(42) No other point has been raised.

(43) In view of the above, we find no merit in this appeal. It is, consequently, dismissed.

J.S.T.

Before V.S. Aggarwal, J.

ISHWAR SWAROOP SHARMA,—*Petitioner*

versus

JAGMOHAN LAL,—*Respondent*

C.R. No. 5261 of 1998

26th November, 1999

Haryana Urban (Control of Rent & Eviction) Act, 1973—S. 4-'Rent'—Defination—Rent is recompense—Payment for the right to occupy demised premises—Agreed rent—Would be rent agreed upon by contract unless varied.

Held that, rent is recompense. The primary meaning of 'Rent' is the sum certain, in gross, which a tenant pays to his landlord for the right of occupying the demised premises. It is an acknowledgement made by a tenant to the landlord of his tenure.

(Para 11)

Further held, that the agreed rent would be the one that was agreed upon by contract and it would continue to be so unless the contract is varied. Even if the period for which the lease has been created has come to an end, the tenant would continue to be liable to pay the rent as had been agreed. It cannot be termed that the tenant would be liable to pay any other amount unless so directed by law or there is change in the terms of the contract.

(Para 12)

Ashok Aggarwal, Senior Advocate with Anil Khetarpal, Advocate, *for the petitioner.*

Ravi Kant Sharma, Advocate, *for the respondent.*

JUDGMENT

V.S. Aggarwal, J.

(1) The present revision petition has been filed by Ishwar Swaroop Sharma (hereinafter described as "the petitioner") directed against the

judgment of the learned Appellate Authority, Jagadhari, dated 24th April, 1998. By virtue of the impugned judgment, the learned Appellate Authority reversed the finding of the learned Rent Controller, Jagadhri, and instead the fair rent of the shop in dispute was assessed at Rs. 328 per month with effect from the date of filing of the application.

(2) The relevant facts are that the petitioner is the landlord of the premises in dispute. It is a shop. The respondent is stated to be a tenant in the suit premises since the year 1975 at the monthly rent of Rs. 200. The petitioner's case is that the shop was constructed and completed in August, 1962. The fair rent has not been fixed as yet. There was no agreed rent with respect to the said shop which is situated in Ram Bari Block on Jagadhri Road which is the main business centre of the city. The shop is provided with all the modern amenities. The adjoining shops which are similar in nature are fetching Rs. 1000 per month. Therefore, it was prayed that fair rent be fixed in accordance with the prevalent rent in the locality.

(3) In the reply filed, the respondent contested the petition. It was pointed out that earlier the rent was Rs. 120 per month. It was increased to Rs. 200 per month inclusive of house tax in the year 1980. The basic rent of the shop, thus, for the purposes of determining the fair rent, was Rs. 200 per month inclusive of house tax. It was further asserted that the shop is situated at a very long distance from the centrally located premises and there is no commercial or other business activities near the said shop. The neighbouring shops were stated to be fetching hardly Rs. 100 per month. It was denied that the petitioner has ever asked for increase of the rent and that the respondent is ready and willing to increase the monthly rent in accordance with the provisions of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short "the Act").

(4) The learned Rent Controller, who recorded the evidence, concluded that it is a settled principle of law that in respect of the premises constructed or completed after 31st December, 1961, the basic rent is to be determined on the basis of rent prevailing in the locality for the similar building on the date of application. Keeping in view the said principle, the learned Rent Controller fixed the fair rent at Rs. 1000 per month inclusive of house tax.

(5) The respondent preferred an appeal. The learned Appellate Authority held that the agreed rent was Rs. 200 per month. The same had been paid for one month. Therefore, it must be taken that Rs. 200 was the basic rent in the year 1976. The learned Appellate Authority went on to hold that, keeping in view the decision in the case of

Gela Ram vs. *Sat Pal (1),* and also keeping in mind the price index which has increased, the fair rent would be Rs. 328 per month with effect from the date of filing of the application.

(6) Aggrieved by the same, present revision petition has been filed.

(7) Some of the admitted facts can well be mentioned before taking any further steps. The shop, admittedly, had been constructed in the year 1962. It is situated in the market of Yamuna Nagar city. In the year 1976, the respondent had agreed to pay the rent at Rs. 200 per month. There is a writing to this effect on the back of the receipt Exhibit R-1 on the record. The petition for fixation of fair rent was filed in the year 1989.

(8) The learned counsel for the petitioner very eloquently pointed out that under section 4 (2) (b) of the Act, there are two parts with respects to the building which had been constructed after 31st December, 1961. In the present case, it would be the second part which would be applicable because no rent had been agreed upon and, therefore, the basic rent should be determined on the basis of prevalent rent of similar premises. It was further urged that because of protection that was granted to the tenant, the landlord is obliged to receive the amount which in common parlance is called the rent. The same cannot be taken to be the agreed rent.

(9) To appreciate the said argument, reference can well be made to section 4 (2) (b) of the Act which reads as under :—

> "(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."

(10) A bare reading of the aforesaid provision would reveal that it is in two parts. If the building has been constructed and completed after 31st December, 1961 or the land has been let out after the said date, the agreed rent between the landlord and the tenant preceding the date of application would be relevant, but 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. The argument is that a tenant who is protected by the

(1) 1988 H.R.R. 356

provisions of the Act is obliged to pay certain amount and by no stretch of imagination can be taken to be paying the agreed rent. However, this particular argument has simply to be stated to be rejected.

(11) Rent is recompense. The primary meaning of "Rent" is the sum certain, in gross, which a tenant pays to his landlord for the right of occupying the demised premises. It is an acknowledgement made by a tenant to the landlord of his tenure. The Supreme Court in *Karmani Properties Limited* vs. *Auqustine (2),* relying on the definition of rent as given in *Property Holding Co. LTD* vs. *Clark (3)* and *Alliance Property Co. LTD* vs. *Shaffer (4)* observed :

> "The term rent" has not been defined in the Act. Hence it must be taken to have been used in it's ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation....."

(12) That being the definition of rent the agreed rent would be the one that was agreed upon by contract and it would continue to be so unless the contract is varied. Even if the period for which the lease has been created has come to an end, the tenant would continue to be liable to pay the rent as had been agreed. It cannot be termed that the tenant would be liable to pay any other amount unless so directed by law or there is change in the terms of the contract.

(13) Reference with advantage can well be made to the Division Bench decision of this Court in the case of *Registered firm M/s Bhagwan Singh and Company through its Registered Partner Kartar Singh, Kurukshetra* vs. *The Central Bank of India Branch at Kaithal through its Manager (5).* In the said case, the landlord had let out the property to the Central Bank of India on rent. The lease period was five years. Later, the rent was enhanced by the Bank but no formal rent deed was executed. The landlord urged that the second part of section 4 (2) (b) of the Act would apply, namely, the fair rent should be determined on the basis of prevailing rent of similar buildings in the locality. The question for consideration was that if a building situated at a place where the provisions of the Act are applicable, whether the rent fixed by the parties can, after the expiry of the period of tenancy, be considered as agreed rent. The Division Bench of this Court relied upon the decision of the

(2) 1957 S.C.R. 20
(3) (1948) 1 King's Bench, 630
(4) 1948 (2) K.B. 464
(5) 1988 (1) P.L.R. 290

Federal Court in the case of *Kai Khushroo Bezonejee Capadia* vs. *Bai Jerbai Hirjibhoy Warden (6),* and held that the terms and conditions of the tenancy agreed between the parties which are not against the provisions of the Act would continue to govern them even after the expiry of the period of lease. One find in respectful agreement with the said view point.

(14) Reliance on behalf of the pertitioner was placed on the decision of this Court in the case of *Tirath Dass of Kaithal* vs. *Raj Rani and another (7).* In the said case, the premises had been constructed in the year 1968. It was let out for a period of 11 months. The landlord presented an application for fixation of fair rent. The tenant did not take the plea in his written statement that the rent was a particular amount. The fair rent was determined on the basis of prevalent rent in the locality. It is abundantly clear from the perusal of the cited decision that the agreed rent had been taken to be so because there was no plea raised by the tenant as to what was the agreed rent.

(15) Similar is the position in the case of *Darshan Lal & another of Kaithal* vs. *Kirni Devi and others (8).* Herein, the tenanted premises had been built after 31st December, 1961. It was let out in the year 1968 at Rs. 400 per month. The tenant, for the first time in revision, took the plea that Rs. 400 was the agreed rent. It was repelled holding that at that stage such a plea cannot permitted. Since there was no plea, the reasoning was otherwise. But the precedents do not hold good for the purpose of the present revision petition because both the cited decisions are confined to the peculiar facts of that case.

(16) In fact, there is no written agreement between the parties. The rent was being paid at Rs. 200 per month. Thus, it must be taken that it was a tenancy from month to month. To the same effect was the reasoning in the decision of this Court in the case of *Firm J.C. Woollen Mills* vs. *Mahant Sohan Dass Chela Mahant Puran Dass (9).* Once it is a month to month lease and there is nothing on the record to indicate that the lease had been determined, it must be held that the agreed rent continued to be Rs. 200 per month. The argument so much thought of by the learned counsel for the petitioner, therefore, in the peculiar facts must fail.

(17) It was urged that it was in evidence that the petitioner had asked for increase of rent but that does not mean that if there was no

(6) AIR (36) 1949 F.C. 124
(7) 1990 H.R.R. 639
(8) 1990 H.R.R. 443
(9) 1999 (2) Civil & Rent Judicial Reports 23

agreement that was arrived at it ceased to be agreed rent. As mentioned above, unless fresh agreement is arrived at, the agreed rent would continue to be so.

(18) Learned Appellate Authority had clearly recorded as of fact that in the year 1976 the rent was agreed to Rs. 200 per month. Therefore, it rightly took the price index of 1970-71 and in the year 1976 the price index recorded was 172.4. The petition was filed in the year 1989. The price index in the year 1988 was 428.8. Keeping in view the ratio of the decision in *Gela Ram's case* (supra) as well as in the case of *Yoginder Mohan* vs. *Krishan Lal and another,* Civil Revision No. 1836 of 1997 decided on 13th August, 1999, it must follow that the learned Appellate Authority rightly fixed the fair rent at Rs. 328 per month. There is no ground, thus, to interfere.

(19) For these reasons, the revision petition being without merit must fail and is accordingly dismissed.

J.S.T.

Before Jawahar Lal Gupta & V. M Jain, JJ.

DALBIR SINGH BAGGA,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,— *Respondents*

C.W.P. No.1656 of 1999

27th August, 1999

Constitution of India, 1950—Arts. 226/227—Electricity (Supply) Act, 1948—S. 79—The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995—Ss. 32 & 33—Appointment—85 posts advertised for the posts of Assistant Engineers—No reservation for physically handicapped—Govt. must specifically call for 3% reservation to be made for physically handicapped—Petitioner physically handicapped—Applied for post as General candidate—Qualified written test and called for interview—Not appointed—Non-reservation of posts for handicapped persons challenged—Petitioner not to be denied benefit of the instructions—Respondent—Board erred in not making 3% reservation.

Held that, the Govt. instructions contain a clear provision for reservation of 3% vacancies in direct recruitment for the physically handicapped persons in various services "in the State". The definition of the handicapped persons is as per provision contained in the 1995