

Kewal Krishan Vs. Surinder Kumar and anr.

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Court : Punjab and Haryana

Decided On : Sep-14-2004

Reported in : (2005)139PLR620

Judge : M.M. Kumar, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 5, 6, 6(1), 6(2), 7(1), 8, 13(4A), 13A, 19, 19(2) and 19(3)

Appeal No. : Civil Revision No. 3387 of 2001

Appellant : Kewal Krishan

Respondent : Surinder Kumar and anr.

Advocate for Def. : Gaurav Chopra, Adv.

Advocate for Pet/Ap. : K.R. Dhawan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M.M. Kumar, J.

1. This petition filed by the tenant is directed against order dated 23.12.2000 passed by the Rent Controller, Ferozepur dismissing his application in which

prayer was made to take action against the landlord-respondents under Section 19 of the [East Punjab Urban Rent Restriction Act, 1949](#) (for brevity, 'the Act') for claiming rent twice from him with effect from 01.01.1992 to 31.12.1994. The landlord-respondent has admitted that by a bonafide mistake, the rent has been claimed twice for the same period and there is no mala fide. The Rent Controller dismissed the application on the ground that the necessary requirement of Section 19(3) of the Act has not been fulfilled by the tenant-petitioner, inasmuch as, no sanction from the Rent Controller in writing was obtained within the meaning of the Section 6(1)(a) of the Act. The views of the Rent Controller on the issue reads as under:-

'It is submitted by both the parties that rent for the period from 1.1.1992 to 31.12.1994 was received by the land lord/respondent on 25.8.1994 in the first ejectment application. Tender of rent for the said period was again accepted by the respondents in second ejectment application.

Now the only fact which requires determination is as to whether the rent was received in second ejectment application under bona-fide mistake or it was intentionally received twice. Ex.R-5 copy of replication in the second ejectment application shows that the respondents/landlords have given detailed clarification of this mistake. He has alleged that the mistake is bona-fide and excess rent has been received under a bona-fide error. He has given an option to the tenant/petitioner for adjustment of excess rent in further/future rent or refund of the excess rent alongwith interest. It has also come on record that after filing second ejectment application, land lord/respondent did not claim the rent for the further period from the petitioner. He has made the suo motto adjustment of the excess rent received in future rent.

The above discussed circumstances shows that excess rent was received under a bona-fide mistake and not otherwise.

For this, the petitioner/tenant has two remedies available. Firstly, under Section 8 of the Act to seek adjustment of the excess rent received in the payment of future rent. Secondly, to take action against the land lord for violation of the provisions of Section 6 Sub section 1 which provides that land lord shall not claim or receive

any premium or any like-some amount in addition to fair rent or any rent in excess of said fair rent. Action under Section 19 of the Act can be taken if the provisions of Section 6 Sub-section 1 are violated. With these observations, this issue is disposed of.

(emphasis already supplied)

2. Brief facts of the case which led to the filing of the instant petition are that the tenant-petitioner filed an application under Section 19 of the Act being Case No. 1-2 of 07.01.1999 with a prayer that the penalty be imposed on the landlord-respondents on account of contravening the provisions of Section 6(1) of the Act. The tenant-petitioner is a tenant in the demised shop at the rate of Rs. 110/- per year under landlord-respondent No. 1. Respondent No. 2 is the father and general power of attorney of respondent No. 1. Landlord-respondent No. 1 had earlier filed an ejectment application against the father of the tenant-petitioner who had expired during the pendency of the application resulting in the impleadment of the tenant-petitioner as party. The tenant-petitioner appeared and tendered rent of Rs. 410/- i.e. Rs. 330/- as arrears of rent from 01.01.1992 to 31.12.1994 plus Rs. 40/- as interest and Rs. 40/- as costs which were duly received accepted by respondent No. 2. In a later petition filed by landlord-respondent No. 1, arrears of rent with effect from 01.01.1992 till 16.10.1996 were claimed which show that it included the period for which the rent had already been paid. According to the averments made in the petition, it was asserted that the tenant-petitioner did not pay the rent of the tendered premises after the death of his father. The tenant-petitioner again tenanted rent in respect of the period from 01.01.1992 to 31.12.1994 to avoid ejectment on 07.05.1997. On the aforementioned allegations, an application was filed on 07.01.1998 that the landlord-respondents have contravened Sub-section (1) of Section 6 of the Act, and therefore, they are liable to be punished in accordance with the provisions of Section 19 of the Act. The application has been dismissed by the learned Rent Controller by observing that no penal proceedings could be initiated against the landlord-respondents unless the sanction is accorded by the Rent Controller in writing for the filing of the complaint and moreover, no fair rent in this case under Section 5 of the Act was fixed which is the requirement of Section 6(1) of the Act.

3. It was also mentioned that there is candid admission by the landlord-respondents that the rent has been claimed twice in respect of the period from 01.01.1992 to 31.12.1994 and the mistake was bona-fide.

4. Mr. K.R. Dhawan, learned counsel for the tenant-petitioner has argued that once it is admitted that rent has been claimed and accepted in respect of the same period twice, then, the basic ingredients of Section 6(1) read with Section 19(2) of the Act are fulfilled and the landlord-respondents are liable to be punished under Section 19(2) of the Act. According to the learned counsel, there is no other mode of proving the unfair demand by the landlord-respondents except showing that rent has been claimed for the same period twice.

5. Mr. Gaurav Chopra, learned counsel for the landlord-respondents has argued that under Section 19(3) of the Act, there is a prohibition to take cognizance by any Court of an offence. Under this Section, unless a complaint of facts which constitutes such offence has been filed with the sanction of the Controller in writing. The learned counsel has also argued that fixation of fair rent under Section 5 of the Act as held by the learned Rent Controller is sine quo non for complaint filed for violation of Section 6 and punishable under Section 19(2) of the Act. In support of his submission, the learned counsel has relied upon a judgment of the Supreme Court in the case of Mangat Rai and Ors. v. Kidar Nath and Ors., 1980(2) Rent Law Reporter 678.

6. After hearing the learned counsel for the parties, I am of the considered view that Section 6(1) and Section 19(2) & (3) are absolutely clear. The aforementioned provisions are extracted for facility of reference which read as under:-

'6. Landlord not to claim anything in excess of fair rent.-

(1) Save as provided in Section 5, when the Controller has fixed the fair rent of a building or rented land under Section 4 -

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void.

19. Penalties.-

(i) xx xx xx xx(2) If any person contravenes any of the provisions of clause (a) of Sub-section (1) of Section 6 or Sub-section (1) of Section 7 he shall be punishable with imprisonment which may extend to two years and with fine.

[(2-A). The specified landlord or the widow, widower, child, grandchild or the widowed daughter-in-law of such landlord, as the case may be, who having evicted a tenant from a residential building or a scheduled building in pursuance of an order made under Section 13-A does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person other than the tenant in contravention of the provisions of Sub-section (4-A) of Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.]

(3) No Court shall take cognizance of an offence under this section except upon-

(a) a complaint of facts which constitute such offence filed with the sanction of the Controller in writing; or

(b) a report in writing of such facts made by the Controller.'

7. A perusal of Section 6(1)(a) of the Act shows that there is a statutory prohibition to claim rent by a landlord in addition to fair rent or to claim or receive any premium or any rent in excess of such fair rent. However, there may be a stipulation for receiving advance not exceeding one month's rent. Any agreement according to Section 6(1)(b) of the Act contrary to the aforementioned provision is considered as null and void. Only those acts of landlord are punishable under Section 19 of the Act which fall within the provisions of Section 6(1)(a) of the Act. The aforementioned issue could be for consideration of the Supreme Court in Mangat Ram's case (supra) and it was held that in a case where no fair rent has been fixed, the provisions of Section 19 of the Act would not be attracted to such a

case. The Supreme Court has over-ruled its earlier view in the case of Shri Vidya Prachar Trust v. Pandit Bassant Ram, (1970)1 S.C.R. 66 and the view of the Supreme Court in this regard is discernible from the following observations made in para 16:-

'Section 6 thus merely provides that where a fair rent is fixed by the Controller it would not be open to the landlord to receive any amount in advance in excess of the fair rent. Section 6(2) further permits the landlord to stipulate and receive in advance an amount not exceeding one month's rent. Clause (b) make any argument for payment of any sum in excess of such fair rent null and void. This Section therefore, clearly deals with a situation where a fair rent under Section 6 is fixed by the Controller on the application of the parties. Neither in the present case nor in Vidya Prachar Trust's case (supra) was there any allegation that a fair rent had been fixed by the Controller. Section 19 is the penal section which makes a person punishable with imprisonment for a maximum period of two years if he violates the provisions of Section 6. So long as fair rent is not fixed by the Controller the parties are free to (sic) and neither Section 6 nor Section 19 would be attracted to such a case. Moreover, even if the tenant were to deposit future rent it is always open to the landlord not to withdraw the future rent but confine himself to taking out only the rent that is in arrears which will not at all violate any provision of the Rent Act.'

8. Apart from non-fixation of fair rent, it is also evident that no sanction from the Rent Controller as is mandatory under Sub-section (3) of Section 19 of the Act was obtained by the tenant-petitioner. It is well settled that no criminal prosecution could be initiated against an accused until and unless sanction from the Competent Authority is taken in cases where provision is made for obtaining of such a sanction. On this issue too, the Rent Controller has taken the correct view. Further more, there is fair and candid admission by the landlord-respondents that by a bona-fide mistake the rent has been claimed twice in respect of a particular period. On the basis of the principle and precedent, no legal infirmity could be found in the impugned order passed by the learned Rent Controller.

For the reasons recorded above, this petition fails and the same is dismissed.

