SUPREME COURT OF INDIA

ISHWAR SWAROOP SHARMA

Vs.

JAGMOHAN LAL

24/11/2000

(S.R.Babu, Ruma Pal)

Appeal (civil) 6755 2000

JUDGMENT

RUMA PAL, J.

Leave granted.

This appeal has been preferred from the decision of the High Court of Punjab and Haryana affirming the order of the Appellate Authority under Section 4 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act) fixing the fair rent of the appellants shop at Rs.328/- per month w.e.f. 1989. The shop was constructed in August 1962. The appellant let out the shop to the respondent in 1975 at a monthly rent of Rs.200/-. In 1989, the appellant filed the application under Section 4 of the Act before the Rent Controller. The Rent Controller considering the evidence of similar premises in the locality, determined the fair rent payable in respect of the shop at Rs.1000/- per month. The respondent preferred an appeal before the Appellate Authority. On the construction of Section 4 of the Act, the Appellate Authority came to the conclusion that the appellant having agreed to accept Rs.200/- from the respondent, was not entitled to the market rent but to a percentage increase on the agreed rent. The Appellate Authority calculated the percentage of increase under Section 4 (3) of the Act and determined the fair rent of the shop to be Rs.328/- per month with effect from the date of the application. This decision was affirmed by the High Court on revision.

Section 4 of the Act provides: Section 4: - Determination of fair rent:

(1) The Controller shall, on application by the tenant or the landlord of a building or rented land, fix the fair rent for such building or rent 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 whereof 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 Numbers, as determined by the Government of India, for the calendar year immediately preceding the date of application.

(4) ..

(5) .

Under section 4(2)(b) where a building is constructed after December1961, as in this case, the fair rent is to be fixed on the basis of the rent agreed upon preceding the date of the application. It is only when there is no such agreed rent that the fair rent may be fixed on the basis of the rent payable in respect of comparable premises. According to the appellant, the phrase rent agreed upon in Section 4(2) (b) does not cover monthly tenancies. It is submitted that if this were not so, no landlord would ever be in a position to avail of the benefit of the later part of Section 4(2) (b), namely, the determination of basic rent prevalent in the locality for similar buildings. It is claimed that since the tenancy in question was a monthly tenancy, the agreement regarding rent came to an end with each month. Therefore, when the application was made there was no agreed rent within the meaning of Section 4(2)(b). According to the respondent, the shop had initially been let out to the respondent at a monthly rent of Rs.50/-. This was increased to Rs.200/- in 1976 and an endorsement was made by the tenant on the back of the rent receipt for October 1976 (Exhibit R-1) to the effect: As mutually agreed, I agree to pay rent at the rate of Rs.200/- (two hundred) with effect from first of Nov. 1976 i.e. from 1.1.1976.

Sd/- Sd/- Ishwar Sarup Sharma Jagmohan Advocate

It is contended that after having mutually increased the rent from 1.1.76 the landlord was bound to accept and had continued to accept the sum of Rs.200/-. As such this was the rent agreed upon within the meaning of Section 4 (2)(b) and this was the rent paid by the respondent upto the date when the application under Section 4 was made. The key to the resolution of the dispute raised lies in the words rent agreed used in Section 4 (2)(b). In a narrow sense rent is understood as the payment agreed to be made to the landlord by the tenant in consideration for the right to use the rented premises. The landlord and the tenant agree that the tenant will be entitled to occupy and use the demised premises at an agreed rent. Without an agreement as to the rent payable there no tenancy is created. This is also how rent is defined in Section 105 of the Transfer of Property Act, 1882. The element of assent is an integral to the concept of rent. If the word rent is given this narrow meaning then, as urged by the appellant the latter half of Section 4(2)(b) would indeed be rendered redundant. But the Legislature has used the word agreed in juxtaposition to rent. If the word rent is used in the narrow sense the word agreed would be tautologous. We cannot assume that the Legislature has used any word without purpose. In our view, by using the words agreed rent the Legislature intended to indicate that the word rent must be construed in a wider sense to include, apart from the narrow connotation, any payment made for use of land where the quantum may have been fixed otherwise than by agreement. The definition of the word tenant in Section 2(h) of the Act

also makes this clear: tenant means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy...

The tenancy being terminated the agreement ceases to operate as a voluntary bilateral transaction. With the cesser of the agreed tenancy, the agreement as to rent would also cease. Nevertheless, under Section 2(h) of the Act the tenant would be liable statutorily to make payment of rent. Similarly after fair rent is fixed under Section 4 of the Act, the rent payable is not the agreed rent. Therefore for the purpose of determining fair rent Section 4 (2)(b) draws a distinction between cases where the parties have agreed to the rent and cases where rent is payable otherwise than by agreement. In the first case, the agreed rent is to be taken as the base and the increase determined according to the formula provided in Section 4(3). In the second case, the base is the market rate. There is no warrant for drawing any distinction between a monthly tenancy and tenancies for longer periods. Nor is it necessary that the agreement should have been entered into immediately preceding the date of the application. Section 4 (2)(b) uses the word preceding without any limitation. This may be contrasted with Section 3 where the word preceding is qualified by the word immediately. For fixing the basic rent under Section 4 the only question would be - was there a subsisting agreement of tenancy under which rent was payable when the application for fixation of fair rent was filed? If the answer is in the affirmative the agreed rent must be taken as the basic rent. If not, then the basic rent is the prevailing market rate. Therefore, even though the agreement may have been entered into in 1976 as is admittedly true in this case, but the tenancy was continuing until the date of the application, the Rent Controller was obliged to take the rate agreed to in 1976 as the basic rent under the first limb of Section 4 (2)(b). It is only after the fair rent is fixed that the landlord could seek re-fixation under the second limb subject to the limitations provided in the Act, as the rent would then cease to be the agreed rent. For these reasons, we uphold the decision of the High Court and dismiss the appeal without any order as to costs.