(1992) 03 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2830 of 1991

Yashpal Dhir APPELLANT

Vs

Sh. R.N. Gosain, Senior Divisional Manager, United General Insurance Company Ltd. RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:
East Punjab Urban Rent Restriction (Amendment) Act, 1985 — Section 18A(8)
East Punjab Urban Rent Restriction Act, 1949 — Section 13A, 2

Citation : (1992) 101 PLR 539 : (1992) 1 RCR(Rent) 584

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin and J.S. Thakur, for the Appellant; J.S. Chahal, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This revision petition has been preferred by the landlord against the order of the Rent Controller declining to pass an order of ejectment against the tenant u/s 13-A of the East Punjab Urban Rent Restriction Act (extended to Chandigarh) Act, 1974 (for short ''the Act'').

2. The ejectment of the tenant was sought on the ground that the landlord being a specified landlord is entitled to recover possession from the tenant because he is going to retire on 28-2-1991. The landlord who now stands retired, at the time of filing ejectment petition was employed with the Haryana Agricultural University Hissar (briefly ''the University'') since February, 1969. In his petition, he inter alia pleaded that his family consists of himself, his wife, a son and two daughters; after retirement shall shift to Chandigarh along with his wife, where he intends to reside there permanently; does not own any other house throughout the country except the house in dispute where he intends to reside after retirement.

3. The tenant on receiving summons, filed an affidavit seeking leave of the Court

to contest the application stating inter alia that the landlord is not a specified landlord within the meaning of Section 2 (hh), and that the landlord does not intend to reside at Chandigarh. The Rent Controller granted leave to the tenant to contest the petition on the following issues :-

1. Whether the petitioner is a specified landlord ? OPP

2. Whether the petitioner does not require the premises in dispute for his own use and occupation ? OPR

3. Relief.

4. The landlord (petitioner herein) examined Y. L. Chhabra (PW-1) Assistant Superintendent, O/o Comptroller, Haryana Agricultural University, Hissar, who proved Certificate (Ex. P-1) to show, that the landlord stood retired w.e.f. 28-2-1991; copy of order (Ex. P-2) that the petitioner was relieved of his duties on "28-2-1991; copy of notification (Ex P-3) that provisions of Provident Fund Act apply to the employees of the Haryana Agricultural University; copy of notification (Ex. P-4) that the Public Premises Act are applicable to the premises to the Haryana Agricultural University; and a copy of statement (Ex. P-5) that the petitioner was contributing towards the provident fund. He also produced on record a book-let (marked ''A'') to show that the University is a member of Association of Indian Universities. The petitioner also examined himself in support of his claim.

5. The Rent Controller declined to pass an order of ejectment as he was of the view that ''Universities'' are not instrumentalities of the government and its employees cannot be equated with the employees of the Government, and therefore, the petitioner is not a specified landlord within the meaning of Section 2 (hh) of the Act. In view of this, the Rent Controller did not go into the question as to whether the premises are required by the landlord for his own use and occupation. It is against this judgment, and order that the present revision petition has been filed. It will be convenient to notice the relevant provisions of the Act before proceeding further to determine the question in controversy between the parties :-

"2(hh) ''specified landlord'' means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State."

"13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons : -

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 date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 whichever is later, applies to the Controller along with 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 his residential building or scheduled building, as the case may be, 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 immediately the possession of such residential building or scheduled 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, a child or a grandchild or a Widowed daughter-in-law who was dependant 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 commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such commencement;

(b) in the case of death of such specified landlord, after such commencement, 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 such commencement and the date of his retirement, within one year of the date of such retirement;

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged 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 or scheduled 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 period for putting the specified landlord or, as the case may be, the widow, widower, child, grand child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation :-For the purposes of this section, the expression "retirement" means termination of service of a specified landlord otherwise than by resignation."

6. In a judgment reported as Vijay Kumar Bhambari v. Ram Nath Bajaj 1990 (1) R. C. R. 654, a retired employee of nationalised bank was held to be a specified landlord within the .meaning of Section 2 (hh) of the Act. In another judgment of

this Court reported as Dr. Dina Nath v. Smt. Santokh Kaur etc. (1987) 91 P. L. R. 171, the landlord who was holding the post of Scientist, was also held to be a specified landlord. In this case, it was also held that the appointment of landlord as Scientist was in connection with the affairs of Union of India. In Fateh Chand Verma v. Balbir Singh (1987) 91 P. L. R. 414, where the landlord was employed with the New Delhi Municipal Committee, it was held that even if the landlord is not deemed to be in public service or in the State service, as such, he certainly fails in the category of those who are serving in connection with the affairs of the State. In the present case, it has come on record that before the landlord retired from the post of Comptroller of the University, he was employed as an Accounts Officer with the Finance Department, Haryana Government. He was also on deputation with the State of Punjab and subsequently, with the University from 11-2-1969. It was only with effect from 1-11-1973 that he was holding the post of Comptroller of the University, his services were transferred to the University in public interest by the Government of Haryana.

7. The question therefore, is whether holding of an appointment under the University is in connection with the affairs of the State. The Articles contained in Part-IV of the Constitution lay considerable emphasis on education. Article 41 directs the State to make effective provisions for securing the right to education. Under this Article, it is the duty of the State not only to establish educational institutions, but also to effectively secure the educational interest by admitting the students to such institutions. Article 48 lays down that the State shall endeavour to organize the agriculture and animal husbandry in modern and scientific lines.

8. At this stage, it is also necessary to refer to various provisions of the Haryana and Punjab Agricultural Universities Act, 1970 (No. 16 of 1970), which received the assent of the President of India on 2-4-1970. The Haryana and Punjab Agricultural Universities were established for the development of agriculture in the State of Haryana and Punjab. Sub-section (1) of Section 4 provides that the University shall be a body corporate having perpetual succession and a common seal. Section 7 incorporates some of the objects for which the University was established, i.e. making provisions for imparting education in different branches of study, particularly agriculture, veterinary and animal science, agricultural engineering, home sciences and other allied sciences. Sub-section (1) of Section 13 provides for the setting up of a Board by the Government for the management of the University and sub-section (2) of Section 13 provides for formation of Board which apart from others shall consist of Vice Chancellor, the Chief Secretary to the Government of the State of Haryana, and the Secretaries to the Government of the State of Haryana in the Departments of, (i) Agriculture, (ii) Finance, and (iii) Community Development. Section 14 relates to the powers and duties of the Board, and one of which is to appoint the officers, teachers and other employees of the University in the prescribed manner. Section 18 provides for the appointment of the Comptroller who shall be a whole-time officer of the university, and shall be appointed by the Vice-Chancellor of the said university.

For the facility of reference, Section 18 is reproduced hereunder :-.

"18. (1) The Comptroller of a corresponding University shall be a whole-time officer of that University and shall be appointed by the Vice-Chancellor of that University with the approval of the Board;

(2) The Comptroller shall manage the property and investments of the corresponding University and advise it in regard to the financial policy;

(3) The Comptroller shall be responsible to the Vice-Chancellor for all accounting matters of the corresponding University including the preparation and presentation of its Budget and statement of accounts;

(4) The Comptroller shall receive such remuneration as may be prescribed and shall not, during the tenure of his office, receive any remuneration or other emolument other than the prescribed remuneration;

(5) The Comptroller shall -

(a) disallow that expenditure, not incurred by the corresponding University except by way of investment, and

(b) disallow any expenditure not warranted by the terms of any Statute or for which provision is required to be made by the Statute but has not been so made;

(6) All moneys belonging to the corresponding University shall be kept in a Scheduled Bank approved by the Board."

Section 34 deals with the accounts and audit of the University. It also provides the contributions and grants made by the government shall be credited to the general fund of the University. Sub-section (4) of Section 34 requires the Vice Chancellor to submit through the Board, the accounts and the balance-sheet to the appropriate government which shall cause them to be admitted by the Examiner, Local Fund Accounts. Sub-section (5) of Section 34 provides that if the ace tints are audited, the same shall be laid before the State Legislature.

9. The provisions of the Act clearly point out that the majority of the members of the Board are Secretaries of the State Government. The contributions to the Fund, maintained by the Universities are also to be made by the Government. The Comptroller of the University is to be appointed by the Vice-Chancellor with the approval of the Board. The University is also required to submit the audited accounts with the Audit report, and these are required to be laid before the State Legislature. Therefore, one thing is obvious that the University was set up by the State in furtherance of the directive principles contained in Part-IV of the Constitution of India. Though the University is an autonomous body, yet is discharging the functions which previously were being performed by the Government. It also performs the functions which may be assigned to it by the Government from time to time. The official members are senior officers of the State Government and therefore, I have no hesitation in holding that the petitioner who retired as a Comptroller of the University, was holding the

appointment in connection with the affairs of the State, and hence, is a specified landlord within the meaning of Section 2 (hh) of the Act.

10. The Rent Controller after finding that the petitioner is not a specified landlord, did not go into the question of bonafide need of the landlord Instead of remanding the case to the Rent Controller for getting finding on this issue, I thought it proper to examine and consider the entire evidence on record in order to avoid unnecessary delay which may result if the case is remanded to the Rent Controller.

11. The petitioner-landlord apart from producing certificate, Ex. P. 1 showing that he retired on superannuation on 28-2-1991 (A.N.), also proved on record Ex. P-2, that on superannuation, he was relieved of his duties w.e.f. 28-2-1991.. The landlord also filed an affidavit as required u/s 13-A of the Act to the effect that he does not own and possess any other suitable accommodation in Chandigarh except the house where he intends to reside after getting possession of the same. Apart from a simple denial, the tenant in his statement has not questioned the bonafide of the landlord. The landlord has also filed an affidavit dated 5-8-1991 in this Court that after retirement, he is living in rented house at Chandigarh, paying rent at the rate of Rs. 1,900/- per month, for the accommodation which according to him is much less than the one available in his house now in possession of the tenant.

12. Notice of the affidavit was given to the tenant, but he has not controverted the averments made in the affidavit by filing a counter affidavit. Even otherwise, u/s 13-A of the Act the bonafide of the landlord is not involved. Once the landlord is able to satisfy the conditions mentioned in Section 13-A of the Act then the Rent Controller is not obliged to go into the question of bonafide need of the landlord. In the present case, the petitioner has fully satisfied the conditions as contained in Section 13-A of the Act and therefore, is entitled to recover possession of the premises in dispute from his tenant.

13 For the reasons recorded above, the revision petition is allowed; the order of the Rent Controller is set aside and the petition filed u/s 13-A of the Act for the ejectment of the tenant is accepted with costs, which are quantified at Rs. 1,000/- However '' the respondent is allowed one month''s time to vacate the premises provided he pays the entire arrears of rent within 15 days from today and also files an undertaking with the Court of the Rent Controller to the effect that he shall hand-over the vacant possession of the premises on the expiry of aforesaid period.

