(1925) 12 CAL CK 0047

Calcutta High Court

Case No: None

S. G. P. Singh — APPELLANT

Vs

Probodh Kumar Das — RESPONDENT

Date of Decision: Dec. 14, 1925

Citation: AIR 1926 Cal 681 : 95 Ind. Cas. 289

Hon'ble Judges: Cuming, J; B. B. Ghose, J

Bench: Division Bench

Judgement

Ghose, J.

These two Rules arise out of the same proceedings taken before the Rent Controller at the instance of a subtenant for fixing standard rent with regard to certain premises against his own landlord, the tenant under the superior landlord. These two persons will be called tenant and landlord henceforth. The Rent Controller fixed the rent of the premises which is called premises No. 6 at Rs. 155 (one hundred and fifty-five) per month including the occupier''s share of the taxes as the standard rent. The landlord made an application for revision before the President of the Tribunal. The President framed several issues in his Court and he has fixed the standard rent at Rs. 230 (two hundred and thirty) per month inclusive of taxes.

2. The landlord has obtained a Rule against the decision of the President; it is numbered 1020. The tenant has also obtained a Rule against the same decision which is Revision Case No. 818. It will be convenient to dispose of the Rule obtained by the landlord first. The arguments addressed on his behalf by his learned Advocate are three fold. The first is that the subject-matter of these proceedings cannot be called premises within the meaning of Section 2 (e) of the Rent Act and, therefore, standard rent could not be fixed for it. The contention is that the premises referred to does not consist of a building but several buildings. This argument is based upon the fact that on the western portion of the land leased to the tenant an old structure was pulled down to a certain extent and new structures were built in its piace. This was done before the lease was given to the tenant. Both

the Courts below rejected this argument. The learned President says with regard to one of the blocks that sonde old doors andjwindows have been re-placed, a small verandah has been constructed and some other changes have been made. And he further says "that the building on the west of the courtyard was constructed on the site of an old structure. The evidence is that the western block has lower rooms than the main building and is used ordinarily as servants'' quarters and kitchen." His finding is that the premises constitutes one building and the fact that it consists of different blocks does not take it out of the definition of premises in the Rent Act. With this conclusion 1 entirely agree. It cannot be said because a house consists of different blocks, consisting of servants'' quarters, and offices, garage and the main building, that it is not premises within the meaning of the Act.

3. The second contention of the learned Advocate for the landlord is that the Rent Act does not apply to the premises in question as it was in the course of erection at the time of the commencement of the Rent Act as provided by Section 15 of the Act. This, as the learned President has observed, is a pure question of fact and he has come to the conclusion upon the evidence that the premises in question was not either erected after the commencement of the Act, nor was it in the course of erection at the commencement of the Act. We cannot interfere with this finding in revision and the decision of the President of the Tribunal must be accepted.

4. The third point is rather complicated and it arises in this way, that the Rent Controller in fixing the standard rent of the premises in question takes into account the rent assessed by the Municipality in 1915 with regard to the premises in question as well as another holding which is No. 5. This was taken to be Rs. 110 (one hundred and ten). The Rent Controller finds that if in 1915 these two premises had been in the same condition as they are now the rent could have been Rs. 165 (one hundred and sixty-five) inclusive of taxes. Having come to this opinion he takes the fact into consideration that the rent of No. 5 in 1915 was assessed by the Municipal Authorities at Rs. 25 (twenty-five) and for No. 6, Rs. 85 (eighty-five) per month. Then he calculated that the present rent of No. 5 should be taken at Rs. 27 (twenty-seven) per month. Deducting that amount from what would be the standard rent of the two premises according to his view, which was Rs. 182 (one hundred and eighty-two) per month, he fixed the standard rent of Nc. 6 at Rs. 155 (one hundred and fifty-five) per month. As against this the tenant did not present any petition for revision to the President of the Tribunal but the landlord did. In disposing of this matter the President of the Tribunal did not take the Municipal assessment of rent of Rs. 110 (one hundred and ten) as the basis lor fixing the standard rent, but he took the actual rent received by the landlord which wasRs. 95 (ninety-five) for the two premises as the basis and from that he worked out the proportion which should be assessed for No, 6, that is the premises in question and he found that it ought to be Rs. 73 (seventy-three) per month, and on that figure the President added Rs. 150 (one hundred and fifty) on account of ihe ex-peuditure on improvements and thereby he arrived at the figure Rs. 230 (two hundred and thirty) as the standard

rent. The objection on behalf of the landlord is that he should have proceeded not upon the basis of the rent actually received in 1918 that is Rs. 95 (ninety-five) but upon the basis taken by the Rent Controller, as the tenant did not object to that. This would only lead to a difference of Rs. 12 (twelve per mouth over the rent fixed assuming that the principle on which the standard rent has been fixed by the President was correct but as I am going to state later on why this mode of fixing the standard rent adopted by the President cannot be accepted, it is unnecessary to decide this question. The Rule, therefore, obtained by the landlord should be discharged with costs bearing fee being assessed at five gold mohurs.

5. Now I come to the Rule obtained by the tenant and his objection is based on this : the owner of the premises v. ho is described as one. Dalmia has spent a certain, sum of money in making improvements and the President of the Tribunal found that it would amount to about Rs. 18,000 (eighteen thousand). The President was of opinion that this was the expenditure made by the landlord within the meaning of Section 5 and Section 15, Sub-section (3), Clause (e) of the Rent Act and he has added Rs. 150 (one hundred and fifty) per month on the basis of the expenditure made on improvements on the rent payable by the tenant. The contention on behalf of tenant is that the expenditure was not made by his landlord and, therefore, those sections of the Rent Act do not apply to the present case. It seems to me, that this contention is sound. The definition of landlord inckides a tenant who sublets any premises, therefore, the person from whom the sublessee took his lease was his landlord although he might be himself a tenant" of a third person. It has not been found that his landlord has incurred any expense on the improvements and, therefore, Section 5 of the Rent Act does not apply to him. It is contended on behalf of the opposite party that Section 15, sub-s. (3), Clause (e) does not refer to any improvement made by the landlord but refers to a change in the condition of the premises and, therefore, if any change is made in the condition of the premises by whoever it may be, that should be taken, into consideration in fixing the standard rent. That, however, can hardly be a proper construction of the section because the Section 15 commences with reference to the fact that the standard rent should be fixed on the application by the landlord or tecant, and also referring to proviso (u) of Clause (e) it will be found that it is provided that the S Controller shall not increase the rent by s more than ten per cent, per annum on the s amount spent on the improvement of struc-1 tural alteration of the premises as provided for in Section 5. This implies that the expenditure to be taken into account must he made by the landlord who applies for standardization of rent or against whom an application for standardization has been made. In my opinion, therefore, the learned President was not correct in taking into consideration the expenditure made by Dahnia for the purpose of making improvements on the premises in fixing the standard rent.

6. It is contended by the learned Advocate for the opposite party that the superior landlord would be entitled to have the expenditure made for the improvements taken into consideration in an application made by the landlord for fixing the

standard rent as against himself and it would lead to anomalous results if the expenditure for improvements is not taken into consideration in fixing the standard rent between himself and his sub-tenants. It is not necessary for us to consider in this case whether the result whould be anomalous in any way. It seems to me upon the plain construction of the section of the Rent Act that the expenditure made by a third person cannot be taken into consideration in fixing the standard rent as between these two contending parties before us. This Rule, therefore, is made absolute. The standard rent fixed by the President of the Tribunal is set aside and the decision of the Rent Controller fixing the standard rent at Rs. 155 (one hundred and fifty-five) per month including the occupier''s share of the taxes is restored. The applicant will be entitled to his costs-hearing-fee three gold mohurs.

Cuming, J.

7. I agree.