

PUNJAB AND HARYANA HIGH COURT

British Medical Stores

Vs

L Bhagirath Mal

(Khosla, J.)

26.08.1954

JUDGEMENT

Khosla, J.

(1.) THESE (in Civil Revisions Nos. 243, 267 to 273, 274 to 292, 293 to 295 and 296 to 298 of 1951) are several rules which have been obtained by the landlord against the various tenants and in Civil Revision No. 243 a rule is obtained by the tenants against the landlord, and they are all directed against appellate orders of District Judge Dulat dated the 15th Jan 1951 varying the orders of the Rent Controller.

(2.) THE landlord Bhagirath Mal, owns four sets of buildings of Chandni Chowk. They are chemists' Market which is also called Medicine Market, Jai Hind Buildings, Prem Buildings and deepak Mahal. Civil Revisions Nos. 243 and 274 to 292 relate to Chemists' Market, Civil revisions Nos. 267 to 273 to Jai Hind Buildings, Nos. 293 to 295 to Prem Buildings and 296 to 298 to Deepak Mahal. All these buildings arc situate in what is called Bhagirath Colony. On the 30th of July 1948 nine tenants of nine shops in Chemists' Market dealing in radios or electrical goods made an applications to the Rent Controller for fixation of rent under Section 7-A read with Schedule IV of the Delhi Rent Control Act. The Rent Controller on the 12th August without indicating in the order that he was as a matter of fact satisfied as to the excessive nature of the rent fixed between the parties and without there being any indication that that was his objective view issued a notice to Bhagirath Mal saying that a summary enquiry will be held and directing him to attend at his office on the 16th August along with all relevant records, plans, account-books vouchers, etc. , and notice was also given to the nine applicants. The notice was in regard to these nine tenants only. It appears that after several adjournments the parties appeared and on the 19th of November some proceedings were taken and statement of Kundan Lal on behalf of the landlord was recorded. On the 3rd December 1948 a notice was issued to the landlord that the Rent Controller would inspect the premises on the 6th December 1948, but the landlord informed him that he would not be in Delhi on that date. On the 12th December 1948 the Rent Controller inspected the premises in the absence of the landlord and on the 10th of January 1949 he fixed

the standard rent for eighteen shops at Rs. 335/-per mensem. He has noted in this order about the quality of the building. The value of the land was calculated at Rs. 275/- per square yard, but he allowed only one-third of the value as the building is only one-storeyed and not a three-storeyed one and he calculated the value of the plinth area at Rs. 9/8/- per square foot and the standard rent fixed including ten per cent, for repairs but excluding house tax and charges for consumption of water and electricity was Rs. 335/- p. m. On appeal being taken to the District Judge the monthly rent was increased from Rs. 335/-to Rs. 670/- allowing the full value of the land, Both parties are dissatisfied with this order and have come up to this Court in revision. The Rent Controller has not only fixed the rent of the shops for which application was made but has also fixed the rent of the shops occupied by other persons who never applied and there-fore could not be parties to the proceedings and also of the vacant shops, and with regard to these shops no notice seems to have been given. The objection taken by the landlord is that section 7-A read with Schedule IV is discriminatory inasmuch as it provides a different tribunal and procedure for determining the standard rent with regard to premises the construction of which was not completed before the commencement of the Act which was on the 24th March 1947 and that the method provided by Schedule IV laid down no principles and were vague, indefinite and unreasonable, that the Rent Controller had no jurisdiction to decide whether the buildings were completed before or after March 1947 nor could he reduce the rent at which the premises were first let and that in this particular case he had made private enquiries and had invited no evidence from the contestants and the calculations which he made for fixing the rent were not shown to the parties for rebutting them if they thought it necessary, and therefore the order of the Controller was vitiated as it was contrary to the principles of natural justice. I have first to decide as to which law will govern the present case, the law in force at the time of decision by the Controller or the law existing on the date the appeal was decided. At the time when the proceedings started or the Controller gave his decision the case was governed by section 7a and Schedule IV of the Act. This section provides for the fixation of standard rent of premises in Delhi the construction of which was not completed before the commencement of this act, The Delhi Rent Restriction Act came into force on the 24th of March 1947 and Section 7a was added by Section 5 of the amending Act L of 1947. Thus the premises the construction of which was completed after the commencement of this Act are governed by a special procedure given in Section 7-A which makes the provisions of Schedule IV applicable to the determination of standard rent of such buildings, the relevant portions of which are: "1. 2. If the Rent Controller on a written complaint or otherwise has reason to believe that the rent of any newly constructed premises is excessive, he may, after making such inquiry as he thinks fit, proceed to fix the standard rent thereof. 3. The Rent Controller in fixing the standard rent shall state in writing his reasons therefore. 4. In fixing the standard rent, the Rent Controller shall take into consideration all the circumstances of the case including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition, to rent. ***** 7. For the purposes of an inquiry under paras. 2, 5 and 6, the Rent Controller may (a) require the landlord to produce any book of account, document or other information relating to the newly constructed premises. (b) enter and inspect such premises after due notice, and (c) authorise any officer subordinate to him to enter and

inspect such premises after due notice. " Thus according to these provisions, if the Rent Controller has reason to believe that the rent of any premises is excessive whether an application has been made to him or not, he can proceed to fix the standard rent and in determining tills rent he is authorised to look into the accounts of the landlord relating to the newly constructed premises, enter or inspect the premises though after notice, and this is the material on which, it appears he has to determine the standard rent. Both under the Act of 1947 before Section 7-A was inserted in the Act and after the coming into force of the new Act of 1952 no distinction was and is made as to the tribunals which will determine the standard rent of premises new or old or the procedure to be followed or the principles on which the standard rent is to be fixed. Thus for the period during which Section 7-A was in force a different procedure and different tribunals for determination were prescribed by the Act in regard to premises the constructions of which was completed before or after, the 24th of March 1947. As I see the provisions of Schedule IV the Rent Controller could not take cognizance of this matter without giving a finding that he had reasonable grounds to believe that the rent was in fact excessive. Reference may be made to -- 'nakkuda Ali v. Jayaratne', 54 Cal WN 883 (PC) (A), where the words in the Regulation were-- "where the Controller has reasonable grounds to believe. " which were interpreted by Lord Radcliffe to mean "as imposing a condition that there must in fact exist such reasonable grounds known to the Controller, before he can validly exercise the power of cancellation" (p. 889). The Privy Council disagreed with the interpretation of the House of Lords in -- 'liversidge v. Anderson', where the words used were ". has reasonable cause to believe. " no doubt the words used in the present statute are ". has reason to believe" but it appears to me that these words do not have a different meaning from that given by Lord Radcliffe in--'kakkuda Ali's case (A)', to the words which I have given above. Thus there was in the absence of an objective determination no basis for a valid exercise of the power of the Rent Controller. find therefore in my opinion the subjective i. e. an honest opinion of the Rent Controller does not give to the Controller the jurisdiction to take cognizance of the matter and this view is in accord with the decision in -- "nakkuda Ali's case (A)'. At the time when the learned District Judge decided the appeal the Constitution of India had come into force on the 26th January 1950. The question is whether the learned District Judge should have decided the appeals in accordance with the law which prevailed at the time he was deciding the appeal or in accordance with the law which was in existence at the time when the proceedings were started, i. e. on the 30th of July, 1948, or when the first Court decided the matter on the 11th of January 1949.

(3.) THE landlord petitioner contends that the law in force at the time when the learned District judge was giving his decision would be applicable to his case. In other words if there was any change in the law during the pendency of the appeal the learned District Judge should have decided in accordance with that changed law. Reliance is first of all placed on -- 'quitter v. Mapleson', (1882) 9 QBD 672 (C), where a landlord brought an action to recover the demised property under a proviso of re-entry for breach of a covenant to insure. Relief was claimed under a statute and a judgment was obtained by the plaintiff on the 4th July 1881, but a stay of proceedings was granted and the plaintiff did not get possession. On the 1st of January 1882 the

Conveyancing and Law of Property Act came into operation which was before the appeal was heard, and it was held that assuming the judgment of the first Court to have been correct according to the law as it then stood, the Court of Appeal could grant to the tenant the relief to which he was entitled according to the law as it stood at the hearing of the appeal and the Court of Appeal was authorised not merely to make an order which ought to have been made by the first Court but to make such further or other orders as the case may require. At page 676 Jessel, M. R. , said: "it was, in my opinion, intended to give appeals the character of rehearings, and to authorise the court of Appeal to make such order as ought to be made according to the state of things at the time. " Bowen, L. J. , said at page 678: "if the law has been altered pending an appeal, it seems to me to be pressing rules of procedure too far to say that the Court of Appeal cannot decide according to the existing state of the law. " The next case referred to is -- '*attorney-General v. Birmingham, Tame, and Rea District drainage Board*'², where it was held that an appeal to the Court of Appeal is by way of rehearing, and the Court may make such order as the Judge of first instance could have made if the case has been heard by him at the date on which the appeal was heard. At page 801 lord Gorell said: "the Court also has power to take evidence of matters which have occurred after the date of the decision from which the appeal is brought see Order LVIII, Rule 4)It seems clear, therefore, that the Court of Appeal is entitled and ought to rehear the case as at the time of rehearing, and if any authority were required for this proposition it is to be found in the case of ' (1882) 9 QBD 672 (C)'. " I may here point out that Order LVIII Rule 4 of the supreme Court Rules of England corresponds to Order 41, Rule 33 of the Code of Civil procedure in India. The rule accepted by the Federal Court of India is the same. In -- '*lachimshwar Prasad v. Keshwar Lal*'³, it was held that the Federal Court of India as a Court of appeal was entitled to take into consideration legislative changes which had supervened since the decision under appeal was given. At page 6, Gwyer, C. J. , said: "with regard to the question whether the Court is entitled to take into account legislative changes since the decision under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that, which, I think, commends Itself to all three members of this Court. " and this rule was laid down in two cases. In -- '*patterson v. State of Alabama*'⁴, Chief Justice Hughes said: "we have frequently held that in exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the cases as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. " ;

Cases Referred.

1(1942) AC 206 (B)

21912 AC 788 (D)

3AIR 1941 FC 5 (E)

4(1934) 294 US 600 at p. 607 (F)