

Reference Court chose not to award any interest, the High court erred in awarding interest under section 28 of the Act, in addition to the interest awarded by the Collector under section 34 of the Act.

13. The collector awarded interest under section 34 of the Act, on the compensation offered, at the rate of 9% per annum for a period of one year from the date of taking possession and thereafter at the rate of 15% per annum. The reference court did not specifically award any interest, because it did not 'increase' the market value, but merely reclassified the acquired land into two categories instead of three categories and adopted the first and second rates awarded by the collector for the two categories. However the High Court deleted the belting/ categorisation and awarded a uniform rate of Rs.26.25 per sq.ft. Therefore, there was in fact an increase in the compensation awarded for lands which were earlier classified by the Collector as second and third belt lands. Therefore, interest under section 28 of the Act had to be granted. The scheme of the Act is that in regard to compensation amount, interest is payable at the rate of 9% per annum for a period of one year from the date of taking possession and thereafter at 15% per annum until deposit is made. In regard to the compensation that is offered by the Land Acquisition Collector, the interest is payable under section 34 of the Act. In regard to the increase in such compensation, which is awarded by the Reference Court or any appellate court, such interest is awarded under section 28 of the Act. Sections 34 and 28 of the Act do not duplicate the award of interest, but together cover the entire amount of compensation awarded. The award of interest on the enhanced amount under section 28 of the Act is the normal rule. The refusal of interest should be by assigning special or specific reasons. The contention of the Authority that the High Court ought not to have awarded interest under section 28 is therefore untenable.

14. In view of the above, the appeals filed by the Authority are dismissed. The appeals filed by the claimants - landowners are allowed and the compensation is increased from Rs.26.25 per sq.ft. to Rs.29.50 per sq.ft. We reiterate that the claimants will be entitled to all the statutory benefits, that is additional amount under section 23(1A), solatium under section 23(2) and interest under section 28 of the Act. Parties to bear their respective costs.

Appeals dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Rakesh Kumar Jain, J.

CR No.7752 of 2010 (O&M)

Decided on: 04.03.2011

Mrs. Birinder Khullar

Petitioner

Versus

Maninder Singh

Respondent

For the Petitioner:

Mr. M.L. Sarin, Sr. Advocate, with Ms. Hemani Sarin, Advocate.

For the Respondent:

Mr. Chetan Mittal, Sr. Advocate, with Mr. Kunal Mulwani, Advocate.

A. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(2)(ii)(a) – Arrears of Rent – Provisional Assessment of – Non-payment of – Extension of time -- Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant.

The questions involved in this case is “(i) Whether the Rent Controller has any jurisdiction to extend time for tendering the provisional rent?;

In order to answer the first question, learned counsel for the petitioner has relied upon the decision of *Rakesh Wadhawan and others (Supra)* which has been further clarified by Division Bench of this Court, in view of a conflict of the views of two Hon'ble Single Benches of this Court in the case of *Rajinder Lal Vs. Gopal Krishan* 2006(2) PLR 124 and *Madan Lal and another Vs. Baldev Raj* 2004(2) PLR 834 observing that the proposition of law laid down in the case of *Rajinder Lal (Supra)* is not correct, meaning thereby, the view expressed in the case of *Madan Lal and another (Supra)* was upheld that in case where tenants fails to make the payment of rent assessed, the order of ejectment has to follow and nothing more is required to be done. In the case of *Sudhir Kumar (Supra)* this Court held that the Rent Controller has no jurisdiction at all to extend time. The facts of that case were that vide order dated 10.9.2009, the Rent Controller assessed the provisional rent and directed the tenant to pay a sum of Rs. 3,62,259/- on or before the adjourned date i.e. 1.10.2009. The said order was challenged by the tenant by CR No.5521 of 2009, which was dismissed on 25.9.2009, however, liberty was granted to the tenant to approach the Rent Controller for extension of time to tender the arrear of rent if so permissible in law. The tenant moved an application to the Rent Controller for extension of time on 1.10.2009, which was not granted and eviction of tenant was ordered for his failure to make the payment of provisional rent in terms of order dated 10.9.2009, which was challenged by the tenant before the Appellate Authority where also he remained unsuccessful as his appeal was dismissed on 7.1.2010. Against those orders, revision in the said case was filed and this Court had observed as under: -

“In view of the above dictums, I am of the view that the learned Rent Controller has no jurisdiction to extend the time to make deposit of the amount as assessed by the Rent Controller beyond the period already fixed by the Rent Controller while assessing the rent. In the opinion of this Court, while dismissing the revision filed by the tenant vide judgment/order dated 25.09.2009, this Court never intended that in case the tenant moves an application seeking extension of time to make deposit, the same shall be allowed. This Court only observed if law permits, tenant can make an application for extension of time. Since, as per the Rakesh Wadhawan's case (supra), tenant is bound to make payment of the amount as assessed by the Rent Controller on or before the date fixed by the Rent Controller, there is no question for extension of time. If tenant does not make deposit within such time as fixed by the Rent Controller while assessing the rent, tenant has to blame himself.”

Insofar as the judgments relied upon by the learned counsel for the tenant are concerned, that pertains to review of the order of the assessment, which is not the dispute in the present case because in this case no application for review was filed before the Rent Controller against the final order of assessment of provisional rent rather the said order was challenged by way of revision.

Therefore, in my opinion all the three judgments, which have been relied upon by the learned counsel for the tenant are totally inapplicable.

Thus, after considering the facts of this case and law applicable thereto, the first question is decided in affirmative and it is held that the Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant.

(Para 1, 17-20)

B. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13(2)(ii)(a) – Arrears of Rent – Provisional Assessment of – – Re-assessment of -- Extension of time -- Whether the Rent Controller has jurisdiction to further extend time to tender rent in case of disagreement with the tenant on his application regarding re-assessment -- Held, even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the provisional rent when he did not agree with him on his application for review -- In that circumstance, he was left with no other alternative but to simply dismiss the application.

The questions involved in this case is

.....

(ii) whether the Rent Controller has jurisdiction to further extend time to tender rent in case of disagreement with the tenant on his application regarding re-assessment?"

Insofar as the second question is concerned, that too is decided in favour of the petitioner herein because even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the provisional rent when he did not agree with him on his application for review. In that circumstance, he was left with no other alternative but to simply dismiss the application as he had actually done in the impugned order but faulted by granting time to the tenant to make the payment of arrears of rent beyond the date, which was given initially when the provisional rent was fixed.

(Para 1, 20)

Cases referred:

1. Rakesh Wadhawan and others v. M/s Jagdamba Industrial Corporation and others, JT 2002 (Suppl.1) SC 11.
2. Rajan alias Raj Kumar v. Rakesh Kumar, 2010(1) L.A.R. 662 (P&H DB) = 2010(2) PLR 201.
3. Sudhir Kumar v. Kuldip Singh Malhotra, 2010(2) RLR 381.
4. Sanjay Sharma and another v. Ajmer Singh and another, CR No.2882 of 2005 decided on 21.2.2007.
5. Ramesh Basandara v. Moti Ram, 2003(2) Rent Control Reporter 508.
6. Bharat Steel Tubes Ltd. v. Ram Piari Sethi, 1986 RCR (Rent) 468.
7. Rajinder Lal v. Gopal Krishan, 2006(2) PLR 124.
8. Madan Lal and another v. Baldev Raj, 2004 L.A.R. 429 (P&H) = 2004(2) PLR 834.

JUDGMENT

RAKESH KUMAR JAIN, J. –

1. The questions involved in this case is “(i) *Whether the Rent Controller has any jurisdiction to extend time for tendering the provisional rent?*; (ii) *whether the Rent Controller has jurisdiction to further extend time to tender rent in case of disagreement with the tenant on his application regarding re-assessment?*”.

2. The landlord is in revision against the order dated 11.8.2010 by which the Rent Controller had extended time for tendering the provisional rent.

3. The brief facts of this case are that landlord filed petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') on 27.10.2008 seeking ejectment of the tenant on the ground of personal necessity and non-payment of rent w.e.f. 1.9.2008 @ Rs. 14500/-. The tenant filed written statement contesting both the grounds of the ejectment and alleged that the rent was not Rs. 14,500/- but Rs. 7250/- per month and was not in arrears. The landlord filed replication, denying the averments made in the written statement and reiterated the contents of the ejectment petition. On 18.1.2010, the learned Rent Controller passed an order of assessment of provisional rent. The operative para reads as under:

"So, in view of these facts, the rent is provisionally assessed in this case w.e.f. 1.9.2008 till 31.1.2010 @ Rs. 14,500/- per month along with interest @ 6% per annum. The cost of litigation is assessed as Rs. 1000/- . However, it is made clear that any difference in the rate of rent shall be adjusted at the time of final order. Now to come up on 10.2.2010 for payment of rent provisionally assessed today and framing of issues."

4. Aggrieved against the assessment of the provisional rent, the tenant filed CR No.842 of 2010 titled as "*Maninder Singh Vs. Mrs. Birinder Khuller*" in which following order was passed on 8.2.2010:

"The learned counsel for the petitioner states that this petition may be dismissed as withdrawn, with liberty to raise a plea that the petitioner had made certain excess payment which is liable to be adjusted in the rent payable in future. It will be open to the petitioner to raise the 'excess' payment plea before the learned Rent Controller and the plea, if raised, shall be disposed of in accordance with the law.

Dismissed as withdrawn, with liberty aforementioned.

Copy of the order be given to the petitioner dasti on payment of usual charges"

5. As a matter of fact, order dated 18.1.2010 was not disturbed by the Revisional Court consequent upon the withdrawal of the revision petition by the tenant. However, liberty was given to him to raise plea of 'excess' payment before the Rent Controller, who was directed to dispose of the same in accordance with law, if raised.

6. The tenant, however, neither tendered provisional rent on 10.2.2010 as stipulated vide order dated 18.1.2010 nor prayed for extension of time. He rather filed an application on that date for re-assessment of provisional rent basically relying upon the order of the High Court in CR No.842 of 2010. On that day, the learned Rent Controller passed the following order:

"Present: Counsel for the parties.

An application for reassessment of rent is filed by counsel for respondent. Copy stands supplied. Now to come up on 15.3.2010 for filing its reply.

Sd/- RC/10.2.2010"

7. The landlord filed reply to the application for reassessment of

provisional rent in which preliminary objection was taken that the said application is not maintainable. The tenant has made himself liable to be ejected in terms of the judgment of the Supreme Court in the case of **“Rakesh Wadhawan and others Vs. M/s Jagdamba Industrial Corporation and others” JT 2002 (Suppl.1) SC 11**. It was also alleged that there is no provision for review and the High Court has not set aside the order of provisional assessment dated 18.1.2010. On 15.3.2010, the Rent Controller passed the following order:

“Present: Sh. RS Walia, Cl. for the petitioner.

Sh. Rajesh Sharma, Cl. for the respondent.

Reply to application for reassessment of rent is moved by counsel for the petitioner. Copy stands supplied. Now to come up on 15.4.2010 for its consideration.

Sd/- (Paramjit Kaur)

RC/15.3.10”

8. Ultimately, on 11.8.2010, the application for re-assessment of provisional rent was disposed of by the Rent Controller observing as under: -

“After going through the file, I am of the considered view that the rent already assessed by learned Rent Controller has rightly been passed and review is not required to re-assess the rent as the order has been passed after due consideration. Hence, the application stands dismissed and the respondent is directed to make the payment of the rent as per the order dated 18.1.2010.

To come upon 30.8.2010 for payment of the arrears of rent.”

9. In terms of the order dated 11.8.2010, the tenant tendered the rent and at that time, following order was recorded by the learned Rent Controller:

“Statement of Birinder Khullar petitioner along with Advocate Subodh Walia, Cl. for the petitioner.

I accept the tender under protest as the rent has not been tendered on the 1st date of hearing immediately on the date fixed after the provisional order of assessment was passed. The tender is short, insufficient and invalid. The petitioner reserves her right to file the revision in the Hon'ble High Court for praying for the order of ejectment.”

10. While assailing the impugned order, the learned counsel for the petitioner has drawn the attention of this Court to conclusion No.4 drawn by the Apex Court in the case of **Rakesh Wadhawan and others (Supra)**, which reads as under: -

“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 injury 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.”

11. He also referred to a decision of the Division Bench of this Court in the case of **“Rajan alias Raj Kumar Vs. Rakesh Kumar” 2010(1) L.A.R. 662**

(P&H DB) = 2010(2) PLR 201 in which it was held as under: -

"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."

12. He has further relied upon a Single Bench judgment of this Court in the case of **"Sudhir Kumar Vs. Kuldip Singh Malhotra" 2010(2) RLR 381** to contend that a similar controversy was involved in that case in which it was held that Rent Controller had no jurisdiction to extend the time for depositing the assessed amount.

13. Besides the above, learned counsel for the petitioner has also submitted that though the High Court had not granted any liberty to the tenant to apply for re-assessment of rent as it is not made out from the order passed in CR No.842 of 2010 yet, assuming for the sake of argument though not admitting, the application is filed and matter has been again considered by the Rent Controller for the purpose of finding out the correctness of assessment made by him vide order dated 18.1.2010 but once he had found that the

provisional rent was correctly assessed by him on 18.1.2010, he should have simply dismissed the application and had not granted time to the tenant to tender the rent.

14. On the contrary, learned counsel for the respondent has submitted that tenant was not satisfied with the assessment of provisional rent as per order dated 18.1.2010 and challenged it by way of revision immediately on 6.2.2010 in which he was given liberty by this Court to take a plea before the Rent Controller about the 'excess' payment, in pursuance of which the application for re-assessment was filed, which was more or less a prayer for review of the earlier order, which is permissible in law and when the Court did not find any reason to review or reassess, time was granted for tendering the rent. Therefore, there is no question of any extension of time by the Court *suo motu* for the purpose of tendering the provisional rent beyond the date fixed by the Rent Controller initially. In support of his submissions, he has relied upon a decision of this Court in **CR No.2882 of 2005** titled as "**Sanjay Sharma and another Vs. Ajmer Singh and another**" decided on 21.2.2007, judgment of the Delhi High Court in the case of "**Ramesh Basandara Vs. Moti Ram**" 2003(2) *Rent Control Reporter* 508 and a decision in the case of "**Bharat Steel Tubes Ltd. Vs. Ram Piari Sethi**" 1986 *RCR (Rent)* 468.

15. I have heard both the learned counsel for the parties and have perused the record.

16. The facts are not much in dispute as they are borne out from the record. However, the fact remains that if a tenant is not satisfied with the assessment of the provisional rent by the Rent Controller, he can challenge the same by way of revision before this Court, which has been done in the present case as well but he was not successful in persuading this Court to disturb the order dated 18.1.2010 and had to get the revision petition dismissed as withdrawn. At that stage, he prayed for liberty to raise the plea before the Rent Controller about the 'excess' payment having been made to be adjusted in the rent payable in future. In this regard, this Court had observed that it is open to the tenant to raise the plea of 'excess' payment before the Rent Controller, who would decide it in accordance with law. From this order, it does not mean that permission was granted by this Court to the tenant to file an application for review in the garb of re-assessment of provisional rent but the tenant decided to file application for reassessment on the pretext of the order passed in CR No.842 of 2010, which was contested by the landlord by filing a reply and the Rent Controller finally found that there was no merit in the application. While dismissing the application for reassessment, the Rent Controller however, directed the tenant to make the payment of rent as per order dated 18.1.2010.

17. In order to answer the first question, learned counsel for the petitioner has relied upon the decision of **Rakesh Wadhawan and others (Supra)** which has been further clarified by Division Bench of this Court, in view of a conflict of the views of two Hon'ble Single Benches of this Court in the case of **Rajinder Lal Vs. Gopal Krishan**" 2006(2) *PLR* 124 and "**Madan Lal and another Vs. Baldev Raj**" 2004 *L.A.R.* 429 (P&H) = 2004(2) *PLR* 834 observing that the proposition of law laid down in the case of **Rajinder Lal (Supra)** is not correct, meaning thereby, the view expressed in the case of **Madan Lal and another (Supra)** was upheld that in case where tenants fails to make the payment of rent assessed, the order of ejectment has to follow and nothing more is

required to be done. In the case of **Sudhir Kumar (Supra)** this Court held that the Rent Controller has no jurisdiction at all to extend time. The facts of that case were that vide order dated 10.9.2009, the Rent Controller assessed the provisional rent and directed the tenant to pay a sum of Rs. 3,62,259/- on or before the adjourned date i.e. 1.10.2009. The said order was challenged by the tenant by CR No.5521 of 2009, which was dismissed on 25.9.2009, however, liberty was granted to the tenant to approach the Rent Controller for extension of time to tender the arrear of rent if so permissible in law. The tenant moved an application to the Rent Controller for extension of time on 1.10.2009, which was not granted and eviction of tenant was ordered for his failure to make the payment of provisional rent in terms of order dated 10.9.2009, which was challenged by the tenant before the Appellate Authority where also he remained unsuccessful as his appeal was dismissed on 7.1.2010. Against those orders, revision in the said case was filed and this Court had observed as under: -

"In view of the above dictums, I am of the view that the learned Rent Controller has no jurisdiction to extend the time to make deposit of the amount as assessed by the Rent Controller beyond the period already fixed by the Rent Controller while assessing the rent. In the opinion of this Court, while dismissing the revision filed by the tenant vide judgment/order dated 25.09.2009, this Court never intended that in case the tenant moves an application seeking extension of time to make deposit, the same shall be allowed. This Court only observed if law permits, tenant can make an application for extension of time. Since, as per the Rakesh Wadhawan's case (supra), tenant is bound to make payment of the amount as assessed by the Rent Controller on or before the date fixed by the Rent Controller, there is no question for extension of time. If tenant does not make deposit within such time as fixed by the Rent Controller while assessing the rent, tenant has to blame himself."

18. Insofar as the judgments relied upon by the learned counsel for the tenant are concerned, that pertains to review of the order of the assessment, which is not the dispute in the present case because in this case no application for review was filed before the Rent Controller against the final order of assessment of provisional rent rather the said order was challenged by way of revision.

19. Therefore, in my opinion all the three judgments, which have been relied upon by the learned counsel for the tenant are totally inapplicable.

20. Thus, after considering the facts of this case and law applicable thereto, the first question is decided in affirmative and it is held that the Rent Controller has no jurisdiction to order extension of time of payment of provisional rent by the tenant. Insofar as the second question is concerned, that too is decided in favour of the petitioner herein because even if it is assumed that the application for re-assessment was a review application, the Rent Controller had no jurisdiction to grant further time to the tenant for tendering the provisional rent when he did not agree with him on his application for review. In that circumstance, he was left with no other alternative but to simply dismiss the application as he had actually done in the impugned order but faulted by granting time to the tenant to make the payment of arrears of rent beyond the date, which was given initially when the provisional rent was

fixed.

21. In view of the aforesaid discussion, the present revision petition is thus, allowed and the impugned order dated 11.8.2010 is hereby set aside with cost throughout.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Ajay Tewari, J.

C .W.P No. 14194 of 2010 (O&M)

Decided on: 20.12.2010

Kuldeep Bishnoi

Petitioner

Versus

Speaker, Haryana Vidhan Sabha and others

Respondents

For the Petitioner: Mr. S.P. Jain, Sr. Advocate with Mr. Dheeraj Jain, Advocate.

For the Respondents: Mr. Mohan Jain, Addl. Solicitor General of India with Mr. Kamal Nehra, Advocate for respondents No.1, 2 and 8.

Mr. Harbhagwan Walia, Sr. Advocate with Mr. Arun Walia, Advocate for respondents No.3 to 7.

A. Constitution of India, Article 191, Tenth Schedule – Petition before Speaker – Power of Judicial review -- Even though proceedings under Paragraph 6 of the Tenth Schedule cannot be termed to be immune from judicial review, yet the Courts would enter this area with strict circumspection.

(Para 20)

B. Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, Rule 7(3)(h) – Constitution of India, Article 191, Tenth Schedule – Defection in party -- Petition before Speaker – Pendency of – Non-decisioning of -- Judicial review – Power of -- Five members of Haryana Janhit Congress (BL) defected to Congress – Petition before Speaker for their disqualification – Speaker gave as many as six opportunities to respondents to file replies over a period of about eight and half months – Speaker even after the filing of the writ petition wherein the prayer was for speedy decision-kept granting further time to respondents -- Held, the present is a case where judicial intervention is justified even during the trial of the petitions, and issue a direction to Speaker to decide the said petitions within a fixed time frame – Speaker is directed to finally decide the petitions in accordance with law, within a period of four months.

..... Coming back to the facts of the case, it is revealed that respondent No.1 gave as many as six opportunities to respondents No.3 to 7 to file replies over a period of about eight and half months. Respondent No.1, even after the filing of the present writ petition on 21.4.2009-wherein the prayer was for speedy decision-kept granting further time to respondents No.3 to 7. As far as the petitioner is concerned, this was an