
(1994) 05 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.R. No. 295 of 1993

Shri Hari Singh

APPELLANT

Vs

Amar Chand Butail and Sons

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1971 — Section 4(2), 4(5)

Citation : (1994) 2 ShimLC 393

Hon'ble Judges : V. Ratnam, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Ratnam, C.J.—On a consideration of the oral as well as documentary evidence, the Rent Controller found that the Respondent had not adduced sufficient evidence for the fixation of the fair rent of the shop in the occupation of the Petitioner and in that view, dismissed the application. However, on an appeal, the appellate authority, on the basis of the materials available, determined the fair rent payable by the Petitioner in respect of the premises in his occupation at Rs. 150 per mensem inclusive of municipal taxes and the Respondent was held entitled to this fair rent, as fixed from the date of the judgment, that is, 16-9-1993.

2. In support of this revision petition, learned Counsel for the Petitioner first contended that the instances of the prevalent rent in the locality, as noticed by the appellate authority in paragraph 12 of its order, are all with reference to new buildings and that cannot, therefore, be adopted as a basis for fixation of fair rent in respect of the premises in the occupation of the Petitioner. It is, however, not payable to accept this contention. u/s 4(2)(a) and (b) of the Act, the determination of the fair rent is with reference to a particular date line and not whether the building is new or old. u/s 4(2)(a) of the Act, which, it is not in dispute, is applicable to this case, all that is relevant is that the rent prevailing in the locality for similar building or rented land let out to new tenants during the

year 1971 and not the condition of the building either as old or new. In view of this clear and specific provision u/s 4(2)(a) of the Act, this contention cannot be accepted.

3. Learned Counsel next contended that no improvements, whatever, have been made in relation to either the locality or the premises in the occupation of the Petitioner, therefore, the fixation of rent, in the manner done, is not warranted. Even with reference to this, having regard to Section 4(2)(a) of the Act, the question of improvements either in the premises or with reference to locality, where the premises is situate, is not a relevant consideration and hence this contention is also rejected.

4. Lastly, learned Counsel for the Petitioner contended that the instances, relied upon by the appellate authority to show the prevalent rent in Ram Mandir market are not in the locality as the premises in the occupation of the Petitioner and they ought not to have been relied upon. Ex PW-2/A shows that M/s. Imperil Coal Company is paying Rs. 250 per month for the premises measuring 17" x 9". Likewise, M/s. Shankar Company is payable Rs. 250 per month for the premises, again, measuring 17" x 9". With reference to a premises measuring 17" x 8.5", one K.G Bhasin is paying of Rs. 310 per month Khadi Grain Udyog as a tenant is paying Rs. 275 per month in respect of the premises measuring 17" x 8.5". Similarly, Smt. Lila Wati is paying of Rs. 280 per month in respect of a premises measuring 17" x 9". Exs. PW-2/B, PW-2/C, PW-2/D, PW-J/E and PW-2/F are the relevant rent notes in this regard. What is, however, significant is that all these rent notes are prior to 1971 and they reflect higher rent of the premises in their occupation. The appellate authority had referred to these rent notes and had also give n some concession in the matter of fixation of the fair rent presumably on the footing that the premises in the occupation of the Petitioner is not very near to the premises covered by the rent notes, referred to earlier. There is no evidence, whatever, to establish that the premises covered by the rent notes, referred to earlier, are not in the same locality or near to the premises or even totally not meriting comparison, in respect of deciding the rent, prevailing in the locality, u/s 4(2)(a) of the Act. On the basis of the available materials, the appellate authority cannot be stated to have committed any error in fixing the fair rent at Rs. 150 per mensem, inclusive of municipal taxes in respect of the premises under the occupation of the Petitioner. Though the Respondent would be entitled to the fixation of fair rent u/s 4(5) of the Act from the date on which the application was filed, the appellate authority had granted the benefit of payment of fair rent to the Respondent only from 16-9-1993 and the Petitioner cannot claim that any prejudice has been caused to him. The evidence on record clearly supports the conclusion of the appellate authority and there is no illegality or irregularity in the order passed by the appellate authority. The civil revision is dismissed.