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Court : Punjab and Haryana

Decided On : Nov-28-1997

Reported in : (1998)118PLR114

Judge : Swatanter Kumar, J.

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

Appeal No. : Civil Revision No. 1836 of 1997

Appellant : Yoginder Mohan

Respondent : Krishan Lal and ors.

Advocate for Def. : Yogesh Goel, Adv.

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

Judgement :

Swatanter Kumar, J.

1. 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. II 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. 425/- besides house tax. The premises in question were admittedly rented out for non-residential purposes. Earlier an application Under Section 4 of the Act was filed and a fair rent of the tenanted premises was fixed at Rs. 439.11 paise by the Rent Controller, Kaithal vide order dated 27.2.1982 with 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 Appellate Authority. This fair rent fixed by the appellate authority in the first proceedings was revised to Rs. 621.40 paise per annum operative from 24.3.1984. There-upon 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 pleadings 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.

2. 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.

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

4. 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 of 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 4.8.1983. 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 percent 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.

5. On the other hand, learned counsel for the respondent while admits the difference in the fair rent is 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/-.

6. 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 basic for the increase, took 25% of the general rise in prices i.e. Rs. 328.50 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 out 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 prices, 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 a net increase in the prices of wholesale commodities to the extent of 12% during the year. This percentage has only to be found out to work out the percentage by which the basic rent has to be increased in order to fix the fair rent. We thus over rule the said judgment to the above noted extent.'

7. 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 as under :-

'The parties agree 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. $(184 \times 25)/100 = 46\%$. That increase of 46% is to be allowed in respect of rent which is already being paid i.e. $(46 \times 400)/100 = 184/-$. The total figure thus comes to Rs. 400/- + Rs. 184/- = Rs. 584/-. This calculation is in term 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 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.

8. 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 another of Kaithal v. Ram Lal, 1987 Haryana Rent Reporter 349. The computation shown in the case of Vijay Kumar (supra) would favour the present respondents 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 per cent of 66 per cent came to 16.5 per cent. Thus, calculated, the increase on Rs. 535.50, 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.'

9. 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.

10. 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 of price 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 loose 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.

11. During the course of hearing I had considered it appreciate 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.

12. 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. 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 the 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.

13. 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 afore-stated views does not permit providing of a clear precept for settlement of such disputes by the Rent Controller, Rent Tribunal and even Single Judge 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 calculation 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 Chili 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?

14. 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 un-necessary litigation between the parties.

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