

Government are not the decision of the State Government exercised by Government in accordance with rules of business and is again in contravention of earlier resolution of the Trust dated 3.2.2000.

55. In view of the above, it is concluded that the agreement dated 24.05.2005 signed by the Chairman of the Trust in favour of the petitioner is not legal and valid. Therefore, the disputes between the parties arising out of the said agreement are not referable to the Arbitrator. Consequently, the present petition is dismissed with no order as to costs.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Mukul Mudgal, C.J. & Jasbir Singh, J.

Civil Revision No. 3577 of 2006

Decided on: 07.01.2010

Rajan alias Raj Kumar

Petitioner

Versus

Rakesh Kumar

Respondent

For the Petitioner: Shri Avnish Mittal, Advocate.

For the Respondent: Shri P.S. Khurana, Advocate with Ms. Amarjit Kaur Khurana, Advocate.

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(2)(i) – Arrears of rent – Provisional assessment of rent – First date of hearing -- Provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority -- ‘First date of hearing’ mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller -- If after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed -- If a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum – View taken by the learned Single Judge in Rajinder Lal's case (2006-2) P.L.R. 124 is not sustainable and view taken in Madan Lal's case (2004-2) P.L.R. 834 is the correct application of ratio of Rakesh Wadhawan case, AIR 2002 SC 2004.

This Court is of the view that the ratio of judgment in Rakesh Wadhawan's case (supra) leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority. The ‘first date of hearing’ has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No. 30 of the judgment in Rakesh Wadhawan's case (supra) leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No. 4 in the said para is very clear and needs no further interpretation. The Court is further of the view

that the benefit of conclusions No. 5 and 6 would become available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller, otherwise it will entail the tenant's ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum.

Accordingly, we are unable to subscribe to the view taken by the learned Single Judge in Rajinder Lal's case (supra) and hold that the view taken by the learned Single Judge in Madan Lal's case (supra) is the correct application of ratio of Rakesh Wadhawan case. The reference made is answered accordingly.

(Para 13, 16)

Cases referred:

1. Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation, AIR 2002 SC 2004.
2. Rajinder Lal v. Gopal Krishan, (2006-2) P.L.R. 124.
3. Madan Lal and another v. Baldev Raj, 2004 L.A.R. 429 = (2004-2) P.L.R. 834.
4. Vinod Kumar v. Prem Lata, 2003 H.R.R. 699.
5. Rajinder Kumar Joshi v. Veena Rani, 1992 H.R.R. 529.
6. Rubber House v. Excelsior Needle Industries (Private) Limited, 1989,H.R.R. 183.

JUDGMENT

MUKUL MUDGAL, C.J. (ORAL) -- This reference has been made by a learned Single Judge on February 5, 2007 in view of differing interpretations given by two Single Judges of this Court, to the judgment of the Hon'ble Supreme Court reported as **Rakesh Wadhawan V. M/s Jagdamba Industrial Corporation AIR 2002 SC 2004.**

2. In the reference order, the learned Single Judge has made reference to a judgment of this Court in case **Rajinder Lal V. Gopal Krishan (2006-2) P.L.R. 124**, which the learned counsel for the petitioner had relied upon to contend that even if the petitioner had failed to pay the arrears of provisional rent as assessed by the learned Rent Controller, an opportunity for regular trial has to be given to the petitioner. The view taken by the learned Single Judge in that judgment is contained in para No. 18 which reads thus:-

"18. After harmoniously construing conclusion Nos. 4,5 and 6.1, I am of the opinion that the failure to deposit provisional rent assessed will not entail passing of the eviction order. The eviction order can be passed only after conclusion of the trial after giving opportunities or hearing to the parties as required under Section 13(2) of the Act. If, however, the final order of the Rent Controller is in terms of the provisional rent assessed, the tenant is not entitled to any other opportunity to tender rent as he has failed to comply with the order of provisional assessment of rent. But in case, in the final order passed by the Rent Controller, rent determined is less than the order of provisional assessment of rent, the tenant would be

entitled to another opportunity to make up the deficiency in respect of such arrears of rent. However, if the amount tendered is in excess, the tenant is entitled to refund. The above conclusion alone would be in tune with the principles of law laid down by the Hon'ble Supreme Court. It is preposterous to say that on failure of payment of provisional rent, i.e. Ad-interim order, the eviction order shall follow without giving a reasonable opportunity to the tenant to controvert the stand of the landlord on the basis of evidence led that such provisional rent was not correctly assessed."

3. On the contrary, learned counsel for the respondent has, placed reliance upon judgment of another learned Single Judge reported as **Madan Lal and another V. Baldev Raj, 2004 L.A.R. 429 = (2004-2) P.L.R. 834**, to contend that the judgment of the Hon'ble Supreme Court in **Rakesh Wadhawan's case (supra)** clearly lays down that in case the tenant fails to make the payment of rent, assessed by the learned Rent Controller provisionally, the order of ejectment has to follow and nothing more is required to be done by the learned Rent Controller.

4. The view taken by the learned Single Judge in **Madan Lal's case (supra)** is to the following effect:-

"8. The Supreme Court in **Rakesh Wadhawan's case (supra)** has interpreted the provisions of Section 13(2)(i) of the Act to conclude that the Act has been framed for the benefit of the tenants and, therefore, the tenants should not suffer on account of self assessment or for short tender. On that basis, the provision was so interpreted to conclude that the Rent Controller is under an obligation to pass a provisional order of assessment calling upon the tenants to make payment of rent and if they fail to make payment of rent in accordance with the assessment order, then nothing requires to be done except ordering the tenant's eviction."

5. Owing to the aforesaid difference of opinion qua the interpretation of the judgment of Hon'ble the Supreme Court in **Rakesh Wadhawan's case (supra)** in the aforesaid two cases, this matter has been referred to this larger Bench for consideration.

6. The controversy involved in the present reference arises out of Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as the Act) which reads as under:-

"13. Eviction of tenants:- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied:-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land with fifteen days after the expiry

of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable;

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid."

7. The Hon'ble Supreme Court in **Rakesh Wadhawan's case (supra)** noted that the landlord-tenant litigation accounts for a major part of litigation pending in Courts of law or before statutory authorities. It was further noticed that substantial number of cases consists of those, wherein eviction is sought on the ground of non-payment of rent by a tenant. As per proviso added to Section 13(2)(i) of the Act, it is the duty of a tenant to tender rent alongwith costs etc. on the first date of hearing, after his service, in an application for ejectment, failing which he may have to vacate the premises in question. The Hon'ble Supreme Court in the above said case also noted that there is always a dispute as to how much amount is due from a tenant and to resolve the above said dispute no mechanism had been provided in the Act. In that context, it was held as under:-

"16. There may be unscrupulous landlords, who with the proviso of placing the tenants in a quandary and thereby earning an easy order of eviction may highly inflate the claim. For example, the landlord may claim the arrears at a highly inflated rate of rent, or may claim rent alleging it to be in arrears though the same had already stood paid and for which the landlord chose to issue receipts for payment, or there may be a bonafide dispute as to the rate at which the rent was paid or is payable. Several other State legislations provide for an interim or provisional order being passed by the Court or the Rent Controller, resolving the dispute momentarily by a judicial order, with which order the tenant should comply and failing which the tenant may suffer adverse consequences. A provision for such an interim or provisional order has not been expressly made in the Punjab Act, yet can it be spelt out? If we were to go by adopting an approach approving the interpretation placed on the proviso by the Punjab High Court in Mangat Ram's case (supra), serious and uncalled for consequences are bound to follow."

8. The Hon'ble Supreme Court then went on to discuss the ways and means as to how the problem can be sorted out. It was further noted that the provisions of the Act in that regard are some what vague and do not reflect the true intention of the legislature. It was observed that on account of above deficiency in the statute, there are chances of prolonging the litigation inter-se the landlord and the tenant. To resolve that problem, it was held as under:-

"19. There are two means of resolving the riddle; firstly, by placing such meaningful interpretation on the provision as would enable the legislative intention being effectuated; and secondly by devising such procedure without altering the structures as would enable the substantive law being meaningfully implemented. Let us see whether the expression assessed by the Controller' qualifies only' the cost of application or qualifies the entire preceding expression i.e. ' the arrears of rent and

interest' as six percent per annum on such arrears together with the cost of application. As there is ambiguity and the provision is susceptible to two meanings, the Court should interpret it in the manner which will best serve the object sought to be achieved. In our opinion, if there be a dispute raised as to the quantum of arrears of rent, or as to the rate of rent which would obviously in its turn have an impact on the quantum of arrears, then for the purpose of payment or tender within the meaning of the proviso, the Controller must make an assessment, provisional in nature, and appoint the quantum of arrears, including the rate of rent, (if necessary) and calculating the interest and the cost of application. There may be a dispute as to the date on which the monthly rent becomes due according to the contract of tenancy which will also need to be resolved without which the period for which interest at six per cent per annum is liable to be paid would not be capable of being quantified. For two reasons, we consider it necessary to place such an interpretation on the language of the proviso. Firstly, it is in conformity with the object of enactment. The legislation was enacted to protect the tenants from the hands of unscrupulous landlords and any interpretation to the contrary would give an upper hand to the landlords and provide a tool in their hands to be cracked like a whip on a weaker tenants. Secondly, such an interpretation would bring the provision in conformity with the several other legislations of the times such as Section 13 of the M.P. Accommodation Control Act, 1961, Section 11 of A.P. Buildings (Lease and Eviction) Control Act, 1960, Section 11(4) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, Section 15 of Delhi Rent Control Act, 1958 and so on. Thirdly, the provision suffers from ambiguity. In the absence of any in-built indication enabling determination of the quantum of arrears, if disputed, and the period for which interest at six per cent per annum is to be calculated, the provision would become unworkable and hence liable to be struck down under Article 14 of the Constitution. An obligation is cast on the Court to interpret it in such a manner as to make it workable and save it from the vice of being rendered unconstitutional."

9. To make the things more clear, a reference was also made to the provisions of Section 114 of the Transfer of Property Act, 1882 (for short 'T.P. Act'), and it was observed that the legislature never intended to place a tenant, in a situation, worse than what it would have been under the principles as may be derived from Section 114 of the T.P. Act. It was also noted that in case a tenant deposits the rent claimed by a landlord, in an application for ejectment, if ultimately it is found in excess by the Rent Controller, there is no mechanism provided as to how that amount will be refunded to the tenant. In the said provision, it is also not provided that the Rent Controller can pass order directing the tenant to deposit the rent during the pendency of the application for ejectment. The Hon'ble Supreme Court then observed that the proviso to clause (i) of sub-section (2) of Section 13 of the Act may be read as obliging the Controller to assess, by means of passing an order, the arrears of provisional rent, the interest and the cost of litigation, which the tenant shall pay or tender on the first date of hearing of the main petition following the date of such assessment by the Controller. It was further observed that such an order can be passed on the basis of pleadings of the parties and such other material as may be available before the Rent Controller and the order passed

would be provisional in nature. It was made clear that after passing of the order determining rent etc. provisionally, the tenant shall be under an obligation to pay the same on the date fixed thereafter by the Rent Controller. The entire process of reasoning was summarized by the Hon'ble Supreme Court as under:-

29.....“Under proviso to Section 13(2)(i), the Controller having 'discharged his obligation of passing an order under he proviso, either suo moto or on his attention in this regard being invited by either or the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case, it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word “may” in the expression “The Controller may make an order directing the tenant to put the landlord in possession”, as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller.”

10. From a reading of **Rakesh Wadhawan's case (supra)**, it becomes clear that nothing was left to chance. The proposition of law was settled by the Hon'ble Supreme Court in para No. 30 of the above judgment which reads thus:-

“30. To sum up, our conclusions are:-

1. In Section 13(2)(i) proviso, the words ' assessed by the Controller' qualify not merely the words “ the cost of application” but the entire preceding part of the sentence i.e. ' the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.
2. The proviso to Section 13(2)(i) of East Punjab Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.
3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.
4. *On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.*” (emphasis supplied).
5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount failing which alone he shall be liable to be evicted. Compliance shall save him for eviction.
6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularly the rent falling due month by month during the pendency of the proceedings.”

11. The view taken in **Rakesh Wadhawan's case (supra)** was reiterated by a three Judges Bench of the Hon'ble Supreme Court in **Vinod Kumar Vs. Prem Lata, 2003 H.R.R. 699**. The afore said case was disposed of by the Hon'ble Supreme Court by making a reference to the ratio of earlier judgment of the Hon'ble Supreme Court in **Rakesh Wadhawan's case (supra)**. Thereafter a review application was moved, wherein it was contended that

when the judgment was passed in the above said case, two earlier decisions of the Hon'ble Supreme Court in **Rajinder Kumar Joshi Vs. Veena Rani, 1992 H.R.R. 529** and **Rubber House Vs. Excelsior Needle Industries (Private) Limited, 1989, H.R.R. 183** were not taken into consideration. A three Judge Bench of the Hon'ble Supreme Court in **Vinod Kumar's case (supra)** held that the judgments in the cases of **Rajinder Kumar Joshi's case (supra)** and **Rubber House's case (supra)** did not lay down correct proposition of law and the ratio of judgment of **Rakesh Wadhawan's case (supra)** was reaffirmed.

12. Learned counsel for the tenant-petitioner Mr. Mittal tried to contend that the view taken by learned Single Judge in **Rajinder Lal Vs. Gopal Krishan 2006-2, Punjab Law Reporter, 124**, is the correct interpretation of law laid down in **Rakesh Wadhawan's case** by the Supreme Court.

13. This Court is of the view that the ratio of judgment in **Rakesh Wadhawan's case (supra)** leaves no manner of doubt that the provisional rent and other ancillary charges assessed by the Rent Controller had to be deposited by the tenant on the next date of hearing alongwith arrears, interest and costs etc., as may be determined by the above said authority. The 'first date of hearing' has also been interpreted to mean, the first date of hearing after determination of provisional rent and other expenses by the Rent Controller. A reading of conclusions drawn in para No. 30 of the judgment in **Rakesh Wadhawan's case (supra)** leaves no doubt that if after determination of the provisional rent, a tenant fails to deposit the same, nothing remains to be done and an order of ejectment of a tenant has to be passed. The language of conclusion No. 4 in the said para is very clear and needs no further interpretation. The Court is further of the view that the benefit of conclusions No. 5 and 6 would become available to a tenant only on his making a deposit of the provisional rent and other ancillary charges determined by the Rent Controller and not otherwise. It was implicitly made clear that it is the bounden duty of the tenant to deposit the provisional rent determined by the Rent Controller, otherwise it will entail the tenant's ejectment from the premises in dispute. This Court feels that if a tenant is dissatisfied with the interim order passed by the Rent Controller, he has an opportunity to challenge the same before the date fixed for payment, in the higher forum.

14. We have gone through the findings given in **Rajinder Lal case (supra)**. We respectfully are unable to agree with the proposition of law laid down therein. The rationale of the assessment as laid down in **Rakesh Wadhawan's case (supra)** is to be discerned from the view as expressed in para No. 29 of the said judgment because the Hon'ble Supreme Court has balanced the interests of the landlords and tenants so as to ensure that the tenants get an adequate opportunity to deposit the rent consequent upon determination of the provisional rent. Whatever may be the extent of emphasis, which have been put on the view taken in the judgment relied upon by the petitioner, this Court is bound by the conclusions arrived at by the Supreme Court in **Rakesh Wadhawan's case (supra)** wherein it has been held that if a tenant does not comply with the order on the first date of hearing after determination of the provisional rent and other ancillary expenses by the Court, then eviction has to follow.

15. Mr. Mittal, learned counsel for the petitioner further urged that provisional assessment order may put the tenant at a great disadvantage in

case the said assessment order is exorbitant and extortionate. We need not to go into that issue because the provisional assessment order dated 18.09.2004 in the present case clearly shows that rent deed had been signed for Rs. 2800/- per month which amount has been provisionally determined as rent by the Rent Controller for the shop rented by the petitioner and the only defence of the petitioner was that this rent deed was secured by fraud under police pressure. The above plea of the petitioner does not have any merit as no contemporaneous complaint to that effect was made.

16. Accordingly, we are unable to subscribe to the view taken by the learned Single Judge in **Rajinder Lal's case (supra)** and hold that the view taken by the learned Single Judge in **Madan Lal's case (supra)** is the correct application of ratio of **Rakesh Wadhawan case**. The reference made is answered accordingly.

17. At this stage, learned counsel for the petitioner states that the tenant has already vacated the premises in dispute and therefore this petition has become infructuous.

18. In view of the statement made by learned counsel for the petitioner, this petition is dismissed as having become infructuous.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Adarsh Kumar Goel & Alok Singh, JJ.

LPA No.147 of 1996

Decided on: 29.01.2010

Municipal Committee, Rania

Appellant

Versus

Hari Chand and others

Respondents

For the Appellant: Mr. R.S. Mittal, Sr. Advocate with Mr. Atul Gaur, Advocate.

For the Respondents: Mr. L.N. Verma, Advocate.

Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961), Section 7 (1) – Eviction proceedings -- Question of title raised – Duty of Asst. Collector -- Asstt. Collector shall record a finding on the question of title, if in any proceeding, the question of title is raised and proved, prima-facie on the basis of document produced before him – If prima facie title is not proved before him then learned Asstt. Collector is not obliged to decide the question of title.

(Para 6, 7)

JUDGMENT

ALOK SINGH, J. -- The appellant is assailing the order dated 28.11.1995 passed by learned Single Judge in CWP No.5057 of 1992 thereby remanding the case to the prescribed authority with the direction to the prescribed authority to decide the question of legality of the auction, acceptance of sale