

Yoginder Mohan Vs. Krishan Lal

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Court : Punjab and Haryana

Decided On : Aug-13-1999

Reported in : (2000)126PLR221

Judge : N.K. Sudhi and; Swatanter Kumar, JJ.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 4 and 4(3)(2)

Appeal No. : Civil Revision No. 1836 of 1997

Appellant : Yoginder Mohan

Respondent : Krishan Lal

Advocate for Def. : J.K. Goel, Adv.

Advocate for Pet/Ap. : Rajinder Goyal, Adv.

Disposition : Petition dismissed

Judgement :

Swatanter Kumar, J.

1. Persistent divergent views expressed by different benches of this Court have resulted in reference of this revision to a Division Bench.

2. In order to avoid necessary repetition of facts and the question of law involved in the present case, we considered it appropriate to refer the order of reference dated 28th November, 1997 reported in 1998, Haryana Rent Report (1) 63. The same reads as under:-

'The petitioner before this Court had approached the Court of learned Rent Controller, Kaithal by filing a petition under Section 5 of the Haryana Act No. 11 of 1973, hereinafter referred to as the Act, for fixation of a fair rent. The respondent was put into possession of one single storeyed shop bearing No. MCK No. 1001/17 (old) and 1242/17(new), Laxmi Market, Kaithal as a tenant on a rent of Rs. 424/- besides house tax. The premises in question were admittedly rented out for non-residential purpose. Further an application under Section 4 of the Act was filed and a fair rent of the tenanted premises was fixed at Rs. 439.11 by the Rent Controller, Kaithal vide order dated 27.2.1982 with the effect from 3.11.1978. This fair rent was, however, raised to Rs. 533.40 vide order dated 4.8.1983 with effect from 3.11.1978, in appeal by the Appellant Authority. This fair rent fixed by the appellate authority in the first proceedings was revised to Rs. 621.40 per annum operative from 24.3.1984. Thereupon the present petition was filed for revision of the fair rent. The respondents contested the petition and denied the allegations made in the petition and prayed for dismissal of the application. On the pleading of the parties the learned Rent Controller, Kaithal, framed the following issues:-

1. Whether the applicants are entitled to the revision of fair rent? If so, to what rent? OPA

2. Relief.

The learned Rent Controller decided the issue in favour of the landlord and the fair rent was fixed at Rs. 828/- per annum with effect from 3.1.1995 i.e. the date of filing of the petition and consequently revised the fair rent.

It is this order of the learned Rent Controller which has been assailed in this revision.

The learned counsel for the petitioner contended that the formula applied and the calculations arrived at by the learned Rent Controller are contrary to the settled principles of law and even arithmetically with regard to the adoption of the basic year. According to the learned counsel the shop was rented out on 24.4.1967 at a monthly rent Rs. 425/-. Application under Section 4 for fixation of fair rent was filed on 3.11.1978, which was fixed at Rs. 439.11 on 27.2.1982. This fair rent was increased to Rs. 533/- with effect from 3.11.1978 on 4.3.1983. Application under section 5 for revision of fair rent was filed on 24.3.1984 and the fair rent was fixed, at Rs. 621.40 with effect from 24.3.1984 vide order dated 30.11.1985. The present application for revision of the fair rent was filed on 31.1.1995. Basic rent is stated to be Rs. 621.40 difference in price index of 1984 and 1993 is stated to be Rs. 677.06, 25 per cent of which is Rs. 169.04. Consequently, increase in fair rent is Rs. 1052.06. Added with the existing fair rent, the petitioner claims Rs. 1674.05.

On the other hand, learned counsel for the respondent while admits the difference in the fair rent as Rs. 677.06 on similar calculation, but on percentage itself the increase in fair rent is Rs. 140/- and total rent now payable is stated to be Rs. 770/-

In order to appreciate the contention of learned counsel for the parties and before adverting myself to the question of calculations, it may be relevant at this stage to refer to the judgments of this Court on the subject. A reference was made to a Division Bench of this Court in the case of Gela Ram v. Sat Pal Sharma, (1988-2)94 P.L.R. 35 wherein it was held as under:-

'It is thus plain that while allowing the increase in the basic rent as determined under sub-section (2) of this section i.e. Rs. 37.5 P.M., the learned Judge instead of taking the percentage of rise in the level of prices, in the light of the average of All India Wholesale Price Index as the basis for the increase, took 25 % of the general rise in prices i.e. Rs. 328.5 itself as the amount to be increased in order to fix the fair rent under sub-section (3). This, on the face of it, is not the true import of this sub-section. The increase in the general level of the prices is to be noticed only to find out the percentage of the rise in prices in the light of All India Wholesale Price Index. In order to be explicit or to be more specific, it may be

pointed but that in the above noted case the increase that could be ordered over and above the basic rent in order to fix the fair rent was to be Rs. 30.75, i.e. 82% of the basic rent which in turn was 25% of the percentage of rise in price, i.e. Rs. 328.5 as indicated by the wholesale price index of the years 1955 to 1977. In case the methodology applied by the learned Judge in Bhim Sain's case (supra) is to be accepted as correct, then each and every basic rent, irrespective of its rate, was to be increased to the same extent, i.e. by Rs. 82/- in order to fix the fair rent of the demised premises. This certainly is not the true implication of this sub-section. As a matter of fact, the index number as such has nothing to do with the rate of rent of a particular premises. As is commonly said, index numbers are only barometers of economic activity, i.e. if one wants to get an idea as to what is happening to economy, he has to look to important indices like the index number of industrial production, agricultural production, business activity etc. Thus when one has to say that the index number of wholesale price is 112 for September 1987 as compared to September, 1986 when it was hundred, it means there is not increase in the price of wholesale commodities to the extent of 12% during the year. This percentage has only to be found out to work out the percent age by which the basic rent has to be increase in order to fix the fair rent. We thus over-rule the said judgment to the above noted extent.'

Following the principles enunciated by the Division Bench of this Court in the. case of Gela Ram (supra) a Single Bench of this Court, in the case of Duli Chand Verma v. Mahender Singh Verma (1992-2)102 P.L.R. 539, held a under-

'The parties agreed with regard to the method to be applied for calculating the increase in terms of section 4(3) of the Act. Thus, the only point which needs some scrutiny is as to whether the appellate authority or the Rent Controller have properly applied the provisions of Section 4(3) for determining fair rent of the shop. As per wholesale Price Index during the year 1981, it is 278.4 and in the year 1989 i.e. the year preceding the presentation of the petition is 462.2. Thus the difference of the figures comes out to be 184 in round figures. 25% of such an increase can be given to the petitioner i.e. $184 \times 25 = 46\%$. That increase of 46% is to be allowed in respect of rent which is already being paid i.e. 46×400 .

The total figure thus comes to Rs. 400 + Rs. 184 = 584/-. This calculation is in terms of Section 4(3) of the Act as interpreted in the Division Bench Judgment reported as Gela Ram v. Sat Pal Sharma, ((1988-2) 94 P.L.R, 35). The calculation made by the appellate authority relied upon an earlier Single Bench Judgment, reported as Vijay v. Ramji Lal, 1987 Haryana Rent Reporter 349 is wrong. Accordingly, I accept this revision petition, set aside the order of appellate authority and affirm the order of the Rent Controller determining the fair rent at Rs. 584/- per month. No costs.'

Thus, the present case has to be decided on the application of the above stated settled principles of the law regulating the fixation or revision of fair rent. The distinct calculations put forward by the learned counsel for the parties create a question for consideration before the Court limited to the extent of calculation. The basic figures are hardly disputed.

Learned counsel appearing for the petitioner, has relied upon the aforesaid calculation and has submitted that the fair rent ought to have revised to Rs. 1674.05 effective from the date of the application. While according to the learned counsel for the respondents, the revised fair rent ought to have been fixed at Rs. 758.60. Thus, there is apparent serious difference in the rent required to be revised based on the distinct calculations. While the learned counsel for the petitioner has relied upon the two aforesaid judgments but the learned counsel for the respondents has relied upon another judgment of the learned Single Judge of this court in the case of Vijay Kumar and Anr. of Kaithal v. Ram Lal, 1987 Haryana Rent Reporter 349. The computation shown in the case of Vijay Kumar (supra) would favour the present respondent where the Court has held as under:-

'As regards issue No. 1, the learned Rent Controller found that the basic rent was already fixed while deciding the previous application for fixation of fair rent and, therefore, this issue had become redundant. Under issue No. 2, it was held that the wholesale all India Price Index determined by the government of India up till December 31, 1983, was to be taken into consideration under Section 4(3) of the Act, which provides guidelines for fixation of fair rent by the Rent Controller. According to the learned Rent Controller, if the base year 1971 is taken into

account, then all India wholesale price index number as determined by the Government was 185 in the year 1978 and the same was 307 in the year 1983. Therefore, there was an increase of 122 in the same. The increase was on 185 and on calculation, it came to 66 per cent. The increase had been allowed at the rate of 25 per cent, and, therefore, 25 percent of 66 per cent came to 16.5 per cent. Thus, calculated, the increase on Rs. 53.50, i.e. the fair rent already fixed came to Rs. 88.35. Accordingly, the fair rent was revised and fixed at the rate of Rs. 623.85 per annum from the date of filing of the application i.e. March 24, 1984. Dissatisfied with the same, the landlord have filed this revision petition in this Court as no appeal is provided under the Act against such an order.

In other words, while revising the fair rent, increase or decrease of at the most 25 per cent as provided under sub-section (3) of Section 4 could be allowed on the fair rent already fixed. Thus I do not find any illegality or impropriety in the order of the Rent Controller.'

The case of Vijay Kumar (supra) was not considered by the Division Bench of this Court in the case of Gela Ram (supra). Learned counsel for the respondents contended that as the judgment of the learned Single Judge was not considered by the Division Bench it continues to be a good law and plain reading of sub-section (3) of Section 4 supports this calculation.

It is true that sub-section (3) of Section 4 of the Act postulates the increase or decrease on the basis of rent determined under sub-section(2) of Section 4 Which would not exceed 25% of the rise or fall in the general level prices since the date of agreed rent or date of the application as the case may be. Thus, it is clear that it is the percentage of the rise or fall in general level which would determine the extent to which the basic rent already fixed is liable to be increased or decreased, however, subject to the maximum of 25 per cent of rise or fall in general level of price. One cannot also lose sight of the fact that in the case of Gela Ram (supra), though the Division Bench laid down the basic principle, but left the calculation and fixation of fair rent on revision to the learned Single Judge.

During the course of hearing I had considered it appropriate to call for the case of Gela Ram (supra) in. order to ascertain the method of calculation adopted by the

learned Single Judge in furtherance to the principle enunciated by the Division Bench. The judgment of the Division Bench was pronounced on 14.9.1987, when the matter came up before the learned Single Judge, the same was disposed of on 9.1.1989 whereby the case was remanded to the Rent Controller for submission of an appropriate report about the details of the rent per month. The further progress of this petition is not available on record.

Reverting back to the facts of this case the calculations submitted by the learned counsel for the petitioner founded on the principle declared by the Division Bench in Gela Ram's case (supra), results in increase of the fair rent by a sum of Rs. 1052.60. Thus, total rent being payable is Rs. 1674.05. While, the calculations submitted by learned counsel for the respondents, based upon Vijay Kumar's case (supra) permit increase of Rs. 89.50 per annum. Thus the total rent being payable per annum is Rs. 758.60. Obviously the difference in the increase of the fair rent payable is considerable. This necessitates the close scrutiny of the relevant provisions of law and the judgments so far pronounced by various benches of this Court. It was brought to my notice that number of cases have been admitted on this ground and other petitions involving the same question are also pending before this Court. The question involved in this case is of importance and is likely to arise even in number of cases in future. Prima facie I am of the view that the principle and method of calculation adopted in Vijay Kumar's case appears to be in consonance with the provisions of Sections 4 and 5 of this Act, but equally true is that the calculations applied in this case of Vijay Kumar apparently cannot be reconciled with the view expressed by the other Bench in Duli Chand Verma's case, where, on the one hand, the correctness of Vijay Kumar's case was not considered by the Division Bench, on the other hand, the clear method of calculation has not been provided in Gela Ram's case even.

In view of the above provisions of law and the judgments pronounced by different Benches of this Court it appears to me expedient in the interest of justice that the matter should be considered by a larger Bench. Such consideration is necessitated for the above reasons. Disparity resulting from the two aforesaid views does not permit providing of a clear precept for settlement of such disputes by the Rent Controller, Rent Tribunal and even Single Bench of this Court.

Enunciation of clear principles of law has an inbuilt ingredient of clarity of applicability to law. If the law settled does not give clarity, it would result in avoidable obstacle in its application to individual cases and would not serve a larger public interest or public purpose. The following questions thus, arise for consideration by the larger Bench:-

(a) What are the principles governing fixation of fair rent under sub-section(3) of Section 4 of the Act by the Rent Controller, while permitting an increase or decrease on the basic rent determined under sub-section (2) of Section 4 with the limitation specified under Sections 4 and 5 of the Act?

(b) Which method of calculations should be adopted by the Rent Controller for calculating the total rent payable upon increase in the fair rent out of the methods provided in the case of Duli Chand Verma and Vijay Kumar (supra)

The ancillary question to the above which needs to be answered is:-

Which of the two calculations placed by the learned counsel for the respective parties on record is a correct one and what rent the petitioner is finally liable to pay?

The file of this revision petition be placed before Hon'ble the Chief Justice for appropriate orders. I am further of the view that it may be appropriate to dispose of this matter expeditiously to avoid unnecessary litigation between the parties.'

3. In order to answer the question raised in the reference, we must notice the relevant provisions of law governing the subject. Section 4 and 5 of the Haryana Urban (Control of Rent and Eviction) Act, 1973(hereinafter referred to as the Act) reads as under:-

4. Determination of fair rent-(1) The Controller shall, on an application by the tenant or the landlord of a building or rented land, fix the fair rent for such building or rented land after holding such enquiry as he may think fit. Such fair rent shall be operative from the date of application.

(2) In fixing the fair rent under this section, the Controller shall first determine the basic rent which shall be-

(a) in respect of the building the construction where of was completed on or before the 31st day of December, 1961, or land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1962; and

(b) in respect of the building the construction whereof is completed after the 31st day of December, 1961 or land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the basic rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land at the date of application.

(3) in fixing the fair rent, the Controller may allow an increase or decrease on the basic, rent determined under sub-section(2), not exceeding twenty five per centum of the rise or fall in the general level of prices since the date of agreed rent or the date of application, as the case may be, in accordance with the (average of All India Wholesale Price Index Number as determined by the Government of India, for the calendar year immediately preceding the date of application).

(4) Notwithstanding that the fair rent for building or rented land has been fixed under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 1949 Act), a landlord or tenant of such building or rented land shall be entitled to get its fair rent fixed under this section.

(5) Notwithstanding anything contained in this Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings. Such rent shall be binding only between the parties and their heirs.

5. Revision in fair rent in certain cases- When the fair rent of a building or rented land has been fixed under section 4, no further increase or decrease in such fair rent shall be permissible for a period of five years:

Provided that an increase may be allowed in cases where any addition, improvement or alteration has been carried out at the expense of the landlord, and in the building or rented land which is occupation of the tenant then at the request of the tenant:

Provided further that the decrease may be allowed in cases where there is a decrease or diminution in the accommodation or amenities provided.

(2) Any dispute between the landlord and the tenant in regard to any increase or decrease under this section shall be decided by the Controller.

4. The scheme of the above provisions is that the Controller on an application by the tenant or landlord can fix the fair rent for the building rented out upon holding an inquiry. The said fair rent has to be fixed under sub-section (3) of Section 4 of the Act keeping in mind the parameters provided under sub-section (2) of Section 4. Precondition to fixation of fair rent is determination of basic rent. The basic rent in relation to the premises rented out on or before 31st December, 1961 would be rent prevailing in the locality for the similar building, while for the premises rented out after the cut off date the agreed rent and where no rent has been agreed upon between the parties, then rent prevailing in the locality for the similar building on the date of application. The provisions of sub section (3) of Section 4 of the Act could be divided into three different portions: (a) The Controller may fix the fair rent by allowing an increase and decrease on the basic rent determined under sub-section (2); (b) subject to increase or decrease in exceeding 25% per centum of the rise or fall in general level of price since the date of the agreed rent or the date of the application; and (c) in accordance with the average of All-India Wholesale Price Index Numbers, (as determined by the Government of India, for the calender year immediately preceding the date of application).

5. The fair rent so fixed or determined under section 4 of the Act is not subject to any further variance at least for a period 5 years unless, such increase is founded on addition, improvements or alteration carried out by the landlord at his own expenses or there is decrease or diminution in accommodation or amenities in the rented premises to the tenant.

6. We cannot lose sight of the ingredients stated in proviso to sub-section (1) of Section 5 of the Act, which is an exception to the rule of revision of fair rent upon the expiry of the period of five years. The exceptions to the rule indicate permits earlier revision of rent that wherever addition, improvement or alteration have been carried out at the instance of the landlord or there is decrease or diminution in the accommodation or amenities provided to the tenant. This solitary provision indicates that the rent has nexus to these components though basic rent has to be determined in consonance with the provision of section 4 of the Act. What we wish to observe is that the condition of the tenanted premises, its extended facilities are a consideration relevant for determining the rent prevalent in the market, as required under section 4 of the Act. This analysis is suggestive of the conclusion that there should not be increase in fair rent uniformly in all cases at a given point of time irrespective of the basic and agreed rent and nature of the premises.

7. The Rent Act is a social welfare legislation which is intended not only to provide protection to the tenant but to create a balance between the rights and liabilities of the landlord on the one hand and that of the tenant on the other. The purpose of increase in the fair rent under Section 4 of the Act obviously cannot be to increase uniformly, irrespective of the premises, the nature and extent, quantum of agreed or fair rent. The increase would have to vary keeping in view the basic ingredients of this section. As far as the legal proposition is concerned, it has been squarely answered in the case of Gela Ram by a Division Bench of this Court. This Bench being equi-bench, has no reason to differ. With respect we are of the considered view that the principle of law enunciated in Gela Ram's case is the correct law and has to be applied to the facts and circumstances of each case.

8. The legislation's intent is to attach finality to the fair rent fixed by the Controller at least for a period of five years. The object appears to avoid unnecessary dispute in relation to the quantum of rent payable for the premises in question.

9. Where the tenant is intended to be protected against the unreasonable increase in the amount of rent payable to the landlord, the landlord is also supposed to be safe-guarded to enable him to receive a reasonable increase in the amount of the rent payable to him after the lapse of prescribed intervals i.e. 5 years. The doctrine

of absurdity requires the Courts to interpret statutes or provisions of law in a manner which would avoid absurdity resulting from application of such provisions. It is difficult for us to accept that the legislature could have intended that identical increase should be available to every landlord irrespective of the quantum and nature of the premises rented out and quantum of rent payable as basic rent for the tenanted premises. In other words, increase by 'X' amount would be payable to all the landlords, even if, one landlord was receiving agreed rent of Rs. 10, Rs. 1,000/- Rs. 10,000/- per month. A social welfare legislation cannot be construed in a manner that it would destroy the very basic object and protection intended under the statute itself. The purpose of providing reasonable increase or decrease in the basic rent payable by a tenant to the landlord is to establish a coherent approach to the basic problem arising from the increase or decrease in the costs of living and commodities as reflected by the All India Whole Sale Price Index numbers. We respectfully adopt the reasoning of the Division Bench in Gela Ram's Case (supra) in coming to the conclusion that the All India Whole Sale Price Index Numbers as determined by the Government of India are an index to determine the percentage by which there has been increase or decrease in the general level of prices between the two commodities indicate in the section. The relevant dates obviously would be the year of last agreed or basic rent, as the case may be and the date of presentation of the petition for increase or decrease of the rent by a tenant or landlord, as the case may be. We must construe the provisions of sub section (2) of Section 4 of the Act in conjunction with other provisions and scheme of the Act. A fixed uniform increase of rent is neither postulated nor indicated in this sub-section, Revision of fair, rent after the prescribed period is founded on the basic rent determined under Sub-Section (2) of this Section. Sub-Section (2) empowers the Controller to fix a fair rent in accordance with the scheme of the Act. Thus a fair rent fixed at given point of time would obviously become an increase or basic rent for fixation of fair rent after the lapse of the prescribed period.

10. To apply the provision of sub-section (2) and (3) of Section 4, the Rent Controller would have to increase or decrease the basic rent by a maximum of 25 per centum of the rise or fall in the general level of prices. The expression per centum has been used by the legislature instead of the simple English word 'percentage'.

11. Per Centum is a Latin word and it indicates meaning synonymous to percentage, a proportional part. It merely indicates, at best, value in percentage. In fact, per centum has been given the meaning similar to percentage i.e. by the hundred. In other words, in some of the dictionaries, meaning given to both the expressions per centum and percentage is stated to be common i.e. by the hundred. We do not find the need to explain this term any further because it is the percentage of such increase which has to form the basis and not exceeding 25% of such increase which with its portions to the rent (i.e. basic and agreed rent) shall have to increase or decrease, as the case may be.(see The Chambers Dictionary, New Edition, the Dictionary of English Law, Webster's Encyclopedic Unabridged Dictionary of the English Language, New Revised Edition and Black's Law Dictionary; Re. MCGAREL 1897 (Chancery 400)).

12. In our view the Controller would have to take the basic or agreed rent as the basis for determining the fair rent payable on an application under subsection (2) of Section 4, and he would have to determine the percentage of rise or fall in the general level of the prices for the dates indicated in Section. For determining the percentage of increase he would have to refer to the All India Whole Sale Price Index Numbers as determined by the Government of India for the calendar year immediately preceding the date of application. Thereupon the Controller would have to proceed to find out the percentage indicated by this rise or fall in relation to the basic or agreed rent payable by the tenant to the landlord thus he would increase the basic or agreed rent by relying on such portion of the Price Index in the above manner to arrive at a final figure of the fair rent to be paid as rent. In order to ostracize the possibility of any confusion persisting any further, we would demonstrate the application of the above principle in terms of the figures applicable to the present case:

Fair rent fixed by the Court vide dated 30.11.1985 Rs. 621.40 Date of which the present application was filed for increase in fair rent. 13.1.1995

Agreed or basic rent for the purpose of present petition Rs. 621.40 Figure of whole sale Price Index for the year 1984, as reflected in the Price Index determined by the Government of India. Rs. 604.5 Figure of Price Index as indicated for the year

1994 (immediately preceding the year of presentation of petition/application i.e 1995) Rs. 1,409.59 Increase in Price Index (1409.59-604.5) 805.09 Percentage of difference between two figures of Price Index Numbers 133.18% The court can grant increase or decrease to the maximum 25% under section 4(3) i.e. 25% the percentage of difference between two figures of Price Index Numbers which comes to 33.29%. On this basis the increase in fair rent comes to $(621.40 \times 33.29) / 100 = 206.86$

13. Therefore, the basic rent would be liable to increase by a sum of Rs. 206.86. Thus, the Court ought to have fixed the fair rent at Rs. 828.26 (Rs. 621.40 + 206.86)

14. In view of the above detailed discussion and arithmetical demonstration, we now proceed to answer the question raised in the reference order, as follows.

15. The Courts are required to follow the principle enunciated by the Division Bench of this Court in Gela Ram's case (supra). To comply with requirement of fixation of fair rent under the provisions of sub-section.(3) of Section 4, the Court would adopt the method of calculation as indicated by us above, to arrive at an amount which ought to be fixed as fair rent under the provisions of Section 4(3) of the Act. In other words, the calculation adopted in the case of Duli Chand with above modification, would be the correct method for such determination.

16. In view of the above enunciation on the question of law and decisive method of calculation to arrive at a fair rent, we dismiss this revision with no orders as to costs, as the conclusions arrived at by the learned Additional Rent Controller do not call for any interference.