

# CALCUTTA HIGH COURT

Bata Shoe and Co., Ltd

Vs.

Narayan Das Mullick

Civil Rule No. 1920 of 1950

(G.N. Das and Lahiri, JJ.)

19.04.1951

## JUDGMENT

**G.N. Das, J.**

1. This Rule was obtained by the petitioner who is a tenant of a room in premises No.24A Canning Street in the city of Calcutta. The petitioner applied on 29-4-1949 for fixation of standard rent in respect of the said room. The Rent Controller fixed the standard rent at Rs. 171-7-3 with effect from 1-4-1949. On appeal the Judge of the Court of Small Causes by his order dated 25-9-1950, has modified the order of the Rent Controller and has fixed the standard rent at Rs. 140-9-6 with effect from 1-5-1950. The petitioner assails the order of the Small Cause Court Judge on the ground that there was no basic rent in respect of the disputed premises and as such the fixation of standard rent was erroneous in law.

2. The question depends on certain facts to which reference should be made. It appears that the disputed room was let out on 1-12-1941 in two portions to two separate tenants. The rent paid by the tenant in respect of the western portion of the room was Rs. 65/- per mensem. The rent paid by the tenant occupying the eastern portion of the room was Rs. 58/- per mensem. It appears that since September 1942 the entire room was let out to the petitioner's predecessor-in-interest at a rent of Rs. 90/- the intervening partition wall having been removed from the said room. The rent payable by the predecessor-in-interest of the present petitioner was later raised to Rs. 100/-. It does not appear when the rent was so increased. The Rent Controller proceeded on the footing that the basic rent could be ascertained by totalling up the rent payable in respect of the two portions of the disputed room and by giving to the landlord an increase in the taxes payable by the tenant. The appellate Court has modified this decree but the effect of the decisions of both the Courts below is the same. The decision proceeds on the footing that the room, the standardization of rent whereof is in question, was let out on 1-12-1941, as the rent paid by the tenants occupying the two portions of the said room. The question is whether it could be said that the premises the

rent whereof is sought to be standardized were let out at a certain rent on 1-12-1941.

3. In order to deal with this contention it is necessary to refer to certain provisions of the West Bengal Premises Rent Control Act (Act 17 of 1950). This Act came into force on 30-3-1950. The application for standardization of rent was made when the earlier Act, West Bengal Premises Rent Control (Temporary Provisions) Act (Act 38 of 1940) was in force. It is not disputed that the rights of the landlord and tenant, so far as it concerns the application for standardization of the rent, would be governed by the provisions of the 1950 Act. Section 9 of the 1950 Act confers on the Rent Controller jurisdiction to fix the standard rent payable for any premises. Section 9(1) provides as follows:

"In any of the following cases, the Controller shall on application by any landlord or tenant fix the standard rent as set forth hereunder (a) where the provisions of Schedule A apply and there is no cause for the alteration of the rate of standard rent as determined according to the schedule for any of the reasons mentioned in the following clauses, in accordance with the provisions of Schedule A."

We are not concerned with clauses (b) to (d) for the purpose of the present case. Clause (e) runs as follows:

"Excepting the case covered by clause (f) following where the provisions of Schedule A for determining the standard rent do not apply, either because the premises or the whole of the premises were not let on 1-12-1941 or for some other reasons, or where any premises have been let rent free or at a nominal rent, or for some consideration other than money rent, or in addition to money rent, by fixing the standard rent at a rate in accordance with Schedule A, taking the rent which would have been reasonably payable for the premises if let on 1-12-1941, as basic rent under the said schedule."

We are not concerned with clauses (f) and (g). We have now to refer to Schedule A to find out what the standard rent should be. Schedule A is headed as "provision for determining the standard rent of premises." The disputed room is used as a shop and not for residential purposes. The material clause would therefore be para 3, which says that where the premises are used or mainly used otherwise than for residential purposes the standard rent "shall be (a) the basic rent, if a period of three years had not elapsed after the time when rent was fixed as mentioned in para 1(a) or the increased rent as mentioned in para 1(b) was first paid." Para 3, clause (b) states further that when the said period of three years relevant to the case has elapsed or elapses or where such period is not relevant the basic rent increased by 10 per cent. if the basic rent per mensem is not more than Rs. 100/-, and the basic rent increased by 15 per centum if the basic rent is more than Rs. 100/-. The question what is the basic rent is dealt with in para 1 of Schedule A. We are not concerned with clause (a) of para 1 in the present case. Clause (b) of para 1 states that

"where the rent of the premises has not been so fixed the rent which was payable for the premises on 1-12-1941, or if any increased rent was paid for the premises between that date and the coming into operation of this Act, the increased rent, which was last paid but not as to exceed the rent payable on 1-12-1941, by more than 10 per centum in case of premises within Calcutta and 20 per centum in case of other premises."

The contention raised on behalf of the petitioner is that the premises the rent whereof is sought to be standardized was not let on 1-12-1941. The ground suggested is that the word 'premises' should mean the entire subject-matter of the present demise, that is, the room taken as a whole. Mr. Mukherji appearing for the opposite party on the other hand contends that the question which is relevant for this purpose is not whether the subject-matter of the present demise was in the occupation of a single tenant or formed the subject-matter of a separate tenancy but whether the subject-matter of the present demise was in the occupation of tenants, and the fact that the subject-matter of the demise was separately let out to separate tenants and formed the subject-matter of separate letting is entirely irrelevant. In order to determine this question we have to consider the meaning of the word "premises" as used in S.2, clause 8. The word 'premises' is defined to mean "any building or part of a building or any hut or part of a hut let separately and....." In its grammatical sense the word 'premises' obviously means a building or part of a building or a hut or part of a hut which is the subject-matter of a separate demise. In other words, the word 'premises' means whatever formed the subject-matter of one demise. Neither the context nor the subject, requires us to place a forced construction on the word 'premises' as suggested on behalf of the opposite party. The meaning of the word 'premises' as contended for by the petitioner is the correct one, receives support from the definitions of the words 'landlord' and 'tenant' as occurring in the Act. The word 'landlord' is defined in S.2, clause 4 of the Act to mean any person who for the time being is recovering the rent of any premises from the tenant thereof and includes any person who is entitled to bring a suit for such rent. The word 'tenant' is defined in Section 2(11) to mean any person to whom rent is, or but for a special contract would be, payable for any premises and includes any person who is liable to be sued by the landlord for rent. When the Act therefore speaks of an application either by the landlord or the tenant to apply for fixation of standard rent it obviously implies that the Controller is required to fix the rent of the tenancy in question. That this is the true interpretation of the word 'premises' would also appear if we consider the other provisions of the Act, namely provisions of ejection of tenant etc. The words "the premises or the whole of the premises" in S.9, clause (c) do not point to a different conclusion. In my opinion, a conspectus of the various provisions of the Act is consistent only with the view that what the Act was contemplating was a determination of the relationship between the landlord and the tenant of a tenancy and to regulate the same in terms of the Act. It would be incorrect to use the word 'premises' as referable to the land itself apart from the question of a tenancy in respect of the same. On all these grounds we are of the opinion that the contention raised on behalf of the petitioner is correct. It must therefore be held that the basic rent of the premises cannot be determined on the footing of the rent which was payable for the

two different portions of the said premises which were in the occupation of different tenants on that date. The Court has got to determine what rent was properly payable for the premises the rent whereof is now sought to be standardized, on the material date namely 1-12-1941.

As the case was not properly approached by the Courts below from the correct angle it is necessary that the orders of the Rent Controller and of the Small Cause Court Judge should be vacated and this application remitted to the Rent Controller for fixing the standard rent in the light of the observations contained in this judgment. The petitioner is entitled to the costs of this Rule, hearing fee being assessed at two gold mohurs.

**Lahiri, J.**

4. I agree.

Orders accordingly.