Miran Devi

Vs

Birbal Dass

Civil Appeal No. 1984 of 1969

(N. N. Untwalia, Syed M. Fazal Ali JJ)

27.07.1977

JUDGMENT

UNTWALIA, J. –

1. This is an appeal by special leave by the landlady of a shop situated in Timber market in the town of Hissar in the State of Haryana. Respondent took the shop on rent of Rs. 175 per month plus the taxes on the basis of a Rent Note executed by him in favour of the appellant on November 2, 1962. On November 24, 1967, he filed an application under Section 4 of the East Punjab Urban Rent Restriction Act, 1949 - hereinafter called the Act, for fixation of the fair rent of the building. The Senior Sub-Judge, Hissar acting as the Rent controller under the Act, found the evidence adduced by the respondent insufficient to enable him to fix the basic rent under sub-section (2) of Section 4 of the Act. In that view of the matter, he upheld the contractual rate of rent of Rs. 175 per month and adding to that Rs. 10.15 paise on account of tax fixed the fair rent at Rs. 185.15 per month. The respondent went up in appeal before the District Judge, Hissar who by his order dated January 16, 1969 allowed the appeal and fixed Rs. 54 per annum i.e. Rs. 4.50 per month as the fair rent of the building. The appellant's revision before the High Court was dismissed on April 11, 1969. Hence this appeal.

2. Mr. V. C. Mahajan, learned Counsel for the appellant submitted that the town of Hissar and the locality where the shop is situated had considerably improved after January 1, 1939. Material improvements were made in the shop premises after that date. The improved structures, Counsel submitted, which were standing when the shop was let out on rent were not there in the year 1938. In that view of the matter it could not be held that the prevailing rate of rent in the locality for the same or similar accommodation during the 12 months prior to January 1, 1939 in similar circumstances was Rs. 3 per month as erroneously held by the District Judge under clause (a) of sub-section (2) of Section 4 of the Act. Mr. B. D. Sharma, learned Counsel for the respondent, however, submitted that the rent had been fixed taking into account the prevailing rate for the same shop which was in existence before January 1, 1939. The phrase "in similar circumstances" occurring in clause (a) governs only "similar accommodation" and not the word "same". Mr. Sharma further submitted that even assuming to be otherwise, the learned District Judge had arrived at a finding of fact on appreciation of the entire materials in the records of this case the circumstances prevailing at the time of the making of the application by the respondent for fixation of fair rent were similar to those prevailing before January 1, 1939. The finding of fact arrived at by the District Judge could not be and has not been interfered by the High Court in revision. There is no such error of law in the judgments of the either of the Courts below which would justify this Court's arriving at a different conclusion.

3. We shall read the relevant portion of sub-section (2) of Section 4 of the Act. It says :

In determining the fair rent under this section, the Controller shall first fix a basic rent taking into consideration -

> (a) the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to January 1, 1939; and
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> (b) the rental value of such building or rented land if entered in property tax assessment register of the municipal, town or notified area committee, cantonment board, as the case may be, relating to the period mentioned in clause (a).

Clause (b) admittedly was not applicable to this case as there was no property tax assessed in respect of this building prior to January 1, 1939. The decision and the case of fixation of the basic rent had to be judged with reference to clause (a) only. In our opinion the phrase "in similar circumstances" occurring in the said clause qualifies and governs both the expressions, namely, "the same" and "similar accommodation". For arriving at the figure of basic rent the prevailing rate of rent in the locality for the same building has got to be determined. But such prevailing rate payable for the same building before January 1, 1939 can from the basis of the fixation of the basic rent only when the same building was in existence in similar circumstances during that period. Identical will be the position with reference to the prevailing rate of rent for similar accommodation.

4. The Full Bench of the Punjab High Court has pointed out in Chanan Singh v. Sewa Ram (68 Punjab Law Reporter 335) that a change in the character of a locality from undeveloped to developed one will constitute a change of circumstances. It had also been observed by Falshaw, C.J. in his judgment at page 340 :

> I should certainly not be prepared to extend the meaning in this context further than the above, and to hold that a general increase in the size and prosperity of the town could be taken into account where the locality in question still remains much as it was 1938 whether it was a predominantly shopping or residential centre.

We would add that the development of the locality would undoubtedly be a change in the circumstances and it would be so if there has been an appreciable and substantial development of the premises or the building by alterations or new constructions after January 1, 1939. A general increase in the size and prosperity of the town will not be sufficient to take the case out of the ambit of clause (a). The purpose and the intention of the Legislature is not to permit a landlord to charge and fabulously increased existing rate as compared to the rate of rent prevailing before January 1, 1939 merely because there has been a general prosperity to the town where the increase in the population, development and advancement of the country as a whole, and several such factors there has been a general prosperity and increase in the population of almost each and every town in our country, leading to substantial increase in the rate of rent due to the increased is to prevent the charging of exorbitant rent in such a situation the Legislature, in its wisdom, thought it expedient to provide for a restriction in the demand for increased rent. If the building is a developed one, made so by substantial alterations, additions or new constructions then the fixation of fair rent under Section 4 may have to be made on different considerations. But if there has been no development of the locality or the building since after January 1, 1939 then the prevailing rate of rent for the same or similar accommodation as was there before January 1, 1939 will have to be taken into account in fixing the fair rent.

5. Mr. Mahajan took us to the Rent Note executed by the respondent, the spot inspection report dated May 11, 1967 of the then Sub-Judge, Hissar, and other relevant pieces of evidence. He submitted that the Rent Controller was right in his view that the evidence on both the relevant points under clause (a) was missing and in absence of such evidence he has justified in upholding the agreed rate of rent. We have given due consideration to the matter after careful perusal of all the three judgments, namely, those of the Rent Controller, the District Judge and the High Court. We have also perused with care the evidence and the materials which were placed before us on behalf of the parties. We felt constrained to do so especially in this case, as the fair rent fixed by the District Judge from the date of the filing of the application by the respondent was so shockingly low as compared to the agreed rate of rent that apparently it appeared that great injustice had been done to the landlady. On the other hand, the agreed rate of rent on the facts and in the circumstances of the case appeared to be exorbitantly high. It was not possible in the teeth of the law which is engrafted in Section 4 of the Act to strike a mean and make any other kind of just or proper order. Ultimately we felt constrained to arrive at the conclusion, though somewhat reluctantly and hesitatingly, that the findings of fact arrived at by the District Judge as affirmed by the High Court do not suffer from any infirmity of law to enable us to interfere with his order. On appreciation of the evidence adduced by the respondent and believing it the finding recorded by the District Judge is that the respondent had succeeded in proving the prevailing rate of rent of the demised premises to be Rs. 36 per annum and it was so in similar circumstances during the year 1938. Over the said prevailing rate, he has allowed the increase of 50% in accordance with sub-section (5) of Section 4 of the Act. The High Court in revision has affirmed the decision of the District Judge on the question of fixation of basic rent. We do not find any justification to interfere with it. We would, however, change the date of fixation of fair rent payable by the respondent to the appellant. Although, in terms, the fourth section of the Act does not say as to from which date the fair rent fixed has to come in force, ordinarily and generally it is to be from the date of the application. But there may be circumstances justifying the fixation of another date. We think there are special circumstances existing in this case. The Rent Controller had upheld the agreed rate of rent. The District Judge fixed the fair rent in his appellate order passed on January 16, 1969. We think in the circumstances of this case the date of the order of the District Judge would be an appropriate one for enforcement of the fair rent as fixed by him. We, accordingly, modify the order to this extent only that the fair rent fixed by the District Judge will be effective not from the date of the application but from the date of the appellate order of the District Judge. Subject to this modification, the appeal fails and is dismissed, but in the circumstances without costs.

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