

Before R. N. Mittal, A.C.J. and D .V. Sehgal, J.
REGISTERED FIRM M/S. BHAGWAN SINGH AND COMPANY,
—Petitioner.

versus

THE CENTRAL BANK OF INDIA,—Respondent.

Civil Revision No. 1001 of 1985.

November 2, 1987.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Section 4(2)(b)—Determination of fair rent—Tenant holding over after expiry of lease period—Terms of original contract—Whether continue to bind parties after expiry of period of tenancy—Rent fixed by parties under old terms—Whether is the agreed rent—Fair rent—Whether to be determined on the basis of such agreed rent.

Held, that by implication 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 the lease. Hence it has to be held that a contractual tenant even after the expiry of the period of the tenancy is governed by the terms of the rent deed executed by him in favour of his landlord.

(Paras 6 and 8).

Held, that for the purposes of fixation of fair rent under Section 4(2)(b) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 in cases where there was agreed rent between the parties, the fair rent would be determined on the basis of that rent. When the terms of the rent agreed between the landlord and the tenant govern them even after the expiry of the period of tenancy, then it has to be held that when a building situated at a place where the provisions of the Act are applicable, has been let out for a specific period, then the rent fixed by the parties is considered as agreed rent within the meaning of Section 4(2)(b) of the Act, after the expiry of the period of the tenancy. Consequently, the fair rent would be determined on the basis of the agreed rent.

(Paras 8 and 10).

Kailash Chander Jain vs. Mool Raj Sondhi, 1982(2) Rent Law Reporter 274.

OVERRULED.

Petition Under Section 15(v) Rent Restriction Act for revision of the order of the Court of Shri S. R. Bansal, Appellate Authority (3), Kurukshetra dated 30th November, 1984 affirming that of Mrs. Navita Parsoon, HCS, Rent Controller, Kaithal dated 25th January, 1984 fixing the fair rent of the tenanted premises at Rs. 526 per month to be paid from the date of filing of the application.

R. S. Mittal, Senior Advocate with P. S. Bajwa and N. K. Khosla
Advocates, for the Petitioner.

Surinder Mohan Arora, Advocate, for the Respondent.

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JUDGMENT

R. N. Mittal, A.C.J.

This Revision Petition has been filed by the landlord against the judgment of the Appellate Authority, Kurukshetra, dated November 30, 1984.

(2) Briefly, the facts are that the landlord-petitioner gave the property in dispute to the Central Bank of India-respondent on rent at the rate of Rs. 350 per mensem for five years,—*vide* Rent Note, dated September 6, 1965. Later, the rent was enhanced by the Bank to Rs. 400 per mensem with effect from May, 1968, but no formal Rent Deed was executed at that time. It is alleged by the petitioner that in view of section 4(2)(b) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act), it is entitled to get the fair rent fixed on the basis of prevailing rent of similar buildings in the locality. Consequently, a petition for determining fair rent of the property was filed by it. The respondent contested the petition and *inter alia* pleaded that the landlord had been accepting the rent at the rate of Rs. 400 per mensem even after the expiry of the period of lease for many years and, therefore, the fair rent should be fixed on the basis of the said rent, which is the agreed rent.

(3) The Rent Controller held that Rs. 400 per mensem was the agreed rent and determined the fair rent on its basis. Accordingly, it enhanced the rent of the building to Rs. 526 per mensem. In appeal by the petitioner, the learned Appellate Authority affirmed the judgment of the Rent Controller. It has come up in Revision to this Court.

(4) The case was listed before S. P. Goyal, J. The learned counsel for the petitioner in view of the ratio in *Kailash Chander Jain v. Mool Raj Sondhi*, (1) contended before the learned Judge that after the expiry of the term of the lease, the rent originally settled between the parties could not be said to be the agreed rent within the meaning of section 4(2)(b) of the Act. The learned Judge doubting the correctness of the view expressed in that case, referred the matter to a Division Bench. That is how, it has been listed before us.

(5) The only question that arises for determination is that if a building situated at a place where the provisions of the Act are applicable, had been let out for a specific period, whether the rent fixed by the parties can after the expiry of the period of tenancy, be considered as agreed rent within the meaning of section 4(2)(b). It is contended by Mr. R. S. Mittal, learned Senior Advocate, that after expiry of the period of lease, the respondent became a statutory tenant and it ceased to be governed by the terms and conditions contained in the Rent Deed. Therefore, the rent paid by it could not be said to be agreed rent. In support of his contention, he has placed reliance on *Kailash Chander Jain's case* (supra).

(6) We have duly considered the argument, but do not find any substance therein. The word 'statutory tenant' has not been defined anywhere in the Act. However, the word 'tenant' has been defined and it 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. From the definition, it is clear that a tenant after expiry of period of tenancy is entitled to continue in possession of the rented premises. The Act provides protection to such a person. Therefore, in common parlance, he is called a statutory tenant. The Act is silent as to whether the terms of tenancy embodied in an agreement executed by him in favour of his landlord would be applicable to him or not. However, we are of the view, that by implication the terms and conditions of the tenancy agreed between them; which are not against the provisions of the Act, would continue to govern them even after the expiry of the period of the lease.

(7) In this view, we get support from *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another*, (2) wherein it was held that the terms of the Rent Note would be applicable to the tenant holding over after the expiry of the period of lease. The relevant observations of Mukherjea, J., as he then was, are as follows :—

“.....the tenancy which is created by the “holding over” of a lessee or under-lessee is new tenancy in law even though many of the terms of the old lease might be continued in it, by implication, and it cannot be disputed that to bring new tenancy into existence there must be

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a bilateral act. What section 116. Transfer of Property Act, contemplates is that on one side there should be an offer of taking a renewed or fresh demise evidenced by the lessee's or sub-lessee's continuing in occupation of the property after his interest has ceased and on the other side there must be a definite assent to this continuance of possession by the landlord expressed by acceptance of rent or otherwise. It can scarcely be disputed that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it."

(8) A Division Bench of this Court in *Dayal Chand v. The Union of India and others*, (3) following the above view held that even after the expiry of the period fixed in the original lease, by implication the terms of lease embodied in the original contract would be applicable to the parties. An identical question arose before me sitting singly, in *Ujagar Singh v. Prem Kumar*, (4) In that case, the question was whether after the expiry of period of tenancy the terms of the Rent Note regarding the payment of rent would be applicable to the tenant who had become a statutory tenant. It was held therein that all the terms in the Rent Note which did not contravene the provisions of the Act would remain applicable to the contractual tenant after the expiry of the period of lease, Again the same question arose in *Dalip Chand and others v. Rajinder Singh and another*, (5). It was reiterated by me after noticing a large number of cases, that the terms of the Rent Deed which did not contravene any provisions of the Act governed a contractual tenant after the expiry of the period of lease. The relevant observations are as follows :—

".....The main question to be seen is whether the terms of the rent deed will govern the parties after the expiry of the period of lease. Similar point arose in *Ujagar Singh's case* (Supra) which was decided by me. I, after noticing various precedents, held that all the terms in the rent note applicable to the tenants holding over except those which contravene the provisions of the Rent Act would

(3) 1970 (2) R.C.R. 205

(4) 1986 (1) P.L.R. 509

(5) 1986 (2) R.L.R. 420.

remain applicable to the statutory tenants. Similar view has been expressed by a Full Bench of the Bombay High Court in *Ratan Lal Chandhi Prasad Jalan's case* (supra). K. Madhava Reddy, C. J., speaking for the Court, observed as follows :—

'The net result is that the contractual tenants will be divided into two categories :—

- (A) a tenant who, under the tenancy agreement is specifically entitled to sub-lease his interest (for short, "category 'A' tenant").
- (B) a tenant who under the tenancy agreement is not so specifically entitled to sub-lease or whose tenancy agreement is silent about it (for short, "category 'B', tenant").

Category 'A' tenant, even after the termination of his tenancy, would continue to have a right to sub-lease. The right under the original contractual lease has not been taken away by the Bombay Rent Act. In fact that right has been kept intact. However, the tenant of category 'B' would not either before or after the termination of his contractual tenancy be able to sublet his interest in view of the specific bar under section 15.'

In the above case the provisions of the Bombay Rents, Hotel and Lodging House, Rates Control Act, 1947 were taken into consideration which are somewhat similar to the provisions of the East Punjab Urban Rent Restriction Act. I am in respectful agreement with the view expressed by the learned Bench... I am, therefore, of the opinion that the terms of the rent deed, which do not contravene any provision of the Rent Act, govern a contractual tenant after the expiry of the period of lease. The term in the rent note that the tenant could sublet the tenanted premises cannot be deemed to be in contravention of any provision of the Rent Act as subletting with written consent is permissible by it. Therefore, a contractual tenant authorised to sublet the tenanted premises situated within the area governed by the provisions of the Rent Act can sublet it after the expiry of the period of lease without the written consent of the landlord."

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We are in agreement with the above said observations and hold that a contractual tenant even after the expiry of the period of tenancy, is governed by the terms of the Rent Deed executed by him in favour of his landlord, which do not contravene any provisions of the Rent Act. Section 4(2)(b) of the Act provides that in fixing the fair rent, the Controller shall first determine the basic rent which shall be in respect of the building the construction whereof was completed on or before 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 had 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. From the above provision, it is evident that in case there was agreed rent between the parties, the fair rent would be determined on the basis of that rent. As already observed, the terms of the tenancy agreed between the landlord and tenant govern them even after the expiry of the period of tenancy. Therefore, if a building situated at a place where the provisions of the Act are applicable, had been let out for a specific period, the rent fixed by the parties is considered as agreed rent within the meaning of section 4(2)(b), after the expiry of the period of tenancy.

(9) Now, I advert to the cases referred to by Mr. Mittal. His argument finds full support from the observations in *Kaliash Chander Jain's case* (supra), wherein it was held that the rent agreed to in the rent note could not be said to be the agreed one between the parties after the expiry of the period fixed in the rent note. The landlord is entitled to get the fair rent fixed in such a case on the basis of the rent prevailing in the locality for similar buildings on the date of filing the application. With great respect to the learned Single Judge, we do not agree with the above observations. Consequently, we overrule the same.

(10) He next referred to *Kirat Singh and others v. Shri Kalu Singh and others* (6), *Sham Charan v. Ved Paul and another* (7) and *Firm Sardari Lal Vishwa Nath and others v. Pritam Singh*. (8) In *Kirat Singh's case* (supra), it was observed that where the lease

(6) AIR 1934 Lah. 129.

(7) 1966 P.L.R. 69.

(8) AIR 1978 S.C. 1518.

is for a fixed term and the tenant holds over, the tenant is a trespasser and that the mere fact that there was a clause in the lease deed providing for damages by way of enhanced rent for use and occupation did not mean that the relationship of landlord and tenant continued in such a case. From the above observations, it is evident that the facts of that case were different. In *Shama Charan's case* (supra), the contention was that the tenant after the expiry of period of lease became a tenant holding over and not a statutory tenant. The contention was repelled by the Bench. The question in that case was also different. Consequently, the observations of the learned Bench in the aforesaid cases are not applicable to this case. In *Firm Sardari Lal Vishwa Nath's case* (supra), it was held that it would not be open to a statutory tenant to urge by way of defence, in a suit for ejection brought against him under the provisions of the Rent Act, that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit. These observations in our view are not of any assistance to Mr. Mittal. In the present case, as already observed above, the agreed rent between the parties would govern the parties even after the expiry of the period of tenancy. Consequently, the fair rent would be determined on the basis of the said rent. It is not disputed that the agreed rent between the parties was Rs. 400 per mensem. The Courts below have determined Rs. 526 per mensem as the fair rent on the basis of the said agreed rent. Mr. R. S. Mittal has not challenged the calculations for arriving at the said figure by the Appellate Authority. In the circumstances, we affirm the finding of the Authorities below that the fair rent of the property is Rs. 526 per mensem.

(11) For the aforesaid reasons, we do not find any merit in the Revision Petition and dismiss the same, with no order as to costs.

R.N.R.

Before R. N. Mittal, J.

SUMAN LATA AGGARWAL,—Appellant.

versus

UNION BANK OF INDIA AND ANOTHER,—Respondents.

Regular Second Appeal No. 1711 of 1986.

November 20, 1987.

Constitution of India, 1950—Article 311—Termination of employment without inquiry—Order of termination—Nature of such order—Order found stigmatic—Effect of—Employees of bank—Such employees—Whether servants of Union or of State.