

BOMBAY HIGH COURT

Khurshed Mody

Vs.

Rent Controller

O.C.J. Appeal No. 60 of 1945

(Leonard Stone, Kt., C.J. and Chagla, J.)

10.04.1946

JUDGMENT

Chagla, J.

1. This is an appeal from the judgment of Mr. Justice Kania. The appellant is the landlady of premises situated at Nepean Sea Road. Respondent No. 2 is her tenant and respondent No. 1 is the Rent Controller of Bombay. It seems that the premises with which we are concerned were let out to respondent No. 2 by the appellant on May 1, 1943, and on July 8, 1943, the appellant gave to respondent No. 2 a notice to quit. That notice to quit was waived and on July 16, 1943, a fresh tenancy agreement was arrived at under which respondent No. 2 agreed to pay rent at the rate of ₹ 400 a month. This agreement was carried out up to March, 1945, and respondent No. 2 went on paying rent to his landlady at that rate. On March 8, 1945, respondent No. 2 applied to the Rent Controller to fix the standard rent of the premises which he was occupying, and the Rent Controller on July 9, 1945, fixed the standard rent of the premises at ₹ 270 per month. The appellant then filed this petition both against the Rent Controller and her tenant for a writ of certiorari alleging that the order of the Rent Controller in fixing the standard rent was without jurisdiction. The petition was heard by Mr. Justice Kania and he took the view that as under the Rent Act an appeal was provided to the Collector, this was not a case for the issue of the writ of certiorari. It seems from the judgment of the learned Judge that he did not decide the petition on merits but contented himself with dismissing the petition on this short point.

2. Now the position with regard to the Rent Act (Bombay Act VII of 1944) is this. Section 4, which is the definition section, defines the "standard rent" to mean (a) the rent at which the premises were let on September 1, 1940, or (b) where they were not let on September 1, 1940, the rent at which they were last let before that date, or (c) where they are first let after September 1, 1940, the rent at which they are first let, or (d) in any of the cases specified in Section 1.3 the

rent fixed by the Controller. When we turn to Section 13, it provides three cases where the Rent Controller may fix the standard rent: one is where any premises are first let after September 1, 1940, and the rent at which they are first let is in the opinion of the Controller excessive; second where, by reason of any premises having been let at one time as a whole and at another time in parts, or by reason of a tenant having sub-let a part of any premises let to him, or for any other reason, any difficulty arises in giving effect to this Part; or third where, in the case of any premises let furnished, it is necessary to distinguish, for the purpose of giving effect to this Part, the amount payable as rent from the amount payable as hire of furniture. Now it is clear that Section 1H sets up a tribunal of limited jurisdiction and the ambit of jurisdiction of that tribunal is circumscribed and must be circumscribed by the provisions of that section. It is only in the cases mentioned in Section 13 that the Controller can exercise his jurisdiction and fix the standard rent. Section 14 is the appeal section which provides an appeal from a decision of the Controller by a person aggrieved by an order passed by the Controller under the provisions of that part of the statute.

3. Now it is true that the learned Judge below has not decided the petition on merits. But both Mr. Taraporewalla and Mr. Maneksha have invited us to give our decision on the merits of the petition. This is not a case where the learned Judge below has decided a preliminary point, an issue having been raised only on that point and the merits not having been gone into. In this case the petition was heard on merits, and after the petition had been heard on merits the learned Judge thought that it was sufficient to dispose of the petition on a short point. Therefore all the materials are before us which were placed by the parties before the trial Judge and it is open to us to decide the petition on merits.

4. The view we take on the facts as appearing from the record is that the Controller had jurisdiction to fix the standard rent in this case. The petitioner in para. 8 of her petition says that the Rent Controller determined the standard rent on the basis of the rent of the property last let before September 1, 1940. She goes on to say that he determined that rent at ₹ 250 per month" and to that he added ₹ 7 for hire of Gas Cooker and two Electric Geysers and ₹ 13 for certain work done by the petitioner. Now it appears from the affidavit in reply of the tenant to which there is no answer in rejoinder that the contention of the tenant who really made the application to the Controller for fixing the standard rent was that the tenement let out to him was much smaller than the tenement which was let out to other tenants prior to September, 1940, and, therefore, his case was that the standard rent was really less or should be freed at a less amount than that which the tenant was paying to whom the premises were let prior to September 1, 1940. On the other hand the contention of the landlady seems to have been that the whole of the tenement was let out and improvements were effected in the tenement. These rival contentions were before the Controller, and on those rival contentions the Controller came to the conclusion that the proper standard rent was ₹ 270 per month.

5. It is contended by Mr. Setalvad that inasmuch as the basis of the standard rent as alleged by him was the letting out of the premises prior to September, 1940, the Controller had no jurisdiction to do so. In our opinion that contention is untenable because looking at the scheme of the Act Section 4 which defines "standard rent" fixes the standard rent in certain cases, one of the cases being where the premises were not let on September 1, 1940, but they were let before September 1, 1940, in which case the rent at -which they were last let before that date. But you might have a case where, after they were last let, improvements might be effected by the landlord; or you might have a case where the tenement let out is not identical with the tenement let out prior to September 1, 1940. Therefore the standard rent would not be what is provided for in Section 4 but something more or something less. If these difficulties occur, then. Section 13, Sub-clause (&), says that those difficulties are to be resolved by the Controller; and taking those difficulties into consideration, he has to fix the standard rent because the language of Section 13, Sub-clause (&), "or for any other reason, any difficulty arises in giving effect to this Part" is clear, and I might point out that the Controller in his order specifically states that he has fixed the standard rent of these premises under Section 13(b) of the Act. In view of this state of the record, we feel that it is not possible to contend that the Controller had no jurisdiction to make the order.

6. In view of our decision on this point, it is really unnecessary to consider the other points urged at the bar. But as the points are of some importance and as they were argued at some length and as they formed the basis of the learned Judge's judgment, we will deal with those points also.

7. The learned Judge took the view that if there is a right of appeal from the order complained of, then the proper proceeding for the party aggrieved to take is to appeal from that order and not to come to the High Court for the high prerogative writ of certiorari. Mr. Setalvad quarrels with this statement of the law. The learned Judge based his view on an observation of the Privy Council in *Besant v. Advocate-General of Madras*¹ Lord Phillimore, delivering the judgment of the Committee, expressed his opinion of the English law that certiorari can only be granted where no other suitable remedy exists. It was a very strong Committee of the Privy Council that gave expression to this opinion and as with all obiters of the Privy Council it is entitled to the highest respect. But Mr. Setalvad has drawn our attention to various English cases which, with great respect to the Privy Council, do not seem completely to bear out this statement of the law at least in the wide terms in which it was expressed. I shall presently briefly deal with the authorities; but our view is that considering all the decisions which have been cited at the bar, the true position seems to be that if there is another suitable remedy as, for instance, a right of appeal, then the Court would be very loath to issue the high prerogative writ of certiorari unless it is satisfied that the Court or the officer against whom the writ is sought has acted in a manner which is contrary to the fundamental principles of justice.

8. The latest case relied on by Mr. Setalvad is *Rex v. Postmaster-General: Carmichael, Ex parte*². There the applicant, who was a telegraphist, claimed compensation under the Workmen's Compensation Act on the ground that she was suffering from telegraphists' cramp and her case

was referred to the Chief Medical Officer of the Post Office and she asked for a writ of certiorari on the ground that the Chief Medical Officer had no jurisdiction to decide her case. The writ was issued and Mr. Justice Avory in his judgment stated that she had the right of appeal; but even if that remedy be open to her, it was, in the opinion of the learned Judge, undoubtedly good law that if the application for a certiorari was made by a party aggrieved, then it ought to be granted *ex debito justitiae*, and the Court had not the general discretion which it would have when the application was made by one of the public who was not personally concerned; and in giving expression to this view, the learned Judge relied on *The Queen v. Justices of Surrey*³ When we turn to the other judgments it does not seem very clear that in fact the applicant

¹21 Bom. L.R. 867

³(1870) L.R. 5 Q. B. 466

²[1828] 1 K. B. 281

had a right of appeal. Lord Hewart seems to doubt that there was a right of appeal because the referee to which the matter could be referred was not really an appellate tribunal in the sense in which that expression is usually understood; and Mr. Justice Salter in his judgment does not refer to the right of appeal at all. Now when we turn to the decision on which Mr. Justice Avory based his decision (*The Queen v. Justice of Surrey*), we find there that the limits of certain roads had to be fixed by the parish and an inhabitant of one of the parishes living in the neighbourhood of the roads applied for a certiorari on the ground that notices were not affixed at the places required by law; and the decision really turned on this that as the applicant had a grievance of his own and was not merely applying as one of the public, he was entitled to the writ *ex debito justitiae*. As far as I can see, no question there arose as to the applicant having another remedy, and in the judgment reliance was placed on the decision in *Arthur v. Commissioners of Servers in Yorkshire*⁴ where the law is stated to be (p. 331):

It is true, where a man is chosen into an office or place, by virtue whereof he has a temporal right, and is deprived thereof by an inferior jurisdiction who proceed in a summary way, in such case he is entitled to a certiorari *ex debito justitiae*, because he has no other remedy being bound by the judgment of the inferior judicature.

9. The other case relied, on by Mr. Setalvad is *Rex v. North: Oakey, Ex parte*⁵ But when one looks into the facts of this case, it seems to conform to the principle which I have just stated, namely, that the Court would usually interfere even if there was a right of appeal if there was a violation of the fundamental principles of justice. In that case a faculty was granted to a vicar and churchwardens to restore a screen in a church. In the course of the work of restoration damage not authorized by the faculty was done to a fresco. A parishioner interested in the fresco petitioned the Consistory Court for a faculty to repair the damage. The petition alleged that the damage was done by the vicar's order, but did not ask that he should pay the cost of reparation. Then a general citation was issued citing all the parishioners and inhabitants to show cause why a faculty should not be granted to allow of the repair, but no special citation was issued to the vicar. The vicar knew of the petition, but did not appear. In his absence the Judge of the Consistory Court granted the faculty asked and ordered him to pay the expense of reparation and the costs of the petition. Then a monition was issued ordering him to pay the sums under threat of

sequestration; and on that, the vicar applied for prohibition. The facts are extremely eloquent and show that there was a gross abuse of the process of the Court and a violation of the fundamental principles of justice inasmuch as the vicar was asked to pay certain amounts and threats of sequestration were held out against him when he had not been served with citations at all and never been heard; and I might also point out that the Court also doubted whether the vicar had a right of appeal to the Court of Arches as he was not a party to the proceedings before the Consistory Court.

10. The other case relied on by Mr. Setalvad. is *White v. Steele*⁶ That case again illustrates the breach of a fundamental principle of justice. There a parishioner declined to pay the rate on the ground that the rate was invalid and the churchwardens instituted a suit against him in the Consistory Court in which suit the respondent tendered a responsive allegation (which I take it is the same as a written statement) that at the vestry a poll had been duly

⁴(1724) 8 Mod. Rep. 88

⁶(1862) 12 C. B. (N. S.) 383

⁵[1927] 1 K. B. 491

demanded and refused. The Judge of the Consistory Court rejected the responsive allegation. The matter went to the Court of Arches and the decision of the Court below was confirmed; and on these facts the Court issued a writ of certiorari against the Consistory Court.

11. The other case relied on by Mr. Setalvad is a case in *Begina v. Blathwayt*⁷ must confess that I find some difficulty in reconciling this case either with what the Privy Council state in *Beswat's* ease, or with what we suggest to be the correct statement of the law as obtaining in England. In this case an order was made by Justices of the Peace and a writ was sought for against them on the ground that the order made by them was defective on the face of it as not showing jurisdiction. There was a right of appeal to the Court of Quarter Sessions and the Court held that the parish on whom the order was made need not appeal to the Court of Quarter Sessions but may come in the first instance to that Court for a certiorari. It is a decision of 1846, and the later cases, as I have pointed out, seem to have taken a different view as to the proper cases in which the Court would issue a writ of certiorari.

12. A bench of the Calcutta High Court (Mr. Justice Lort-Williams and Mr. Justice Jack) in *Dorman Long & Co., Ltd. v. Jagadeeshchandra Mahindra*⁸ took the view that the fact of there being another specific legal remedy, such as a right of appeal, is not conclusive against issuing such writs or orders where the want of jurisdiction or refusal or illegality complained of is based upon the breach of a fundamental principle of justice; and again in *In re Ramjidas Mahaliram*⁹ Mr. Justice McNair stated the guiding principle to be that the writ will not issue, if there was a right of appeal, unless the want of jurisdiction complained of was based upon a breach of the fundamental principle of justice. With respect to the learned Judge below, we are unable to take the view that merely because there is a right of appeal the Court will not issue a writ of certiorari. We agree that ordinarily the Court will require the petitioner to have recourse to his ordinary remedies; but if the Court finds that there is a breach of a fundamental principle of justice, it would certainly not hesitate to issue this high prerogative writ of certiorari. In this particular ease

there is no allegation that the Controller in making the order acted in any way which was contrary to the principles of fundamental justice and, therefore, even on this ground as the petitioner had the right of appeal, the learned Judge was right in holding that a writ of certiorari should not be issued.

13. Mr. Setalvad has contended that even though there might have been a right of appeal at the date of the petition, that right of appeal was not subsisting because under Section 14 of the Rent Act an appeal ought to have been preferred within fifteen days from the date on which the order was communicated to the petitioner. But that hardly strikes us as a proper ground for issuing the writ of certiorari, if a party has a remedy given to him by law and if he does not avail himself of that opportunity owing to his own default this Court should not interfere by means of this high prerogative writ.

14. Under the circumstances we are of the opinion that the appeal must fail and must be dismissed with costs.

Appeal dismissed.

⁷(1846) 3 Dowl. & L. 542

⁹ I.L.R.(1935) . Cal. 1011

⁸ I.L.R.(1884) Cal. 596