintainable in view of preliminary objection No. 1 in the written statement? OPR.
6. Whether the Rent Controller has no jurisdiction to entertain the application? OPR.
7. Whether Mahant Bhagwan Dass has a right to file this application? OPA
8. Relief."

The Rent Controller treated issued No. 5 as preliminary issue and decided the same against the landlord and dismissed his application on this short ground alone vide his order dated 30.11.1983.

3. Aggrieved by the said order, the landlord filed an appeal before the Appellate Authority, Amritsar. The landlord challenged the findings recorded by the Rent Controller on the preliminary issue. The Appellate Authority noticed that no meaningful arguments were advanced by the learned counsel for the tenant. Accordingly, the Appellate Authority vide an interim order dated 28.2.1986 set aside the findings of the Rent Controller on the preliminary issue and remitted the matter to him for recording his findings on merits on the other issues on the basis of evidence already on record. He was directed to send back the case file thereafter for final disposal of the appeal.

4. Thereafter, the Rent Controller afforded an opportunity to both the parties and submitted a report dated 19.5.1986 to the Appellate Authority, Amritsar upholding the charges of non-payment of rent as also of subletting. Accordingly, it was held that the tenant deserved to be evicted on these grounds.

5. The Appellate Authority, Amritsar, thereafter, disposed of the appeal vide order dated 13.10.1986 after affording a reasonable opportunity of being heard to the parties. The findings of the Rent Controller contained in his report dated 19.5.1986 were upheld and accordingly the application of the landlord for eviction of the petitioner was allowed. It is against this order that the present revision petition has been filed.

6. Mr. J.S.Bhatti, counsel for the petitioner, could not show that the concurrent findings of fact by the two authorities below are in any manner erroneous or against the material on record. He, however, raised a legal issue that the order of the Appellate Authority dated 13.10.1986 is based on an interim order dated 28.2.1986 remanding the matter back to the Rent Controller which itself was illegal and invalid because the Appellate Authority u/s 15(3) of the East Punjab Urban Rent Restrictions Act, 1949 (for short "the Act"), has no power to remand the matter without dealing with the merits of the case. For this purpose, he

placed reliance on a Division Bench judgment of this Court in Raghu Nath Jalota v. Romesh Duggal and Anr. 1979(2) R.C.R. 501, in which an earlier decision of a Division Bench of this Court in Shri Krishan Lal Seth v. Shrimati Pritam Kumari (1961)63 P.L.R. 865 has been followed.

7. Contesting the arguments of counsel for the petitioner, Mr. Arun Palli, counsel for the respondent-landlord submitted that the petitioner is estopped from raising this plea in the present proceedings inasmuch as he had not contested the interim order of the Appellate Authority dated 28.2.1986- He pointed out that, in fact, the petitioner had submitted himself to the jurisdiction of the Rent Controller and participated in the proceedings. Even on being confronted with the report dated 19.5.1986 by the Appellate Authority, he did not raise any objection questioning the validity of the order of the Appellate Authority dated 28.2.1986. Still further, no such objection was raised by him before the Appellate Authority during the course of his arguments. For this purpose, he placed reliance on the judgments of this Court in Santokh Singh etc. v. Sat Pal Jayanti Parshad (1981)83 P.L.R. 419 and Ram Diwaya v. Kanhaya Lal 1972 R.C.R. 530.

8. He further submitted that even otherwise there is no restriction on the powers of the Appellate Authority to ask for a report from the Rent Controller in terms of Section 15 of the Act. He specifically referred to Sub-section (3) of Section 15 which confers the power on the Appellate Authority to make such further inquiry as it thinks fit either personally or through the Controller. Thus, accordingly to the learned counsel, the interim order of the Appellate Authority dated 28.2.1986 was perfectly legal and valid.

9. Referring to the judgments of this Court in the cases of Raghu Nath Jalota (supra) and Shri Kushan Lal Seth (supra), he pointed out that those related to the remand of the whole case to the Rent Controller and not a case where the Rent Controller was asked to record findings on issues which had not been decided by him. He pointedly drew my attention to the question formulated by the Division Bench in Raghu Nath Jalota's case (supra) to show that they were considering only a case where the whole case had been remanded to the Rent Controller for a fresh decision. According to him, in the present case neither the whole case had been remanded nor there was any question of fresh decision being sought because the Rent Controller had not decided the issues on merits at all. The question of deciding any issue afresh could arise only if the Rent Controller had in the first instance recorded a finding earlier. According to Mr. Palli the order dated 28.2.1986 was nothing but an order requiring the Rent Controller to make some inquiry on behalf of the Appellate Authority which is permissible u/s 15(3) of the Act. He also placed reliance in this behalf of the judgments of this Court in Raghu Nath Jalota's case (supra) and Santokh Singh's case (supra) and that of Himachal Pradesh High Court in Smt. Surinder Kaur v. Sh. Mohinder Pal Singh 1976 R.C.R. 594.

10. In reply counsel for the petitioner states that there is no question of estoppel as the Act is a Code by itself and the provisions of the CPC are not applicable. He

further states that from a perusal of the order passed by the Rent Controller on remand, it is evident that he was passing a fresh order and not merely submitting a report. Therefore, the order was in fact an order of eviction in the camouflage of a report.

11. I have heard the rival contentions and gone through the impugned orders. Subsection (3) of Section 15 of the Act reads as under;-

"(3) The Appellate Authority shall decide the appeal after sending for the records of the case from controller and after giving the parties as opportunity of being heard and, if necessary after making such further enquiry as it thinks fit either personally or through the Controller."

A plain reading of the aforesaid provision shows that the Appellate Authority has been vested with the power to make such further enquiry as it thinks fit either personally or through the Rent Controller. In the present case, the Rent Controller after having framed various issues had treated one of the issues as preliminary issue and disposed of the application by adjudicating on that issue alone. He had not recorded his findings on the other issues. The Appellate Authority was not in agreement With the findings of the Rent Controller on the preliminary issue. For disposing of the appeal, he had two options open before it either to appraise the entire evidence himself and record findings on the other issues or ask for a report from the Rent Controller in this behalf. He chose to do the latter and ask the Rent Controller to submit his report on the other issues. It is also evident that he had not disposed of the appeal but kept it pending and had asked the Rent Controller to give his findings on the issues which had been left undecided by him. It is in compliance with this direction that the Rent Controller had submitted his report dated 19.5.1986. It is true that the manner in which para-19 of this report has been worded, does convey an impression as if the Rent Controller was disposing of the rent petition. However, viewed in the light of the order of the Appellate Authority dated 28.2.1986, it is nothing but a report submitted by him to the Appellate Authority. This position is also clear from para-20 of his report which reads as under;-

"20. The report is submitted accordingly to the learned Appellate Authority, Amritsar. The parties have been directed to appear in the Court of learned Appellate Authority, Amritsar (Sh. J.P.Gupta) on 3.6.1986."

Thus, the action of the Appellate Authority in seeking this report is perfectly valid in view of the clear mandate of Sub-section (3) of Section 15 of the Act. Even in Radhu Nath Ja/ota's case (supra), on which strong reliance has been placed by the counsel for the petitioner, the Bench in para-II has visulised such a situation and has observed as under;-

"II. The case in hand is itself an example (though much more glaring ones are also available) of the delay in the courts below which may nevertheless occur despite the legislature's intent to provide an expeditious procedure for the rent jurisdiction which prima facie cries out for urgent disposal. The application for

ejection was preferred way back on the 20th of January, 1971 but it was not till more than four years later that on the 10th of March, 1975 the case came to be decided by the Controller. The Appellate Authority proceeded with relative quickness, but nevertheless it was not till a year and three months thereafter that the judgment under revision was rendered. If the matter were to be remanded for a fresh decision the parties would be thrown back into the mill of a fresh trial which conceivably may take as long as the earlier one. Therefrom, inevitably would arise fresh rights of a regular appeal u/s 15(3) and the possibility of a revision thereafter have equally to be conceived of. It were perhaps such like eventualities which had motivated the legislature that at least within the rent jurisdiction, the appeal would remain before the Appellate Authority even though fresh enquiry may be necessary in order to prevent the start of the cycle all over again."

Similarly, in para-23, it has been observed as under;-

"..... The plain language of Section 15(3) clearly provides both the alternatives in a wide ranging discretion to the Appellate Authority. He is entitled to make such further enquiry either himself or through the Controller. It is thus plain that in appropriate cases, if the Appellate Authority so desires, the matter can be sent to the Controller for the recording of further evidence and even the findings to be arrived at thereon. This procedure can obviously be closely analogous to the calling of a report from the trial court under order 41 Rule 25 of the Civil Procedure Code. Therefore, the fear repeatedly expressed that the absence of the power to remand would inevitably and as a matter of law convert the Appellate Authority into a trial court, in peculiar cases, appears to be not well founded. It would be wasteful to reiterate all the reasons given above and on their basis, there is no option, but to overrule the judgment on this point."

According to me, the above observations completely demolish the case being urged on behalf of the petitioner. The Appellate Authority vide order dated 28.2.1986 had not remanded the whole case to the Rent Controller for fresh adjudication but had merely sought his report giving his findings on the issues which had not been decided earlier. Thus, the Appellate Authority was fully competent to do. Thus, it cannot be held that the interim order passed by him dated 28.2.1986 was without jurisdiction. In view of this finding, it is not necessary for me to go into the other contentions raised by Mr. Palli, learned counsel for the respondent-landlord, that the petitioner is estopped from questioning the validity of the order of the Appellate Authority dated 28.2.1986 in the present proceedings.

No agreement has been advanced against the correctness of concurrent findings of fact recorded by the two authorities taken.

Consequently, the petition being devoid of any merit is dismissed. However, there shall be no order as to costs.