

RENT LAW THROUGH THE LENS OF HISTORY

The first Rent Legislation in India was one of the outcomes of War. As a matter of fact, after the First World War, the Provincial Rent Legislation came first of all in Bombay.¹ The Rent Acts in Calcutta² and Rangoon³ were enacted soon after the Bombay rent legislation. However in the rest of the country the relationship of landlord and tenant used to be governed through the provisions of Transfer of Property Act, 1882.

It is worthy to note here that the Second World War was mainly responsible for various rent legislations in the rest of the country. After the Second World War there was a huge migration of population from the rural to Urban areas for business, residence and livelihood resulting into acute shortage of accommodation in the urban areas. As a result of which the landlords used to take undue advantage of the tenant seeking unnecessary exorbitant rent from the tenants. Therefore, there was a dire necessity to introduce new rent legislations in order to protect the interest of the tenants in the rest of the country.

After the Second World War, first rent legislation was introduced in New Delhi⁴ in 1939. In 1941 came the Punjab, Mysore (Karnataka) and Madras (Tamil Nadu) Rent Control Orders. Thereafter came the Bihar House Rent Control Order of 1942 which was subsequently followed by Rent Control Orders in Madhya Pradesh, Uttar Pradesh and Assam in 1946. Subsequently in 1947 Rent Control Orders were brought into force at Orissa, in 1948 at Rajasthan and in 1949 at Kerala respectively.

¹ The Bombay Rent (Restrictions) Act, 1918 dated 10.04.1918

² The Calcutta Rent Control Act, 1920.

³ The Rangoon Rent Act, 1920

⁴ New Delhi House Rent Control Order of 1939.

In Punjab originally the first rent legislation enacted was Punjab Rent Restriction Act, 1941 (Act X of 1941) which was prior to partition of the country. The historical background of this act and its subsequent acts need to be seen in the context and special circumstances arising out of the Second World War. Another reason behind the introduction of such legislation like other legislations was the imposition of various taxes on the urban immovable property by British Government. In order to meet the heavy expenses and costs of War, the British Government decided to raise additional revenue in the British India and imposed a new tax on the urban immovable property under the provisions of the Punjab Urban Immovable Property Tax Act, 1940. The Provincial Government was empowered to notify any area (apart from Lahore Municipality, where it was compulsory) where the said tax was to be levied.

Interestingly, the Government was also empowered to acquire the residential buildings in the areas of Punjab, especially Lahore, to provide accommodation to the families of Civil War and army officers engaged in the war. As a result of which the Government requisitioned a large number of residential buildings in the urban areas to provide accommodation. Thus, if the family of any officer serving in the Royal British Army approached the Provincial Government for accommodation, the Government used to acquire a residential building in the urban area concerned expeditiously to meet their demand which led to great housing problems in the Punjab.

The cumulative effect of requisition as well as the imposition of new taxes for sake of generating additional revenue led to sudden hike in the rent in the urban areas. And as already discussed above, due to movement of population there was scarcity of accommodation already. Resultantly, the landlords started evicting their tenants so as to put new tenants at higher rents.

It is for the above said reasons that the Punjab Rent Restriction Act, 1941 (Act X of 1941) was introduced by the then Government. The statement of objects and reasons of 1941 Act read:

“In consequence of the tax imposed on buildings and lands within the limits of the Lahore Municipality and the tax which will be levied by the Provincial Government on buildings and lands situated in the urban areas throughout the province under the provisions of the Punjab Urban Immovable Property Tax Act, 1940. It is feared that the attempts might be made by the landlords to pass on this extra burden to their tenants. The passing on of such burden to their tenants cannot be justified and would press heavily in particular on middle and proper sections of the community. It is therefore, necessary to ensure that the rent is not increased on account of payment of tax on buildings and lands whether payable to government or to a local authority.”

A reference to section 4 and 5 of the 1941 Act would indicate that the primary object was to restrict the increase of rents of certain premises. It was to make sure that the landlords should not increase the amount of rent from the tenants on the imposition of any new tax by the government. However, section 1(3) of the Act provided that the said act would remain in force for five years only subject to any extension by a resolution of the Punjab Legislative Assembly.

Since the act of 1941 was a short term measure to check on the sudden increase of rent in residential buildings in the urban areas of Punjab. After six years, the 1941 act was replaced by Punjab Urban Rent Restriction Act, 1947 (Punjab Act No.6 of 1947). The prior act of 1941 mainly emphasized to keep a check on hike in rents, whereas the new act of 1947 introduced the provisions of fixation of fair rent, the grounds of eviction and also the authorities as Controller and Appellate authority were made. It also

introduced the provisions relating to appeal and bar of second appeal along-with the provisions of execution as well as prosecution.

It is a matter of common knowledge that during the year 1947 India got independence with the bitter taste of partition. The most affected areas included the province of Punjab. It is further a matter of common knowledge that during pre-partition days, the area of Punjab which is today part of the India was popularly known as East Punjab whereas the other part of the province, popularly known as West Punjab, became a part of the newly created state of Pakistan. Partition of India was followed by world's biggest migration of population ever from one state to another which resulted into a quite serious problem of housing shortage in the North India including the states of Punjab (including present Haryana) and Delhi. In this wake the act of 1947 was replaced by '*East Punjab Urban Rent Restriction Act, 1949*'. The statement of objects and reasons of 1949 Act reads¹:

“Under article 6 of the India (Provincial Constitution) order 1947, any law made by the Governor of Punjab by virtue of section 93 of the Government of India Act, 1935 which was in force immediately before the 15th August, 1947, is to remain in force for two years from the date on which the proclamation ceased to have effect, viz. on the 14th August 1947. A Governor's Act will, therefore cease to have effect on the 14th August, 1949. It is desired that the Punjab Urban Rent Restrictions Act, 1947 (Punjab Act NO. VI of 1947), being a Governor's Act, be re-enacted as a permanent measure, as the need for restricting the increase of rents of certain premises situated within the limits of urban areas and the protection of tenants against mala fide attempts by their landlords to procure their eviction would be there even after the 14th August, 1949.”

¹ Published in East Punjab Gazette Extraordinary, dated 27th September, 1948.

For many years the present rent act of 1949 has served its purpose and the same has been exploited by both sides including tenants as well as the landlords and the same had also outlived its utility not just years but many decades ago. The Rent act of 1949 was enacted keeping in view of the socio-economic conditions of the same era. However, keeping alive the provisions like that of fair rent where-in the formula of fair-rent is so absurd that applying the provisions of same would frustrate the sole purpose of enacting the rent legislations. The rent acts are introduced in order to strike a balance between the rights of both landlord as well as that of tenant. But giving the literal meaning to the formula of fair rent would be too unjust to the landlords.

However, in compliance with the suggestions made by the Hon'ble Apex Court¹, a model Rent Control legislation was formulated by the Central Government to the prevailing rent control laws. Following the same, the Delhi Government firstly adopted the Delhi Rent Act, 1990. Similarly, the Government of Punjab has also passed the new Punjab Rent Act, 1995 which has received the Presidential Assent on 26.03.1998. But the same has been enforced from its date of notification in the official gazette of Punjab Government dated 10.10.2012 vide notification no. 18-Leg/2012, pg. no. 77.

Though the new Rent act has been enacted as well as has been enforced by the State of Punjab but it is noteworthy that the said act does not have any retrospective effect. In-fact the same has been enforced after more than 14 years of its enactment. Undoubtedly, it is prospective in nature and any buildings/land given on rent prior to 10.10.2012 will be governed by the 1949 Act. It has also been observed by the Hon'ble Apex Court that landlord-tenant litigation accounts for a major part of litigation pending in courts of law or before statutory authorities. Also a substantial number of cases consist

¹ Prabhakaran Nair vs. State of Tamil Nadu, AIR 1987 SC 2117

of those wherein the eviction is sought for on the ground of non-payment of rent or the tenant being a defaulter.¹

The Hon'ble Supreme Court² also contributed to elaborate the reasons behind the enactment of various rent control legislations in different states of the country in following words:

“The strain of the last World War, Industrial Revolution, the large scale exodus of the working people to an urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their connected evils. The country was faced with spiraling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Racketing and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making economic life of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control legislation.”

It is quite imperative that there exists an acute shortage of accommodation and various factors have contributed to the said problem. Different legislations in different states have tried to solve the problem in their own manner. But the common factor among every other rent control legislation is the protection of interests of tenants. As mentioned in the preceding paragraphs that after the Second World War there was a movement of people from rural areas to urban areas, as a result of which the problem of accommodation in cities became extremely acute. The landlords started charging the exorbitant rents from the tenants. In the absence of any legislation to control such whimsy evictions, the landlords used to take

¹ Rakesh Wadhawan v. M/s Jagdamba Industrial Corporation, 2002 (1) RCR (Rent) 514

² Nagiadas Ramdas v. Dalpatram Iccharam Brijram and others, (1974) 1 SCC 242.

recourse to section 106 of T.P.A. By simply giving a month's notice they could get the building evicted.

Eventually the legislature stepped in and rent acts were enacted. The object of East Punjab Urban Rent Restriction Act, 1949 can be gathered from its statement of objects and reasons. It is the preamble of the act. As we always say that '*The Preamble to the statute walks before it.*' The preamble reflects the reasons and the objects which induced the mover to introduce the Bill in the House. It is the key to open the mind of the makers of the act and mischief it was intended to remedy.

The objects of the present rent act are twin fold. Firstly to restrict the increase in rent and secondly the eviction of tenants by the landlords in an arbitrary manner. In plain words it can be safely interpreted that the present act aimed at the prevention of rights of the tenants at the hands of the unscrupulous landlords. It is quite at hand to say that rent acts tried to ease the situations for the tenants.

But it would not be out of place to mention here that multiple restrictions placed by the Rent Control legislations upon the landlord like curtailing the landlord's right to charge the rent and further to evict the tenant, also resulted in a new problem. Such multiple restrictions further discourage the landlords from giving their buildings on rent. Especially those who had the capacity to built new houses were discouraged from doing so because of the restrictions placed by the rent control legislations. In order to meet this crisis, again the legislature had to step in and provided for exemption to newly constructed buildings for certain number of years from the operation of the restrictions of the rent control legislations. These steps are generally taken to meet the acute scarcity of accommodation and to encourage the landlords to construct buildings which would ultimately ease the situation of shortage of

accommodation to a large extent.¹ Even in the recently enforced Punjab Rent Act of 1995 as well as The Haryana Urban (Control of Rent and Eviction) Act, 1973 provides for such provisions wherein the provisions of such acts are not applicable to any building construction of which is completed on or after the commencement of the said acts for a period of ten years from the date of its completion.

The Hon'ble Supreme Court has further held that the preamble to the Punjab Rent Act cannot be pressed into service for upholding the constitutional validity of a provision in the Act where there is no nexus between the two. Thus the preamble will help in identifying the reasons for legislating the Act but the provision of the Act must have a reasonable nexus with it.²

The object of the rent act is to protect the needy tenants and not to unduly enrich the tenant at the cost of landlord.³ The purpose of the Act was to restrict the increase of rent of certain premises situate within the limits of urban areas and eviction of tenants. The act thus is a piece of ameliorative legislation in the interests of the tenants of premises in urban area, so that they may be protected against large increase in rents, and from harassment by eviction consequent on the increase of population and the division of Punjab in 1947 and large movement of population in consequence thereof.⁴

Where legislation enacts a law for human problem, Courts have to interpret it from point of view of furthering the social interest.⁵ The East Punjab Urban Rent Restriction Act, 1949 is a social legislation to give protection to the tenants against indiscriminate increase of rent and eviction

¹ Kesho Ram & Co. v. Union of India, 1989 (2) RCR (Rent) 425 S.C.

² Harbilas Rai Bansal v. State of Punjab, AIR 1996 S.C. 857.

³ Sohan Lal Kataria v. Ram Lal Dua, 1989 (2) RCR (Rent) 337 (P&H)

⁴ Attar Singh v. Inder Kumar, AIR 1967 SC 773.

⁵ Sheshrao v. Sonchand, 1986 (1) RCR 411 (Bombay) (DB)

and therefore, it has to be interpreted in a manner more beneficial to the tenant apart from giving literal meaning to the words used in the various provisions of the Act.¹

The contention that the Rent Act is legislation for protecting a tenant will be over simplification of the legislative import of Rent Act. The interests of both the parties i.e. landlords and tenants have been equally protected by the legislature. On one hand, tenant has been given protection against unscrupulous landlords so that he should not be evicted arbitrarily or be burdened with the unnecessary increase in rents from time to time. On the other hand, the legitimate needs and requirements of the landlords have also been equally protected by the Rent Acts. The landlords have been equally given rights like that of eviction.

Object of the Act is not merely to protect tenants but also to provide fair returns to the landlords and to encourage housing activity so as to augment rental housing in the form of construction of buildings and letting them out.²

The preamble presupposed the landlord to be rich, affluent, feudal lord, the exploiter and belonging to class of '*haves*' and the tenant to be poor, downtrodden and belonging to the '*have nots*' strata of society. This could have been true in 1941 but the present day socio-economic scenario in the urban areas may reflect an altogether different picture in landlord-tenant relations as found in most of the urban areas of the country.³

It would be untrue to say that Rent Acts lean only in the favour of tenants. No doubt such special legislations have been introduced to protect the interest of the tenants but to say that interpretation of provisions only in

¹ Karnail Singh v. Vidya Devi alias Bedo, 1980 (1) RCR (Rent) 592 (P&H)

² M/s Crompton Greaves Ltd. V. State of Maharashtra, 2002 (1) RCR 387 Bombay

³ "Rent Matters on Trial" (1998) at page 32 by Sh. D.N. Jauhar

the favour of tenants would be too unfair to the landlords. The Legislature cannot make it impossible for the landlord to recover back his own property. In-fact legislature was also apprised of such a situation and therefore interests of both the parties have been protected by the legislatures in such Rent Acts. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that equal treatment has been meted out to both the sections of the society. In spite of overall balance tilting in favor of tenants while interpreting provisions courts must also take care of the interest of the landlords. The court should not hesitate in leaning in favor of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.¹

In fast growing and dynamic society, the laws equally require dynamic changes and the failure of the same would end in drastic results. It is at such junctions where the judicial activism comes into play and the Courts have to take the matters in their own hands by using the weapon of interpretation in its armory.

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¹ Joginder Pal v. Naval Kishore Behal, 2002 (1) RCR (Rent) 582.