
(1996) 04 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 133 of 1995

Smt. Anita Chanana

APPELLANT

Vs

Sh. Surinder Singh Obrei

RESPONDENT

Date of Decision : 23-04-1996

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 15, 15(2), 16, 16(2), 16(4)

Citation : (1996) 2 ShimLC 284

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; K.D. Sood and B.K. Sood, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J

1. This revision petition is directed against the order dated 28-4-1995 of the Rent Controller (2), Paonta Sahib of District Sir-mour, whereby, the Petitioner tenant has been ordered to be evicted from the tenanted premises u/s 15(2) of the H.P. Urban Rent Control Act, 1987, hereinafter referred to as the Rent Act.

2. The Respondent-landlord was an employee under the Ministry of Railways, Government of India He retired as Deputy Shop Superintendent, Patiala on 30-11-1994. A petition u/s 15(2) of the Rent Act was made by him as a specified landlord seeking ejectment of the Petitioner-tenant from the tenanted premises comprised of one room, verandah in front of it, kitchen and a joint latrine in house No. 72, Ward No. 5, Paonta Sahib The tenanted premises have been described as X, Y, Z and Z-I in the site plan Ext. P-I attached with the petition. The petition was filed on 7-4-1994. In seeking the eviction, it was averred by the landlord- Respondent that he was due to retire on attaining the age of superannuation on 30-11-1994. After retirement, he wants to settle and live with his family at Paonta Sahib He has three married daughters who keep on visiting

him with their children. He has only one room in the house bearing No. 72 described above in his possession, which is too inadequate and insufficient for his requirement. He has no kitchen. It was further averred that neither he nor his wife own or possess any other house except the one in question in the urban area of Paonta Sahib or anywhere in India.

3. The Petitioner-tenant upon having been duly served with the notice of the petition, applied to the Rent Controller under Sub-section (4) of Section 16 of the Rent Act for permission to contest the petition. The necessary leave was granted on 8-7-1994. While resisting the petition for her ejection from the tenanted premises, it was averred by the Petitioner-tenant that the claim of the Respondent-landlord was not bona fide. His wife was serving at Rajpura. The landlord-Respondent is not having any children from his present wife. All the children from the first wife are already settled. The story of settling at Paonta Sahib after retirement was concocted and made for the purpose of seeking ejection of the tenant- Petitioner since the landlord Respondent was interested to dispose of the premises after getting the same vacated in order to fetch a higher price. For the purpose of negotiating the sale, the landlord Respondent has already contacted some property dealer. It was further averred that the tenanted premises were not in good condition when it was let out to her and that she has spent more than Rs. 25,000 on its repairs and upkeep. Such repairs were carried out by her on the assurance of the landlord-Respondent that as and when the premises would be sold, the same would be offered to her. The ownership of the landlord-Respondent was also denied.

4. On the pleadings of the parties, the following issues were framed by the learned Rent Controller:

1. Whether Petitioner is landlord of the demised premises, as alleged? OPP
2. Whether Petitioner is to retire on superannuation from Railway Services w.e.f. 30-11-1994, as alleged? OPP
3. Whether Petitioner is entitled for the vacant possession of the demised premises for his residential purpose as alleged? OPP
4. Whether Petitioner was taking rent from the Respondent by putting misrepresentation of facts, qua his ownership of premises, as alleged? OPD
5. Relief.

5. Issues No. 1 to 3 were found in favour of the landlord-Respondent, while Issue No. 4 was decided against the tenant-Petitioner. The learned Rent Controller came to the conclusion that the landlord Respondent was a "specified landlord" due to retire from Railway Department on attaining the age of superannuation on 30-11-1994 and he being the landlord of the tenanted premises was entitled to possession of the tenanted premises by way of ejection of the tenant-Petitioner. The learned Rent Controller also came to the conclusion that there has been no misrepresentation of facts on the part of the landlord-Respondent qua his

ownership in respect of the tenanted premises. Consequent upon such findings, the petition made by the landlord-Respondent u/s 15(2) of the Rent Act was allowed and an order of ejectment came to be passed against the tenant-Petitioner.

6. Feeling aggrieved by the impugned order of ejectment passed against her, the tenant-Petitioner has come up before this Court by virtue of the present petition assailing the findings of the learned Rent Controller, inter alia, on the grounds that the petition made by the landlord-Respondent u/s 15(2) of the Rent Act was not in accordance with law, inasmuch, as neither the same was supported by a proper affidavit nor there was a certificate from the authority competent to remove him from service indicating the date of his retirement. It has further been averred that the Rent Controller has failed to appreciate the evidence properly while coming to his conclusion and in passing an order of ejectment against the tenant-Petitioner. The further contention raised on behalf of the tenant-Petitioner is that sufficiency and suitability of the accommodation available with the landlord is not required to be looked into in a petition filed u/s 15 of the Rent Act.

7. On the other hand, the case of the landlord-Respondent is that the petition filed was proper and in accordance with law. The objections as to the petition not having been filed in accordance with law, is not open at this stage to the Petitioner-tenant on her failure to have raised such a point before the Rent Controller. The question of sufficiency or insufficiency of the accommodation available with the landlord has to be gone into by the Rent Controller before allowing or refusing the petition made u/s 15(2) of the Rent Act. The Rent Controller has properly appreciated and assessed the evidence led by the parties before him while passing the impugned order.

8. There is no denying that the Petitioner was serving in the Ministry of Railways and at the time of his retirement on attaining the age of superannuation he was posted as Deputy Shop Superintendent at Patiala. The landlord-Respondent, is, therefore, a "specified landlord" within the meaning of Section 15(2) of the Rent Act. The tenant Petitioner during the course of evidence as well as arguments before the learned Rent Controller has also not disputed the date of retirement of the landlord-Respondent to be 30-11-1994.

9. Section 15(2) of the Rent Act provides:

Where a specified landlord, at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the appointed day whichever is later, applies to the Controller, alongwith a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of one residential building, for his own occupation, there shall accrue, on and from the date of such application to such

specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary a right to recover immediate possession of such residential building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, mother or father or a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this section to the Controller:

(a) in the case of death of such specified landlord before the appointed day, within one year of the said day;

(b) in the case of death of such specified landlord after the appointed day, but before the date of his retirement, within one year of the date of his death;

(c) in the case of death of such specified landlord, after the and on the date of such application the right to recover the possession of the residential building which belongs to such specified landlord at the time of his death shall accrue to the applicant:

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential building inclusive of any part or parts thereof if it is let out in part or parts:

Provided further that the Controller may give the tenant a reasonable time for putting the specified landlord or, as the case may, the widow, widower, child, grand-child or widowed daughter-in-law in possession of the residential building, and may extend such time not exceeding three months in the aggregate.

Explanation.-For the purposes of this section, the expression "retirement" includes the voluntary retirement but does not include resignation, discharge or dismissal from service.

10. The above provision has been enacted for the benefit of landlord of specified categories. For the adjudication of such kind of cases in order to enable the specified landlords to recover immediate possession of the premises let out by him, provided, the conditions specified in the section are fulfilled The conditions being: (a) the landlord has to file the petition within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the appointed day, whichever is later; (b) he has to file a certificate alongwith the petition from the authority competent to remove him from service indicating the date of his retirement; (c) he has to file an affidavit to the effect that he or his spouse does not own and possess any other suitable accommodation in the local area in which he intends to reside or to start his own business.

11. If all the above conditions exist, the specified landlord has a right to recover immediate possession of the residential building or any part/ parts of such building, if it is let out in part or parts, notwithstanding anything contained elsewhere in the Rent Act or in any other law for the time being in force or in any contract, whether expressed or implied, customs or usages to the contrary Relying upon the abovesaid provisions, Sh Kuldip Singh, the learned Counsel for the tenant-Petitioner has contended that the petition filed u/s 15(2) of the Rent Act by the landlord-Respondent was bad inasmuch as, the same was not supported by a certificate from the authority competent to remove the landlord-Respondent from the service indicating the date of his retirement.

12. There is no denying that a certificate Ext P-5 was annexed with the petition made by the landlord-Respondent u/s 15(2) of the Rent Act. According to the learned Counsel, this certificate has not been issued by the authority competent to remove the landlord-Respondent from service, and, as such, the same is bad.

13. Section 16 of the Rent Act lays down a special procedure for the disposal of the petitions made u/s 15 of the Rent Act, A perusal of the various clauses of Section 16, shows that the legislature intended a quick and special procedure for the benefit of specified landlords seeking immediate possession of the premises let out by them. There is no provision for appeal and second appeal. The only remedy available against the order of the Rent Controller is by way of revision.

14. Sub-section (2) of Section 16 of the Rent Act provides that on a petition u/s 15 having been made, the Controller shall issue the summons in relation to such application in the form specified in Schedule II to the Rent Act. Sub-section (4) further provides that the tenant on whom the summons are duly served in the form specified, shall not contest the prayer for eviction from the tenanted premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain leave from the Rent Controller for contesting the prayer for his eviction. Sub-section (5) of Section 16 lays down that the Controller shall give to the tenant leave to contest the petition, if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the tenanted premises.

15. The words "if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises" appearing in Sub-section (5) of Section 16 are very material. It is implicit therein that while seeking necessary leave to contest the petition, the tenant must put forward and state all the necessary grounds of which he proposes to contest the eviction petition. The scheme of Section 16 of the Rent Act further shows that leave is to be granted or refused by the Rent Controller on the facts/grounds put forward by the tenant in his affidavit while seeking the necessary leave to contest the eviction petition. Therefore, once a leave to contest a eviction petition granted in favour of a tenant on the grounds stated by him in his affidavit, he cannot be permitted to take a new ground at a subsequent stage by widening the scope of his defence.

16. The apex Court in Surjit Singh Kalra Vs. Union of India (UOI) and Another, while dealing with the similar provisions contained in the Delhi Rent Control Act has held that the Controller's power to give leave to contest the petition is cribbed by the condition that the "affidavit filed by the Petitioner discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified". Therefore, the tenant's right to contest the petition is narrowed down and is restricted to the parameters of the respective sections. The tenant cannot widen the scope of his defence.

17. In the present case, admittedly, it was nowhere alleged by the tenant-Petitioner either in her reply-affidavit filed by her while seeking the leave to contest or in her reply filed to the eviction petition that the petition was bad for want of proper certificate from an authority competent to remove the landlord-Respondent from service with regard to the date of his retirement. Such an objection has sought to be raised for the first time before this Court. Since the Petitioner-tenant was never granted the leave to contest the present petition on this ground and on her failure to raise such a plea at the earliest available opportunity, she cannot be permitted to raise such a plea before this Court for the first time.

18. Further the question, whether the certificate Ext. P-5 has not been issued by the authority competent to remove the landlord-Respondent from service is a question of fact, which was required to be proved by way of evidence. In the absence of anything on the record, it cannot be said that the certificate Ext P-5 has not been issued by the competent authority. Had such an objection been raised by the Petitioner tenant before the learned Rent Controller in her pleadings, an issue would have been framed with regard thereto and thereafter parties would have been given the opportunity to prove the validity or otherwise of the certificate Ext. P-5 It is not a case where no certificate has been attached with the petition made u/s 15(2) of the Rent Act.

19. The first contention, raised on behalf of the tenant-Petitioner, is, therefore, without any merit and the same is accordingly rejected.

20. The learned Counsel for the tenant-Petitioner has next contended that admittedly, the landlord Respondent is in occupation of a part of house No. 72, Ward No. 5, Paonta Sahib of which the tenanted premises also form a part. In view of the admitted fact that the landlord-Respondent is in possession of accommodation within the local area of Paonta Sahib, where he intends to reside, the learned Rent Controller could not have gone into the question regarding the sufficiency or insufficiency of the accommodation available with the landlord-Respondent.

21. There is no force in the contention of the learned Counsel for the tenant-Petitioner. Under Sub-section (2) of Section 15 of the Rent Act, the specified landlord is required to show that "he does not own and possess any other suitable accommodation in the local area in which he intends to reside",

therefore, before granting or refusing the eviction petition filed u/s 15(2) of the Rent Act, the Rent Controller has to record a findings whether the accommodation in possession of the landlord at the time of filing of the petition u/s 15(2) of the Rent Act was suitable or not. In other words, the Rent Controller has to make an inquiry regarding the sufficiency or insufficiency of the accommodation available with the landlord. The Hon''ble apex Court in Surjit Singh Karla's case (supra), while dealing with the provisions of Section 14C of the Delhi Rent Control Act, 1958 which are almost *pari materia* with the provisions contained in Section 15(2) of the Rent Act has held:

The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the word *bona fide* requirement in sections 14B to 14D does not absolve the landlord from proving that his requirement is *bona fide* or the tenant from showing that it is not *bona fide*. In fact every claim for eviction against a tenant must be a *bona fide* one. There is also enough indication in support of this construction from the title of Section 25B which states "special procedure for the disposal of applications for eviction on the ground of *bona fide* requirement.

22. This view was again reiterated by the Hon''ble apex Court in Anand Swaroop Vohra Vs. Bhim Sen Bahri and Another,

In the present case, therefore, the learned Rent Controller, has rightly gone into the question whether the accommodation available with the landlord-Respondent was sufficient or not in order to determine his *bona fide* requirement.

23. Sh. Kuldip Singh, the learned Counsel for the tenant-Petitioner has further contended that the landlord-Respondent has not been able to prove the *bona fide* requirement on the basis of the evidence coming on the record. In support of his contention, the learned Counsel has placed reliance on primarily two facts; firstly, that wife of the landlord-Respondent was employed as a teacher at Rajpura. She is to retire sometime in the year 1998, therefore, it cannot be taken that the landlord-Respondent wished to reside in the tenanted premises alongwith his family Secondly, that the landlord-Respondent is interested in disposing of the tenanted premises after getting it vacated in order to fetch a higher prices and for this purpose he has already contacted RW 4 Vinod Parshad, a property dealer.

24. The mere fact that the wife of the landlord-Respondent is employed at Rajpura as a teacher and that she is to retire sometime in the year 1998 will not go to show that the requirement of the landlord-Respondent is not *bona fide*. It is in evidence that the landlord Respondent is residing in the Government accommodation at Patiala allotted to him during the course of his service, and, consequent upon his retirement he has to vacate the same. There is nothing on the record to show that the landlord- Respondent or his wife owns and possesses any other accommodation either at Patiala or Rajpura. The law as found in Section 15(2) of the Rent Act places a restriction on a specified landlord to apply

for the eviction of the tenant within one year of his retirement. The landlord-Respondent therefore, cannot be asked to wait till the retirement of his wife in order to seek ejectment of the tenanted premises.

25. Though, the tenant-Petitioner has averred in her reply that the landlord-Respondent was interested in disposing of the tenanted premises after getting it vacated for which purpose he had already contacted a property dealer, the name of such property dealer was never disclosed by he* in her reply, nor the name of the property dealer was suggested by her during the course of cross examination of the landlord-Respondent as PW I. Such name has been disclosed by her only when she appeared as RW 1 and such property dealer has come to be examined as RW 4. It is admitted by RW 4 that his wife is a colleague of tenant-Petitioner. Therefore, RW 4 was a convenient witness for the tenant-Petitioner. The learned Rent Controller has rightly placed no reliance on the testimony of RW 4.

26. On the basis of the evidence coming on the record, I am satisfied that the learned Rent Controller has rightly come to the conclusion that the tenanted premises are bona fide required by the landlord-Respondent.

27. There is no illegality or irregularity in the impugned order. The same does not call for any interference by this Court.

As a result, the present petition fails and the same is accordingly dismissed.