

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 22nd December, 2015

1. Civil Revision No. 1096 of 1988

Satish Kumar

..Petitioner

Versus

Laxmi Narain and another

..Respondents

2. Civil Revision No. 1186 of 1989

Laxmi Narain and another

...Petitioners

Versus

Satish Kumar

....Respondent.

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present : Mr. A.K.Singhal, Advocate for the petitioner
in Civil Revision No. 1096 of 1988 and
for the respondents in Civil Revision No. 1186 of 1989.

Mr. Anil Rathee, Advocate, for the petitioners
in Civil Revision No. 1186 of 1989 and
for the respondent in Civil Revision No. 1096 of 1988.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The landlords are the petitioners in Civil Revision No. 1186 of 1989 and the respondents in Civil Revision No. 1096 of 1988. The respondents in Civil Revision No. 1186 of 1989 and the petitioners in Civil Revision No. 1096 of 1988 are the heirs of the original tenant, one Satish Kumar, who died on 22.04.1984. They were brought on record by an order of the learned Single Judge dated 21.05.2003. We will for convenience refer to the parties as the landlords and the tenants.

2. This Civil Revision No. 1186 of 1989 comes as a reference pursuant to the order of the then learned Chief Justice made in view of an

order dated 17.03.2004 passed by the learned Single Judge directing the office to place the matter before the Chief Justice for constitution of a larger Bench to consider the judgment of another learned Single Judge in *Nand Kishore v. Des Raj Chopra and another* 1970 RCR (Rent) 974. The learned Judge opined that the following questions arise for consideration by a larger Bench:-

- a) Would the change in tenancy effect the fixation of fair rent by the Rent Controller under section 4 of the Act and whether law enunciated in *Nand Kishore's* case (supra) spells out the correct position of law applicable to the cases alike the present one?
- b) Whether the Rent Controller had exceeded its jurisdiction in treating a petition under section 5 of the Act, despite the fact that the petition was specifically stipulated/described under section 4 of the Act and what shall be its effect on the maintainability of the appeal, particularly in view of the law enunciated by the Full Bench of this Court in the case of *M/s Daya Chand's* case (supra)?

3. The following provisions of the Haryana Urban (Control of Rent & Eviction) Act, 1973 are relevant:-

“2. Definitions:- In this Act, unless there is *anything repugnant in the subject or context:-*

(a) ‘building’ means any building or a part of building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, gardens, lawns, wells or tanks appurtenant to such building or the furniture let therewith or any fittings affixed to or machinery installed in such building, but does not include a room in a hotel, hostel or boarding house”.

“Section 4: Determination of fair rent. - (1) The Controller shall, on application by the tenant or the landlord of a building or rented land, fix fair rent for such building or

rented land after holding such enquiry as he may think fit. Such fair rent shall be operative from the date of application.

(2) In fixing the fair rent under this section, the Controller shall first determine the basic rent which shall be,-

(a) in respect of the building the construction whereof was completed on or before the 31 st day of December, 1961, or land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1962; and

(b) in respect of the building the construction whereof is completed after the 31 st 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.

(3) In fixing the fair rent, under this section, the Controller may allow an increase or decrease on the basic rent determined under sub-section (2), not exceeding twenty-five per centum of the rise or fall in the general level of prices since the date of agreed rent or the date of application, as the case may be in accordance with the [average of All India Wholesale Price Index Numbers, as determined by the Government of India, for the calendar year immediately preceding the date of application.]

(4) Notwithstanding that the fair rent for building or rented land has been fixed under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 1949 Act), a landlord or tenant of such building or rented land shall be entitled to get its fair rent fixed under this section.

(5) Notwithstanding anything contained in this Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings. Such rent shall be binding only between the parties and their heirs.

Section 5. Revision in fair rent in certain cases.- (I) When the fair rent of a building on rented land has been fixed

under Section 4, no further increase or decrease in such fair rent shall be permissible for a period of five years:

Provided that an increase may be allowed in cases where any addition, improvement or alteration has been carried out at the expense of the landlord, and in the building or rented land which is in occupation of the tenant then at the request of the tenant:

Provided further that the decrease may be allowed in the case where there is a decrease or diminution in the accommodation or amenities provided.

(2) Any dispute between the landlord and the tenant in regard to any increase or decrease under this section shall, be decided by the Controller.

Section 6. Landlord not to claim anything in excess of fair rent.- Save as provided in this Act, when the Controller has fixed the fair rent of a building or rented land under section 4,-

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent:

(b) any agreement for the payment of any sum in addition to fair rent or of rent in excess of such fair rent shall be null and void.”

4. The premises were admittedly constructed prior to 31.12.1961.

5. The landlords filed an application being Rent Case No. 310 of 1975 against the earlier tenant one Moti Ram for fixing the fair rent under Section 4 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as ‘the Haryana Act’). This application was disposed of by an order and judgment dated 26.02.1979. The judgment records the basis on which the application was made and the contention on behalf of the tenant to be as follows:-

(A) The landlords let out the shop on rent to the said Moti Ram for the period 19.09.1971 to 18.09.1972 at the rate of ₹ 600/-per annum. After determination of the tenancy by efflux of time, the status of the said Moti Ram was that of a statutory tenant. The tenancy had been determined by a notice dated 27.06.1975 under Section 106 of the Transfer of Property Act, 1882. The landlords stopped accepting the rent after determining the tenancy. The prevailing market rent for similar premises was not less than ₹ 3500/- per annum. There had also been substantial increase in the general level of the Whole Sale Price Index to the extent of about ₹ 400/- per annum. The landlords, therefore, sought an order fixing the fair rent at ₹ 3900/- per annum.

(B) The earlier, tenant Moti Ram contended that the contractual rent of ₹ 600/- per annum was the agreed rent between the parties and that he had not been served with a notice terminating the tenancy. Two of the issues raised by the learned Rent Controller were:-

“i) What is the basic rent of the property in question?

ii) What should be the fair rent of the said property?.

(C) This application under Section 4 was disposed of by the judgment and order dated 26.02.1979. The Rent Controller held that there was no evidence on record and therefore, considered it appropriate to accept the contractual rent of ₹ 600/- per annum to be the basic rent of the premises in question. He also held that there had been a substantial rise in the All India Whole Sale Price Index since the date of the agreed rent and therefore, allowed an increase of 25% on the basic rent determined under Section 4(2) of the Haryana Act from the date of the contractual rent till the date of the filing of the application. The Rent Controller fixed the fair rent in respect of the premises at ₹ 786/- per annum.

6. It was recorded in paragraph-9 of the judgment and order dated 26.02.1979 that it was the admitted case of the parties that the construction over the premises was completed before 31.12.1961.

7 The tenants before us are the heirs of the subsequent tenant Satish Kumar who having died is now represented by his heirs. By an agreement between the landlords and the tenants, the shop was rented out with effect from 27.10.1979 for a sum of ₹ 1900/- for a period of six months.

(A) The landlords filed Rent case No. 68 of 1986 under section 4 of the Haryana Act stating that upon the expiry of the period of six months, the tenants became the statutory tenants in respect of the shop. The landlords further claimed that after the year 1979 there had been a manifold increase in rent in respect of similar premises which fetched more than ₹ 12000/- per annum. The landlords sought an order fixing the rent accordingly.

The Rent Controller framed the following issues:-

- i) What is the basic rent of the premises in question?
- ii) What is the fair rent of the premises in question?

(B) The Rent Controller by a judgment dated 15.01.1988 held that the earlier judgment of the Rent Controller dated 26.02.1979 was a judgment in rem and therefore, the rent fixed by that judgment of ₹ 786/- per annum could be taken into consideration, although the tenants were not parties in that matter. In this regard, he relied upon the judgment of this Court in *Nand Kishore v. Des Raj Chopra's case (supra)*. He held that a petition under Section 4 of the Haryana Act was not maintainable as the fair rent had already been fixed in the earlier matter. He, however, treated the petition to be one under Section 5 of the Haryana Act. Considering the All India Whole

Sale Price Index, the learned Judge held that there was an increase of 64% over the previous fair rent of ₹ 786/- per annum which amounted to ₹ 503/- per annum. The petitioners would have been entitled to 25% of the increase i.e. ₹ 126/- per annum. Accordingly the Rent Controller calculated the fair rent to be ₹ 912/- per annum. He, however, held that it was agreed between the parties that the premises had been let out on rent at the rate of ₹ 1900/- for the period of six months which aggregated to ₹ 3800/- per annum. He accordingly held that the fair rent of the premises in question previously fixed at ₹ 786/- per annum in the said judgment dated 26.02.1979 stood increased to ₹ 3800/- per annum and no further increase under section 5 of the Haryana Act could be allowed. He, therefore, disposed of the application by holding the amount of ₹ 3800/- per annum to be the fair rent of the premises in question.

8. The appeal against this order was dismissed. The above cross civil revisions have been filed by the parties. Civil Revision No. 1186 of 1989 is filed by the landlords and Civil Revision No. 1096 of 1988 is filed by the tenants. The learned Judge came to the correct decision but for the wrong reasons.

9. The learned Judge in the order of reference noted that the learned counsel appearing on behalf of the tenants had relied upon the judgment of a learned Single Judge in *Nand Kishore v. Des Raj Chopra and another (supra)* who had held that the change in tenancy would not affect the fair rent fixed by the Court as fixation of the fair rent is relatable to the building in question and not to the parties in lis. In the reference order, the learned Judge stated that he was unable to subscribe to the view in *Nand*

Kishore v. Des Raj Chopra and another (supra) illustrating his points as follow:-

“To elucidate what I have expressed above, one can refer to a simple example that where the standard rent is fixed between the parties to the lis, but subsequent thereto tenancy changes and the parties agree to rent, higher than the fair rent fixed by the Rent Controller, the agreed rate of rent between the parties would become the contractual rent and thus, the very basis for considering the subsequent application for enhancement/fixation of fair rent under Sections 4 and 5 of the Act. It also cannot be disputed that basis for fixation of standard rent or revision of rent would be the fair rent fixed earlier or the agreed rate of rent between the parties in terms of the judgment of the Division Bench of this Court in the case of *Yoginder Mohan v. Krishan Lal* 1999(2) RCR 466.”

The learned Judge accordingly considered it appropriate that the matter be decided by a larger Bench.

10. We will now refer to *Nand Kishore v. Des Raj Chopra's case (supra)* in respect whereof the order of reference expresses reservation and to the judgments referred to therein. It would be convenient if we were to preface a consideration of these cases by noting that they dealt with the East Punjab Urban Rent Restriction Act, 1949 and not the Haryana Urban (Control of Rent & Eviction) Act, 1973 that falls for our consideration. Certain differences between these Acts answer the reference to a large extent.

11. In *Nand Kishore v. Des Raj Chopra and another (supra)*. The premises were taken in the year 1949 on rent by the respondent at the rate of ₹ 8/- per month. Subsequently, the petitioners purchased the property. The petitioners/landlords moved an application under Section 4 of the East

Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the East Punjab Act') for fixation of fair rent at ₹ 27.50/- per month alleging that the basic rent in the year before 01.01.1939 was ₹ 20/- per month. The judgment records that the parties had made a statement before the Rent Controller that the basic rent prior to 01.01.1939 was ₹ 7.25 per month. The Rent Controller, therefore, after allowing the statutory increases fixed the fair rent at ₹ 10/- per month. The judgment noticed that the Rent Controller had not discussed the evidence on record and all that he said was that he had gone through the evidence and was satisfied that the basic rent of the shop should be ₹ 7.25 per month. The learned Judge held as under:-

"3. It was the landlord who went in appeal from the order of the Rent Controller to the appellate authority. The learned Judge of the appellate authority very rightly pointed out that no fair rent could be fixed on the compromise or statement of the parties, in which approach he is supported by the decisions in **Ladha Ram v. Khushi Ram and Lekh Ram v. Firm Chander Bhan Rajinder Parkash**. So the appellate authority found that it could not possibly sustain the order of the Rent Controller as it was in substance based on nothing else but the admission of the parties before him. The learned Rent Controller had made reference to the evidence without discussing the same, which amounted to his not having considered the evidence. In the circumstances the appellate authority perused the evidence of the parties and found that tenant's two witnesses, Charan Das R. W. 1 and Pam Shah R. W. 2, had clearly stated that the rent of the demised shop a year before January 1, 1939, was Rs. 5/- per mensem, and their testimony was supported by the landlord's witness Devi Chand A. W. 2. There was no evidence, to the contrary. On this evidence, if the Rent Controller had applied himself to the merits of the controversy in the wake of his duty under section 4 of the Act, he had

no option but to come to the conclusion that the basic rent of the demised shop a year before January 1, 1939 was Rs. 5/- per mensem and making an allowance of 37-1/2 per cent statutory increase the fair rent could only come to Rs. 6.87 Paise per mensem. This is exactly the conclusion which the appellate authority reached.

4. The appellate authority having reached the conclusion as above, it had to decide the appeal of the landlord, the tenant not having come before it against the order of the Rent Controller. It has to be remembered that the appellate authority was considering even in appeal, the application of the landlord under section 4 of the Act for fixation of fair rent. Sub-section (2) of that section provides the criteria for arriving at basic rent and sub section (1) reads in this manner, "The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit." Now, it is obvious that once the Rent Controller has been moved for fixation of fair rent the ambit of the inquiry is entirely within his control. There is an object for this wide power having been left with the Rent Controller and that is pointed out by the learned Judge in Lekh Ram's case, the reason being that an order fixing fair rent is an order in rem and (sic not) merely an order inter partes. Once fair rent of the premises is fixed, it attaches to the building and is not merely a decision between the parties. Hence a duty is cast on the Rent Controller to make as just an inquiry as he should think fit to fix fair rent of the premises, provided an application is moved by one of the two parties, either the tenant or the landlord. Thus the Rent Controller is not in any way restricted, by the pleadings of the parties to any manner of fixing the fair rent. He must fix the fair rent after arriving at the basic rent on the criteria provided in sub section (2) of section 4 and after holding as complete an inquiry as he thinks fit."

As we mentioned earlier, the judgment considered the provisions of the East Punjab Act and not the Haryana Act which falls for consideration in the case before us. It will be necessary, therefore, to see whether and if so, how far and in what circumstances the judgment, if affirmed applies to the Haryana Act. Before dealing with this aspect, we will refer to the judgments which were relied upon in *Nand Kishore's case* (*supra*).

12. In *Lekh Ram v. Firm Chander Bhan-Rajinder Parkash* 1962 P.L.R. 197, a learned Single Judge of this Court held as under:-

“As regards the tenant's petition relating to the fair rent of the premises the Rent Controller on the material produced before him held that the fair rent of the premises amounted to Rs. 357 per annum. The landlord who is claiming the contractual rate of Rs. 1,126 per annum to be the fair rent, filed an appeal and the following passage occurs in the brief order of the Appellate Authority :-

"The counsel for both the parties have agreed that the actual fair rent which will work out on the material on the record would be Rs. 720 per year."

and he fixed the fair rent at this figure.

In the revision petition on behalf of the tenant it is contended that the fair rent cannot be fixed in this manner by agreement between the parties, but must be determined by both the Rent Controller and the Appellate Authority on a consideration of the evidence on the record. On this point reliance is placed on a decision of Bishan Narain J., in *Ladha Ram and others v. Khushi Ram*, (1955) 57 P.L.R. 188. This was a case in which in previous proceedings the fair rent had been fixed on the basis of an admission by the tenant who reopened the matter in subsequent proceedings and it was held that an admission by a tenant in proceedings for fixation of

fair rent cannot prevent the Rent Controller from fixing fair rent on a subsequent application by the tenant and the Controller alone has jurisdiction or power to ascertain or fix the fair rent in the manner laid down in the Act and the landlord and tenant cannot by agreement fix the fair rent for the purposes of the Rent Restriction Act. There is good reason for accepting this view as correct since the order of the Rent Controller or the Appellate Authority fixing the fair rent is not merely a judgment *inter parties* but is a judgment *in rem*, and it will apply to the premises even if they are occupied by a succession of tenants following the tenant in whose time the fair rent is fixed."

This judgment was also under the East Punjab Act and not under the Haryana Act.

13. In *Ladha Ram and others v. Khushi Ram* 1955 PLR 188, the applicants had given their shop on lease in 1949 at ₹ 150/- per month. The respondent and one Ishar Lal used, as partners, the premises as a hotel. Ishar Lal applied under the East Punjab Act for fixation of fair rent. The matter was compromised and on 27.07.1950 a consent order was passed by the Rent Controller fixing the fair rent at ₹ 80/- per month. Three years later, the respondent applied for fixing the fair rent. The Rent Controller dismissed the petition on the ground that the fair rent had already been fixed in the year 1950. The Appellate Court held that the parties could not by a compromise fix the fair rent and therefore, remanded the case for further enquiry by the Rent Controller. The learned Single Judge dismissing the petition under Article 227 of the Constitution of India challenging the order, held as under:-

"Now, the East Punjab Urban Rent Restriction Act, 1949 lays down in Section 1 that on an application by the landlord or the tenant for fixation of fair rent the Controller shall, after holding such inquiry as he

considers fit, fix the basic rent as defined in the Act and then increase it by certain percentage as laid down in this section. This section in fact provides machinery for the purpose of deciding questions as to the amount of fair rent. It is a jurisdiction which enables the Controller to decide without reference to any existing claim for rent or possession the question as to the amount which should be considered fair rent for the premises in question. An order obtained under this section can be used in subsequent proceedings. It is then provided in Section 5 that once fair rent is fixed it cannot be increased unless some addition, improvement or alteration has been carried out in the premises at the expense of the landlord."

14. These judgments considered the provisions of the East Punjab Urban Rent Restriction Act, 1949 whereas in the case before us the Haryana Urban (Control of Rent & Eviction) Act, 1973 falls for consideration. There is a vital difference between these Acts. The East Punjab Act does not contain a provision similar to sub section (5) of section 4 of the Haryana Act. The Haryana Act expressly states that notwithstanding anything contained in the Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings. Thus the Haryana Act entitles the Controller to fix the fair rent on the basis of a compromise between the parties to the proceedings whereas the Punjab Act prohibits the same. For obvious reasons, the second sentence of sub-section (5) of section 4 of the Haryana Act provides that such rent shall be binding only between the parties and their heirs. A compromise between parties ought not to govern or affect the rights and liabilities of strangers thereto. That would be most inequitable. Moreover, sub section (5) entitles the Controller to fix the fair rent and not the basic rent. In proceedings for fixing

the fair rent under sub section (1) the parties are entitled to have determined first and indeed the Controller must first determine the basic rent. This is on the criteria stipulated in sub section (2) of section 4. The fair rent would then be determined with reference to the basic rent.

15. This explains the difference between the opening words in section 6 of both the Acts. Section 6 of the East Punjab Act opens with the words "Save as provided in Section 5.....". It prohibits the landlord from claiming or receiving any premium or other like sum in addition to fair rent or any rent in excess of such fair rent when the Controller has already fixed the fair rent under Section 4 of the Act but "Save as provided in Section 5.....". The exception is only to the admissible increase in the fair rent provided in section 5 of the Punjab Act which reads as under:-

"5. Increase in fair rent in what case admissible.

- When the fair rent of a building or rented land has been fixed under Section 4, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out at the landlord's expense and if the building or rented land is then in the occupation of a tenant, at his request:

Provided that the fair rent as increased under this Section shall not exceed the fair rent payable under this Act for a similar building or rented land in the same locality with such addition, improvement or alteration and it shall not be chargeable until such addition, improvement or alteration has been completed:

Provided further that any dispute between the landlord and tenant in regard to any increase claimed under this Section shall be decided by the Controller:

Provided further that nothing in this Section shall apply to any periodical increment of rent accruing under any subsisting agreement entered into before the first day of January, 1939."

Section 6 of the Haryana Act in contrast opens with the words “Save as provided in this Act.....”. These words are wider than those of section 6 of the East Punjab Act. This is obviously because Section 4 (5) of the Haryana Act permits the Controller to fix the fair rent on the basis of a compromise between the parties to the proceedings whereas the Punjab Act does not have a similar provision. There is, therefore, an essential difference between the relevant provisions of the two Acts.

16. As stated in the preamble, the Haryana Act is to control the increase of rent of certain buildings and rented land situated within the limits of urban areas and the eviction of tenants therefrom. Sub section (1) requires the Controller to fix the fair rent on an application by the tenant or the landlord of a building or rented land after holding such inquiry as he may think fit. The fair rent determined by the Controller is operative from the date of the application. Sub section (2) mandates that in fixing the fair rent under Section 4 (1) of the Haryana Act, in respect of a building, the construction whereof was completed on or before 31.12.1961, the Controller must first determine the basic rent thereof in accordance with sub section (2). As we mentioned earlier, the building which is the subject matter of the case before us was constructed before 31.12.1961. Section 4 (2) (a) is, therefore, applicable to the case before us. Section 4 (2) (a) stipulates that the basic rent in respect of such building shall be the rent prevailing in the locality for a similar building let out to a new tenant during the year 1962. Any increase or decrease in the fair rent is, thereafter, controlled by the provisions of the Act such as Sections 4(3), 5 and 8 thereof.

Thus the parameters for the determination of the basic rent in respect of a building constructed prior to 31.12.1961 are fixed. Absent sub

section (5) of Section 4, the Controller could not have determined the basic rent on any other basis. As per section 6 when the Controller has fixed the fair rent of the building under section 4, the landlord cannot claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent and any agreement for the payment of any sum in addition to the fair rent or of rent in excess of such fair rent shall be null and void. Section 6, however, opens with the words “*Save as provided in this Act*”.

17. The said judgments would apply to cases under the Haryana Act other than when the Rent Controller taken recourse to sub-section (5) of section 4. In such cases, it has been the consistent view of this Court that the judgment is in rem. We see no reason to take a different view. The judgments are affirmed in this regard for the reasons stated therein and we venture to add another.

18. This view is supported by the second sentence in sub section (5) of section 4. It indicates that the legislature also considered a judgment fixing the fair rent other than on the basis of or even taking into consideration a compromise between the parties to be a judgment in rem as held by the above judgments albeit under the East Punjab Act. It is for this reason that the legislature out of abundant caution provided that where the Controller fixes the fair rent on the basis of a compromise arrived at between the parties to the proceedings, it shall be binding only between the parties thereto and their heirs.

19. Section 6 read with section 4(5) entitles the Controller to fix the fair rent on the basis of a compromise arrived at between the parties to the proceedings. Under section 4 (5) of the Haryana Act, the Controller has the discretion to fix the fair rent on the basis of a compromise arrived at

between the parties to the proceedings. However, the fair rent fixed by the Controller on the basis of a compromise between the parties is binding only between the parties and their heirs. The reason is not far to see. Absent such a provision, a landlord could always in collusion with a party persuade the Controller to fix the fair rent on the basis of a compromise and then demand from the subsequent tenants such rent irrespective of the agreement between them. When the Controller fixes the fair rent on the basis of a compromise between the parties, it is not an order or judgment in *rem* but only one in *personam*. It would in such cases always be open to the parties to make an application for fixing the fair rent under section 4 of the Haryana Act.

In view of sub section (5) of Section 4 of the Haryana Act, an order passed by the Rent Controller fixing the fair rent under the Haryana Act based on a compromise between the parties can never be a judgment in *rem*. Thus the ratio in *Nand Kishore v. Des Raj Chopra and another (supra)* and the judgments relied upon therein that an order fixing the rent is an order in *rem* would not apply to an order fixing the fair rent based on a compromise between the parties under the Haryana Act.

The judgments in *Nand Kishore v. Des Raj Chopra's case (supra)*, *Lekh Ram v. Firm Chander Bhan-Rajinder Parkash's case (supra)* and *Ladha Ram and others v. Khushi Ram's case (supra)*, would, therefore, have no application to cases under sub section (5) of Section 4 of the Haryana Act which expressly entitles the Controller to fix the fair rent on the basis of a compromise arrived at between the parties to the proceedings. The second sentence in sub section (5) that such rent shall be binding only between parties and their heirs leaves no room for doubt that a compromise between the parties cannot bind or affect in any manner strangers thereto. An

order under the Haryana Act on the basis of a compromise between the parties is, therefore, not a judgment in rem.

However, once the rent is determined by the Controller under Section 4, otherwise than on the basis of a compromise between the parties, the rent so fixed is in relation to the buildings/premises and not in relation to the tenants and the judgment is one in rem.

20. It is necessary now to determine the ambit of the term ‘compromise’ in section 4(5) of the Haryana Act.

21. The words “between the parties to the proceedings” in sub section (5) of Section 4 do not relate only to a compromise arrived at between the parties to the proceedings during the course of or in the proceedings. These words include a compromise between the parties to the proceedings even otherwise including before the proceedings are instituted-even in the absence of any proceedings. Had it been otherwise, the language of sub section (5) would have been entirely different. It would have been clarified that the compromise ought to be one between the landlord and the tenant “in the proceedings” or “in the course of proceedings”.

22. The Chamber’s 21st Century Dictionary defines a compromise as “*a settlement of differences agreed upon after concessions have been made on each side*” or “*anything of an intermediate type which comes halfway between two opposing stages*”. It is also defined as “*to make concessions*”. Parties may arrive at a compromise in the course of negotiations obviating the necessity of filing an action for the resolution of a dispute. A compromise is not necessarily only in the course of resolution of disputes relating to a relationship between parties contractual or otherwise.

A compromise can be arrived at even otherwise leading to a contractual

relationship between the parties. The contract then comes about as a result of the compromise. It is reasonable to presume that the parties who intend entering into an agreement of tenancy are aware of the existence of the concerned laws relating thereto, in this case the Haryana Urban (Control of Rent & Eviction) Act, 1973. It is reasonable also to presume that they were aware of the concept of basic rent and fair rent. If instead of having the basic rent determined they enter into an agreement stipulating the rent in respect of the tenancy. They thereby arrive at a compromise in regard thereto. Thus, even if the rent is agreed upon without a process of bargaining, it would be a compromise.

23. The compromise contemplated in section 4(5) of the Haryana Act is not limited to any particular stage or period of time. The Rent Controller may fix the fair rent on the basis of a compromise arrived at between the parties to the proceedings at any given point of time. In other words, it is not necessary for the Rent Controller while fixing the fair rent to consider a compromise arrived at between the parties to the proceedings only with respect to the period for which the fair rent is fixed. The compromise referred to section 4(5) of the Haryana Act is only one of the factors/parameters which the Controller may take into consideration while fixing the fair rent. If the parties rely upon a compromise which the Controller considers inappropriate or irrelevant for any reason including in relation to the period when it was arrived at, he is entitled to disregard the same.

24. It is also important to note that sub section (5) refers to the Controller's discretion to fix the fair rent. It does not refer to the Controller fixing the basic rent referred to in sub section (2) of the Haryana Act. Thus,

in exercise of discretion under sub section (5) the Controller can fix the fair rent on the basis of the compromise without first fixing the basic rent. Once the Controller decides to fix the fair rent on the basis of a compromise it is not necessary for him to fix the basic rent under sub section (2) of Section 4 of the Haryana Act. He may for the purpose of exercising his discretion under sub section (5) ascertain approximately what the basic rent is but that is a different matter altogether. He is not bound to do so.

The ratio of the judgments that we have referred to would apply in a case where the Controller fixes the fair rent otherwise than on the basis of or with reference to a compromise arrived at between the parties to the proceedings.

25. In the case before us, the Controller by the order and judgment dated 26.02.1979 held that there was no evidence on record and therefore, considered it appropriate to accept the contractual rent of ₹ 600/- per annum to be the basic rent of the premises in question. He, however, did not determine the basic rent himself. The determination of the basic rent was a *sine-qua-none* to the determination of the fair rent as sub section (2) of Section 4 mandates that in fixing the fair rent “the Controller shall first determine the basic rent”. Fixing the basic rent is, therefore, mandatory to fixing the fair rent. The fair rent is computed on the basis of and in relation to the basic rent. There was, therefore, no determination of the fair rent by the Controller as required by Section 4 of the Haryana Act. In view of sub section (5) of Section 4, the rent determined by the judgment dated 26.02.1979 was on the basis of a compromise arrived at between the parties to those proceedings and therefore, again on the basis of sub section (5) of Section 4 it cannot bind parties subsequently. The finding of the Rent

Controller that the basic rent had been fixed at ₹ 600/- per month in the proceedings between the landlords and Moti Ram, the previous tenant, being Rent Case No. 310 of 1975, is therefore, erroneous as that rent was determined only on the basis of the agreement between the landlords and the previous tenant. In view of section 4(5) of the Haryana Act, it cannot bind the parties to the subsequent tenancy.

26. The case before us commenced with the landlord having filed Rent Case No. 68 of 1996 under section 4 of the Haryana Act stating that upon the expiry of period of the agreement between the parties, the tenants became the statutory tenants in respect of the shop and that after the year 1979 there had been a manifold increase in rent in respect of similar premises which fetched more than ₹ 12,000/- per annum. The landlord accordingly sought an order fixing the rent. The issues framed by the Rent Controller required him to fix the basic rent and the fair rent.

27. The Rent Controller was in view of section 4(5) of the Haryana Act entitled to fix the fair rent on the basis of the rent agreed to between the parties of ₹ 1900/- for a period of six months with effect from 27.10.1979. That rent was fixed on the basis of a compromise between the same parties. It was therefore a factor, a parameter which the Controller was entitled to take into consideration while fixing the fair rent under section 4(5). We see nothing irrational or arbitrary in his having done so.

28. (A) Regarding question (a) framed by the order of reference, the reference is answered as follows:-

- i) A change in tenancy would not affect the fixation of fair rent by the Rent Controller under Section 4 of the Haryana Urban (Control of Rent & Eviction) Act, 1973

after determining the basic rent under section 4(2)(a) and without reference to sub section (5) of section 4. In other words, where the fair rent is arrived at after determining the basic rent under section 4 (2) (a) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 and without reference to a compromise, it would bind the subsequent landlords and tenant. It would be a judgment in rem. The judgments in *Nand Kishore v. Des Raj Chopra's case (supra)*, *Lekh Ram v. Firm Chander Bhan-Rajinder Parkash's case (supra)* and *Ladha Ram and others v. Khushi Ram's case (supra)* to this effect are, therefore, affirmed.

- ii) Where the fair rent is arrived at on the basis of or even upon taking into consideration a compromise between the parties, the same is binding only between such parties and their heirs and does not affect any other parties. Such a judgment is one in personam and not one in rem.
- iii) The ratio of the judgments in *Nand Kishore v. Des Raj Chopra's case (supra)*, *Lekh Ram v. Firm Chander Bhan-Rajinder Parkash's case (supra)* and *Ladha Ram and others v. Khushi Ram's case (supra)* does not apply to cases under section 4(5) of the Haryana Urban (Control of Rent & Eviction) Act, 1973. It is clarified that the ratio of these judgments would not apply even where one of the factors while determining the fair rent is a compromise arrived at between the parties one or more of

whom are not parties to the case in question, under consideration.

(B) Regarding question (b) the reference is answered as follows:-

- i) In view of what we have stated earlier, it is not necessary to answer the reference as regards question (b). We have held that the Rent Controller erred in coming to the conclusion that ₹ 600/- per annum fixed in Rent Case No. 310 of 1975 between the landlords and the erstwhile tenants was the basic rent. The Rent Controller fixed the fair rent in the present case on the basis of the compromise arrived at between the parties in relation to an earlier period namely six month's period from 27.10.1979. Further, he infact determined the fair rent in this case with reference to section 4 (5) of the Haryana Urban (Control of Rent & Eviction) Act, 1973. The determination was not on the basis of section 5 of the Haryana Urban (Control of Rent & Eviction) Act, 1973.

29. In the result, both the Civil Revisions are dismissed with no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

22.12.2015
'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE

To be referred to the Reporter or not	√ Yes	No
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