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 RAM PRASAD
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 ANUNDJI
 & Co.
 GHOSE J.

the time limited by law, this suit abated. And, in my opinion, no sufficient reasons within the meaning of Order XXII, r. 9, sub-rule (2) were or have been shown for setting aside the abatement. The result is that the application succeeds. The applicant will get the costs.

Certified for counsel.

A. P. B.

CIVIL RULE.

Before Chatterjea and Cuming JJ.

H. D. CHATTERJEE

v.

L. B. TRIBEDI.*

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Rent Controller—Rent Controller, Calcutta, whether a Civil Court—Standard rent, application for fixing before expiry of lease—President of Tribunal, jurisdiction of, to revise Rent Controller's order of refusal—High Court's power of revision—Government of India Act (1915, 5 & 6 Geo. V. c. 61.) s. 107—Calcutta Rent Act (Beng. III of 1920) ss. 2 (f) (ii), 18.

Where the Calcutta Rent Controller went into the question of rent, and expressed his opinion that the existing rent was fair, and even stated that the present rent might be the standard rent of the premises in suit under section 2 (f) (ii) of the Calcutta Rent Act, but did not fix the standard rent as the application therefor had been made before the expiry of the lease :—

Held, that the President of the Tribunal had no jurisdiction under section 18 of the Rent Act to revise that order as there had been no decision by the Rent Controller fixing the standard rent.

Held, further, that the Rent Controller was a Court of Civil Jurisdiction, and therefore the High Court had the power of revising the order

* Civil Rule No. 522 of 1921, against the order of S. C. Banerjee, President of the Improvement Trust Tribunal, dated July 25, 1921, rejecting the order of B. D. Banerjee, Rent Controller, dated July 11, 1921.

of the Rent Controller under section 107 of the Government of India Act.

Kali Dasi v Kanai Lal De (1), and *Bata Krishna Pramanik v. A. K. Roy* (2) followed.

Held, also, that there was nothing to prevent an application for fixing standard rent being made before the expiry of a lease.

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CIVIL Rule obtained by H. D. Chatterjee, the applicant.

The facts of this case are fully set out in the judgment of the learned Rent Controller which is as follows:—

“ From the Court of the Controller of Rents, Calcutta.

Orders.

Suit No. 157 of 1921.

Re. premises No. 59B., Lansdowne Street.

Mr. Hari Das Chatterjee—Landlord, Applicant,

v.

L. B. Tribedi—Tenant, Opposite party.

Cross case.

Suit No. 591 of 1921.

L. B. Tribedi—Terant, Applicant,

v.

Mr. Haridas Chatterjee—Landlord, opposite party.

The application in the former suit was presented on the 31st January 1921 and that in the latter was presented on the 25th April 1921 or three months after.

In the former application the applicant alleges that the tenant, L. B. Tribedi, came into occupation of the above premises on one year's agreement from 1st August 1920 to 31st July 1921 at a monthly rental of Rs. 210, *plus* occupier's share of taxes amounting to Rs. 32-12-6 per quarter.

In September 1918 the premises was let out to a zamindar in the District of Mymensingh for a period of four months on a rent of Rs. 225, per month *plus* occupier's share of taxes. In November 1918 when the zamindar occupied the premises there was no compound wall, outhouses, garage, gates, which were subsequently built. The level of the lawn

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on the south was at the time low and water used to accumulate there. There were huts and privies on the south which were subsequently removed in November 1918. There was only one access by the common passage to the premises on the north. Now there is a 40 feet road on the south of the premises. The construction of these two outhouses, stable, compound wall and the filling up the lawn to the south, cost him Rs. 2,500. For the opening of the road to the south he had to pay to the Improvement Trust Rs. 2,500 as betterment fee.

After the zamindar of Mymensingh left, one Surendra Narayan Singha Chaudhry of Begriberi, Assam, who was a friend of the brother-in-law of the applicant's son occupied the premises from January to July 1919 on a monthly rental of Rs. 210: when he vacated he put in Kumar Bahadur of Balihar who occupied it for a year on the same rent. The Kumar left in July 1920.

It is a two storied house consisting of 5 rooms in the first floor, broad inside verandah on three sides, the drawing room having marble floor. The ground floor has exactly similar accommodation. There are 2 bath-rooms and drain connected privies attached to the first floor and one bath room and drain connected privy in the ground floor. There is electric installation in the premises having 23 light points and 8 fan points.

In paragraph 5 of the application the applicant alleges that in view of the above stated facts and circumstances the rent of Rs. 210 per month *plus* occupier's share of taxes is wholly inadequate and unduly low, he is entitled under the law to an increase of 10 per cent. on the rent paid for the house in November 1918 and is further entitled to charge for the improvements mentioned above and also the change in the condition and surroundings of the house.

In case No. 591 of 1921 in which the tenant was the applicant and the landlord was the opposite party notice issued as usual to the opposite party asking him to file written statement on the 20th May 1921. On the 30th April 1921 the opposite party filed the written statement in paragraph 2 of which it is stated all the talks about occupying the house for one year did not take place with the landlord's son and agent but had previously taken place with the landlord's cousin-in-law, Babu Sashti Das Chatterjee, and repeated with the landlord's son.

In his examination in chief the son of the applicant, Mr. R. K. Chatterjee, who is a Bar-at-Law of the Calcutta High Court says—"my maternal uncle Sasthidas Chatterjee settled the lease of the house with Mr. Tribedi. Sasthidas Chatterjee afterwards told me that he had agreed to let out the house to Mr. Tribedi at Rs. 210 *plus* occupier's share of taxes." Sasthidas Chatterjee, cousin-in-law of the landlord, says—"He, Mr. Tribedi

came to our house to take lease of 59B., Lansdowne Road. The house was occupied at the time. He asked me the rent, I said 'Rs. 210.' He said he would take it for one year. I said let Mr K. K. Chatterjee come in the night. I told R. K. Chatterjee that I have promised to let out the house to Tribedi at Rs. 210. He seemed to be displeased with me. At last he agreed to let the house to the tenant."

It is to be seen (i) whether Sasthidas Chatterjee was authorised to let out the house, (ii) whether he actually did so.

Sasthidas Chatterjee says—"I live at home, occasionally I come to Phowanipur and I live with R. K. Chatterjee. I live in Haripal in the district of Hughli. I don't stop at Calcutta for more than two or three days at a time. Mr. Chatterjee was not at home when Tribedi came to arrange for the lease of the house. I did not promise to any other man to let out the house to him. I did not give the tenent anything in writing. I told Tribedi that he should come to Mr. Chatterjee the next morning and finally arrange with him the lease of the house and commit it to writing. I told this to him as Mr. Chatterjee might not agree to let out the house at Rs. 210. Early in the morning I left for home. Excepting the lease of this house I did not make promise to anyone."

From the above it will appear that Sasthidas Chatterjee did not agree to let out the premises to the tenant at Rs. 210. He simply told him to come to the son of the landlord to settle the lease finally with him. Besides it was not at all likely that when the son of the landlord who was a Bar-at-Law who was on the spot occupying the adjoining house and when he had gone out in the evening probably for a walk or on visit to a friend, a distant relation who was an ordinary villager and a casual visitor would take upon himself the responsibility of letting out the premises at a particular rent which according to the applicant's son was wholly inadequate or unduly low.

If it were a fact that the cousin-in-law of the applicant settled the rent and promised to let out the premises to the tenant at the said rent and his son out of respect to his maternal uncle's cousin agreed to it, he would have mentioned the fact in the application filed by him on 31st January 1921 and not waited for three months till he took the earliest opportunity to embody it in his written statement filed in the cross case 20 days before the date fixed in the notice for filing it. Even if he had out of respect to the mother's cousin agreed to the rent of Rs. 210 he would not have within six months and long before the expiry of the period of agreement come forward with an application under section 15 of the Act characterising the rent as wholly inadequate and unduly low. The fact is that in his eagerness to let out the premises to a tenant who would evidently rent it for a long period he let it out to him at the rent paid by the previous tenants and

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when afterwards he was taken to task by his father the applicant, who was an eminent lawyer of the Central Provinces, made this application with the hope of obtaining a much higher rent. The introduction of Sasthidas Chatterjee on the scene is undoubtedly an after-thought which struck him after he filed this application. As this rent was fixed in August 1920 after the outhouses, compound wall, etc., had been built the property improved and there had been a change in the condition at the premises by the opening out of a 40 feet road to the south in place of an access by a common passage only, after November 1918 the new premises may be taken to be 'first let out' and the rent taken to be 'first rent.' It may thus be the standard rent of the premises under section 2 (f) (ii). I think this is an unique application of its kind. Rent fixed in the latter part of 1920 is invariably high. Never in any case such rent has been characterized as wholly inadequate and unduly low, specially within the period of such a short lease.

From the above it will appear that in November 1918 Rs. 225 was paid by a zamindar of Mymensingh who rented it for four months only for the treatment of his son. It was necessarily a higher rent than usual. It cannot be doubted that the son of the landlord who was a Barrister of the Calcutta High Court took into consideration the rent he derived previously for the temporary occupation of the premises and the cost of the construction of the outhouses and the payment of the betterment fee before he let out the premises to the opposite party at Rs. 210 in August 1920. There is no evidence to show that it was a concession rent or that the opposite party was an old tenant.

In the circumstances stated above I consider Rs. 210 is the present fair rent of the premises fixed long after the passing of the Rent Act by a professional landlord evidently conversant with the provisions of the Rent Act. I therefore find that the application filed in suit No. 157 of 1921 does not lie, specially as it was presented within the period of the lease, and I dismiss it.

B. D. BANERJEE,

Rent Controller,

11th July 1921.

H. D. Chatterjee, the landlord, then moved the President, Calcutta Improvement Trust Tribunal, under section 18 of the Calcutta Rent Act in revision of the order of the Rent Controller. On this

application being rejected, the landlord moved the High Court and obtained this Rule.

Babu Surendra Madhab Mallik, for the petitioner.

Babu Charu Chandra Biswas and *Babu Manindra Kumar Bose*, for the opposite party.

Cur. adv. vult.

CHATTERJEA AND CUMING JJ. This is a Rule calling upon the opposite party to show cause why the application (made by the petitioner) under section 18 of the Rent Act for revision of the order of the Rent Controller should not be heard by the President of the Improvement Tribunal; or, in the alternative, why the order of the Rent Controller should not be set aside and such other order passed as to this Court may seem proper.

It appears that the petitioner applied to the Rent Controller for fixing the standard rent of certain premises occupied by the opposite party as tenant. The Rent Controller discussed certain matters in his judgment and was of opinion that the rent paid by the tenant was fair, but he did not fix the standard rent and dismissed the application. The petitioner then applied to the President of the Tribunal under section 18 of the Rent Act. The learned President held that the order of the Controller could not be regarded as a decision fixing the standard rent of the premises concerned, and that section 18 of the Act did not confer any jurisdiction upon him to revise such an order. The petitioner thereupon obtained this rule.

As there was no decision by the Rent Controller fixing the standard rent, the learned President was right in holding that he had no jurisdiction under section 18 of the Rent Act to revise the order.

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The next question is whether the order of the Rent Controller should be set aside by us and he should be directed to fix the standard rent.

A preliminary objection has been taken by the opposite party to the hearing of this Rule on the ground that the Rent Controller is not a Court of Civil Jurisdiction, and that even if he is, the High Court has no power of revising his orders.

Now rule 24 of the Rules framed by the Local Government under section 23 of the Calcutta Rent Act, lays down that in all proceedings before them under the Act, the Controller and the President of the Tribunal shall have all the powers possessed by a Civil Court for the trial of suits. See also rule 4 which says that in making inquiries under the Act, the Controller or President of the Tribunal shall follow, as nearly as may be, the procedure laid down in the Code of Civil Procedure, 1908, for the regular trial of suits, the substance only of the evidence being recorded as in appealable cases.

It is clear, therefore, that the Rent Controller is a Court of Civil Jurisdiction. The same view has been taken in Civil Revision Case No. 322 of 1921 [*Bata Krishna Pramanik v. A. K. Roy* (1)].

Then the question is whether the High Court has the power of revising the order of the Rent Controller under section 107 of the Government of India Act.

There is no doubt that under section 15 of the Charter Act (now section 107 of the Government of India Act), the High Court has powers of superintendence over all Courts subject to its Appellate Jurisdiction.

The question whether the High Court has the power of revising the orders of Courts (other than Civil Courts) exercising Civil Jurisdiction under its

general powers of superintendence under section 15 of the Charter has been considered in several cases in connection with orders of the Collector's Court under Rent Act X of 1859, and under the Land Acquisition Act. One of the earliest cases on the point is *Govind Coomar Chowdhuri v. Kristo Coomar Chowdhuri* (1) where it was held by the Full Bench that the High Court has the power of revising an order of the Deputy Collector under Act X of 1859. In the case of *Nilmoni Singh Deo v. Taranath Mukherjee* (2), it was held by the Judicial Committee that the High Court has power to interfere with the orders of the Collector under Act X of 1859. See also the case of *Chaitan Patjosi Mahapatra v. Kunja Behary Patnaik* (3). Then, again in proceedings under the Land Acquisition Act, it has been held that the order of the Collector when acting judicially is subject to revision by the High Court. See the *Administrator-General of Bengal v. The Land Acquisition Collector, 24-Pergannas* (4) and *Krishna Das Roy v. Land Acquisition Collector of Pabna* (5).

Under the Calcutta Rent Act, in the recent Civil Revision case No. 401 of 1921 [*Kali Dasi v. Kanai Lal De* (6)] the High Court, Appellate Side, revised an order of the Rent Controller; and in Civil Revision case No. 322 of 1921 [*Batu Krishna Pramanik v. A. K. Roy* (7)], it revised an order of the President of the Tribunal.

It is to be observed that under section 18 of the Rent Act, an application against the decision of the Controller fixing the standard rent is to be made to

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(1) (1867) 7 W. R. 520 ;

B. L. R. Sup. 714.

(2) (1882) I. L. R. 9 Calc. 295.

(3) (1911) I. L. R. 38 Calc. 832 ;

15 C. W. N. 863.

(4) (1905) 12 C. W. N. 241.

(5) (1911) 16 C. W. N. 327.

(6) (1921) 26 C. W. N. 52.

(7) (1921) 26 C. W. N. 30.

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the President of the Tribunal appointed under section 72 of the Calcutta Improvement Act in respect of premises in Calcutta, and such an application in respect of premises outside Calcutta is to be made to the principal Civil Court of Original Jurisdiction in the district. Such principal Civil Court is certainly within the Appellate Jurisdiction of the High Court. As stated above the President of the Tribunal is also within the Appellate (Revisional) Jurisdiction of this Court.

We are accordingly of opinion that this Court has the power of revision under its general powers of superintendence over the Rent Controller's Court under section 107 of the Government of India Act.

The next question is whether in the present case the order of the Rent Controller should be revised.

Now section 15, sub-section (1) lays down that the Controller shall on application made to him by any landlord or tenant, grant a certificate certifying the standard rent of any premises leased or rented by such landlord or tenant, as the case may be.

The Rent Controller has in the present case gone into the question of rent, and has expressed his opinion that the existing rent is fair, and even in one place of his judgment, he has stated that the present rent may be the standard rent of the premises under section 2 (f) (ii), but he has not fixed the standard rent. If he had fixed the standard rent, the petitioner might have asked the President of the Tribunal to revise the order under section 18 of the Act.

It is contended on behalf of the opposite party, that the petitioner applied for *fixing* the standard rent and not for *certifying* the standard rent. But the standard rent cannot be certified unless it is first fixed.

The Rent Controller says that the application does not lie because it was made before the expiry of the lease. We do not see, however, anything to prevent an application being made before the expiry of the lease for fixing the standard rent.

We are of opinion that the Rent Controller was asked to fix the standard rent and certify it under the provisions of section 15 of the Act.

We do not express any opinion on any question as to the merits of the case which must be dealt with by the Rent Controller.

We accordingly set aside the order of the Rent Controller and direct him to fix the standard rent according to law. Costs, two gold mohurs, to abide the result.

We trust the case will be taken up by the Rent Controller as early as possible.

Rule absolute.

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