

Before : V. K. Jhanji, J.

ABNASH CHANDER AND ANOTHER,—Petitioners.

versus

MULAKH RAJ AND ANOTHER,—Respondents.

Civil Revision No. 1006 of 1981.

20th May, 1992.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 9—Increase of rent on account of increase in house tax—Landlord can exercise his right to increase rent to the extent of levy of amount of house tax only when he chooses to exercise his right—Cannot claim arrears of rent as house-tax for any period prior to date of notice—No claim to be made for something of which liability has not been incurred before making the claim.

Held, that there being no automatic increase of rent, the landlord can exercise his right to increase rent to the extent of levy of amount of house-tax only when he chooses to exercise his right as provided under S. 9 of the Act. In the present case, he made a demand for the increase of rent only by notice dated 15th June, 1976. The landlord, therefore, cannot be taken to have made a demand from the date earlier to the date of notice. The landlord, thus, cannot claim house-tax earlier to the date of issuance of telegraphic notice, as part of arrears of rent for the purposes of ground for eviction of the tenant. The contention of Mr. Sarin that the claim made in the petition should be taken to be a demand for increase is wholly untenable because no claim could be made for something for payment of which liability had not been incurred before making the claim. Considering the facts of this case in the light of judgment of Division Bench of this Court in *Puran Chand's case*, I find that the tenant is not liable to be ejected because he paid the house-tax from the date he received the telegraphic notice effecting an increase in the rent on account of levy/increase of house-tax.

(Para 9)

Petition under Section 15 of East Punjab Urban Rent Restriction Act for revision of the order of the court of Sardar T. S. Cheema, Appellate Authority, Gurdaspur, dated 2nd March, 1981, affirming that of Shri P. S. Bajaj, Rent Controller, Pathankot, dated 26th November, 1979, accepting the application and passing an order of ejectment of the respondents from the demised premises known as Hotel and Restaurant Air Lines, as described in the head note of the application, situated in Main Bazar, Pathankot, in favour of the applicants and against the respondents with costs and directing the respondents to put the applicants in possession of the demised premises forthwith (Appellate Authority given two months' time to vacate the demised premises and hand over the possession to the landlords,

failing which the landlords shall be at liberty to take out execution proceedings).

Claim :—Application Under Section 13 of the Punjab Urban Rent Restriction Act No. III of 1949 for ejection of the respondent from the building known and styled as Hotel & Restaurant Air Lines (Three Storeyed building) situated in Main Bazar, Pathankot and shown in the plan attached as :

- (a) Ground Floor by letter CDEFGH.*
- (b) First Floor by letter IJKL.*
- (c) Second Floor by letters MNOP and bounded as :—*

East : Krishna Gali.

West : Main Bazar Road.

North : Property of S. Amolak Singh under the tenancy of Mohra General Stores.

South : Shop of the petitioners under the tenancy of Bata Shoe Co., and property of Sarvshri Wadhara and others and under the tenancy of Dr. Mrs. Shakuntala.

Claim in revision : For reversal of the order of both the courts below.

H. L. Sibal, Sr. Advocate with Deepak Sibal and Naresh K. Joshi, Advocates, for the petitioner.

H. L. Sarin, Sr. Advocate with Ashish Handa & Alka Sarin, Advocates, for the respondent.

JUDGMENT

V. K. Jhanji, J.

This will dispose of Civil Revisions No. 1006, 1007, 1008 and 1009 of 1981 preferred by the tenants. Since the facts of these four revision petitions are common, I propose to dispose them of by one judgment. The facts of this case have been taken from C.R. No. 1006 of 1981.

(2) The dispute between the petitioner (tenant herein) and the respondent (Landlord herein) relates to the premises known as 'Air Lines Hotel and Restaurant' a three storeyed building-situated in the main bazar of Pathankot. According to the landlord, the premises

were let out to the tenant at the rate of Rs. 1,600 per month and the tenancy starts from 28th of each month. However, in the earlier litigation, i.e. Civil Revisions No. 206 to 209 of 1979, the matter with regard to commencement of tenancy was decided on the basis of statement made by the counsel for the landlord that the tenancy starts from 16th of each month. These revision petitions arise out of different ejectment applications filed by the landlord for the ejectment of the tenants. In the ejectment petition No. 28 of 1975, the landlord claimed ejectment of his tenant on the ground of non-payment of rent with effect from 28th of January, 1975 to 28th of May, 1975 at the rate of Rs. 1,600 per month. In the petition, house-tax was also claimed and was stated to be part of the rent. Similarly in the ejectment petitions No. 67 of 1975, 32 of 1976 and 60 of 1976, rent for the period from 28th of May, 1975 to 27th of November, 1975, 28th of October, 1975 to 27th of May, 1976, and 28th of March, 1976 to 27th of October, 1976 respectively, was claimed. In all these petitions, rent was claimed at the rate of Rs. 1,600 per month as well as the house-tax which was alleged to have been paid by the landlord. In all the three petitions namely ejectment petitions No. 28 of 1975, 67 of 1975 and 32 of 1976, the tenant on the first date of hearing, tendered the entire arrears of rent as well as the interest and costs so assessed by the Rent Controller. However, house-tax was not paid. In ejectment petition No. 60 of 1976, the rent as claimed as well as the interest and costs were tendered and paid to the landlord but house-tax was paid with effect from 15th of June, 1976. Apart from claiming ejectment on the ground of non-payment of rent, the landlord also claimed ejectment on the ground that the tenant has materially impaired the value and utility of the premises. As far as the second ground is concerned, the same is no longer material since there is no finding against the tenant in respect of second ground i.e. impairment of value and utility of the premises. The only ground that survives is of non-payment of rent on the first date of hearing.

(3) The Rent Controller as well as the appellate Authority ordered the ejectment of the tenant on the ground that the tenant failed to tender/pay the house-tax as claimed by the landlord on the first date of hearing. All the four petitions were decided by the Rent Controller on 26th of November, 1979, and the appeals of the tenants were dismissed by the appellate Authority on 2nd March, 1981.

(4) In the four petitions, the only controversy involved is as to whether the house-tax claimed by the landlord in the ejectment petition was part of the rent or not.

(5) Mr. H. L. Sibal, Senior Advocate, learned counsel for the tenant contended that Section 9 of the East Punjab Urban Rent Restriction Act, 1949 (briefly 'the Act') makes an addition to the rent from the date the landlord exercises his right under that Section to increase the rent to the extent of amount of house-tax. He further contended that in the present case, the landlord sent a notice to the tenant only on 15th June, 1976,—*vide* which, he exercised his right under Section 9 of the Act, by increasing the rent to the extent of amount of house-tax and therefore, increase in rent was made only with effect from 15th June, 1976.

(6) On the other hand, Mr. H. L. Sarin, Sr. Advocate, learned counsel for the landlord submitted that the landlord in the petition for ejection categorically claimed that the tenant was liable to pay house-tax as mentioned in the petition, and the said claim should be deemed to be a claim of increase in rent and therefore, ejection of the tenant was rightly ordered by the Authorities under the Act.

(7) Both the counsel in support of their arguments, relied upon a Division Bench judgment of this court in *Puran Chand v. Mangal* (1).

(8) In order to appreciate the rival contentions of learned counsel for the parties, it is necessary to notice the relevant provisions for the increase of rent on account of levy of house-tax as contained in Section 9 of the Act which reads as under:—

9. Increase of rent on account of payment of rates etc., of local authority but rent not to be increased on account of payment of other taxes etc.,

(1) Notwithstanding anything contained in any other provision of this Act, a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of this Act a fresh rate, cess or tax is levied in respect of the building or rented land by any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the Act :

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

- (2) Notwithstanding anything contained in any law for the time being in force or any contract, no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1).

A reading of therefore-mentioned provision shows that it neither makes the payment of house-tax the liability of the tenant, nor comes into operation automatically on an increase in the house-tax by any local Authority. It only permits a lawful increase in the rent payable by the tenant if the landlord wishes to effect an increase. Section 9 of the Act was considered by a Division Bench of this Court in *Furan Chand's case* (supra) wherein it was held that rent can be increased either by mutual agreement or if permitted by law for the time being in force by serving a notice of increase in the rent. The only other eventuality for increasing the stipulated rate of rent of a certain rented premises is by some statute providing an automatic increase. No claim can be made for something for payment of which liability has been incurred before making of the claim. A claim for increased rent could only follow the effecting of the increase. Where the landlord has not exercised his option to increase the rent by adding thereto the amount of house-tax or cess levied on him in respect of the rented premises, the rate at which the tenant is liable to pay the arrears of rent cannot possibly include the amount of house-tax or cess.

(9) It is equally true that no particular mode is provided under Section 9 of the Act which can be adopted by the landlord to intimate to the tenant about the increase in rent on account of levy/increase of house-tax. Notice can be verbal or expressed. Where the landlord claims that he verbally informed the tenant about increase in the house-tax, then he has to prove this fact by cogent and clinching evidence. In this case, though the landlord in his ejection petition claimed house-tax apart from the agreed rent, yet he has nowhere stated in his petition that any such demand on account of levy/increased in rent was ever made by serving a notice on the tenant. The averments in the petition do not indicate that at any point of time, the landlord had informed the tenant about the increase in rent on account of levy/increase of house-tax, either verbally or through notice in writing. It is only in the last ejection petition No. 60 of 1976, where the landlord stated that telegraphic notice dated 15th June, 1976 was sent to the tenant and on the following day, i.e. 16th June, 1976, a confirmative letter conveying the telegraphic message

was also sent. The telegraphic message which was sent to the tenant, reads as under:—

“Take notice that rent of building hotel restaurant ‘Air Lines’ stands increased by Rs. 100 per month from April, 1973, to March 1975, and by Rs. 180 per month from April, 1975, onwards due increase house-tax by municipality Pathankot, and same is claimed. Notice of increase already given to you in ejection applications No. 22, 28 and 67 of 1975 pending in Court. Pay arrears on account of increase.”

A reading of the telegram shows that the landlord not only claimed increase in rent upto the extent of house-tax for the past period, i.e. with effect from April, 1973, but also for the period April, 1975 onwards. The question is whether the landlord by giving a notice dated 15th June, 1976 to the tenant, can claim arrears of rent as house-tax for the period earlier to the date of notice. In my view, the landlord cannot treat the telegraphic notice dated 15th June, 1976 as operating retrospectively, to effect increase in the rent to the extent of house-tax as from April, 1973. There being no automatic increase of rent, the landlord can exercise his right to increase rent to the extent of levy of amount of house-tax only when he chooses to exercise his right as provided under Section 9 of the Act. In the present case, he made a demand for the increase of rent only by notice dated 15th June, 1976. The landlord therefore, cannot be taken to have made a demand from the date earlier to the date of notice. The landlord thus, cannot claim house-tax earlier to the date of issuance of telegraphic notice, as part of arrears of rent for the purposes of ground for eviction of the tenant. The contention of Mr. Sarin that the claim made in the petition should be taken to be a demand for increase is wholly untenable because no claim could be made for something for payment of which liability had not been incurred before making the claim. Considering the facts of this case in the light of judgment of Division Bench of this Court in *Puran Chand's case* (supra), I find that the tenant is not liable to be ejected because he paid the house-tax from the date he received the telegraphic notice effecting an increase in the rent on account of levy/increase of house-tax.

(10) Consequently, the revision petition is allowed, the orders of the Authorities below are set aside and as a result thereof, ejection petitions filed by the landlord are dismissed. However, the parties are left to bear their own costs.

J.S.T.