CIVIL RULE.

Before Suhrawardy and Page JJ.

1924

Jan 22.

F. D. BELLEW

v.

T. ELKE *

Standardization of Rent—Calcutta Rent Act (Beng. Act III of 1920)—Application by tenant for standardization of rent—Subsequent determination of tenancy—Maintainability of the application.

An application properly initiated under the Rent Act for the standardization of rent does not lapse merely because at the date when the application is heard, the applicant has ceased to be the landlord or tenant of the premises in question.

THIS was a Rule for setting aside an order of the Rent Controller dismissing an application by the tenant, F. D. Bellew, for fixing standard rent, on the ground that he was no longer a tenant at the time of the hearing of the application.

Babu Mahendra Nath Roy and *Babu Lalit Mohan Sanyal*, for the tenant petitioner: The question of the liability to pay rent continues although the tenancy may have ceased. The tenant has a right to recover excess amount paid, if the standard rent is assessed at a lower sum; the Rent Controller ought to have assessed the standard rent.

Babu Bepin Chandra Mallik, for the landlord, opposite party. Only a landlord or a tenant can apply, the matter ought to be decided with reference

* Civil Rule No. 809 of 1923.

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to circumstances at the time of the hearing of the application. The relationship must subsist till that time; otherwise the party in actual occupation may be affected by the standardization without getting a chance of a hearing, there may also be two applications, one by the existing tenant and one by the old tenant, and this will lead to confusion. The application was rightly dismissed.

Cur. adv. vult.

SUHRAWARDY J. In this Rule we are asked to revise the order of the Rent Controller, dated the 6th July 1923, in Standard Rent Case No. 673 of 1922 dismissing the application of the petitioner under section 15 of the Calcutta Rent Act, III of 1920. The facts are that the petitioner was a tenant under the opposite party in respect of premises No. 24, Royd Street, for six months from the 5th August 1922. On the 31st of October 1922 the petitioner applied to the Rent Controller to have the standard rent fixed. The case was adjourned from time to time and it took 8 months to come to a hearing. On the 30th June 1923 the petitioner was evicted under a decree of the Calcutta Small Cause Court. That decree was passed on the 14th May 1923 on the ground that the tenant had not paid rent and was an insolvent. On the 6th July 1923 the petitioner's application under the Rent Act was dismissed. The ground upon which the application has been dismissed is that the petitioner having ceased to be a tenant in respect of the premises for which he had applied for standardization of the rent the case could not go on. No authority has been cited for this view, but the learned Rent Controller has felt himself bound by a certain ruling of the President of the Improvement Trust Tribunal who under the Act

has been vested with revisional authority over the Rent Controller.

Under the Act a tenant is empowered to apply to the Rent Controller to have the standard rent of a premises fixed. It is conceded by the learned vakil for the opposite party that there is nothing in the Act which indicates that the proceedings under it come to a determination as soon as the relationship of landlord and tenant between the parties has ceased. But it is argued that in consideration of the general scheme of the Act it must be so. I am unable to accede to this proposition. I find on a close scrutiny of the Act nothing in it to justify the dropping of a proceeding which has been started regularly under the Act because one of the parties was not at the date of the hearing occupying the position which he did at the commencement of the case. In my opinion, when a case has been regularly started, there must be some direct provision in law to disqualify it from being carried to the end. Reference has been made to certain provisions of the Act. Section 8 has been referred to as indicating that when there is an enhancement of rent on the application of the landlord he cannot recover it until after the expiration of one month after the landlord served on the tenant a notice in writing of his intention to increase the rent. I do not think that this provision lends support to the contention of the landlord. Then reliance has been placed upon section 14 which provides that when a tenant has overpaid the landlord and then rent is subsequently reduced he may recover the amount from the landlord and may deduct it from any rent payable within six months. It is contended that this indicates that the relationship of landlord and tenant must continue even after the Rent Controller has fixed the rent. It may be so, but that section provides

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that this is one of the modes of recovering money paid to the landlord more than what was due to him, as it is especially mentioned that this remedy is without prejudice to any other method of recovery. A person who has ceased to be a tenant has under the general law a right to recover any overpayment made to the landlord.

In support of my view reference may be made to section 15, clause (4), which says that before exercising any of the powers conferred upon him by this Act the Controller shall give notice of his intention to the landlord and tenant "if any." The words "if any" indicates that it is possible that when the time comes for the Rent Controller to give notice of his intention under the Act one of the parties may have ceased to be either a landlord or a tenant.

It is also argued on behalf of the opposite party that the application before the Rent Controller was not maintainable inasmuch as the new tenant, who was brought on the premises after the petitioner had left it, ought to have been made a party because any decision in this case will be binding upon him. I do not see much force in this contention. The Act does not make it obligatory upon the applicant for standardization of rent to make all persons interested in the litigation parties to the proceeding except the landlord; and this view finds support from section 15, clause (4), of the Act which provides that the Rent Controller shall duly consider any application received by him from any person interested. The new tenant, if he so chooses, may make an application to the Rent Controller to be heard at the time of the hearing of this case I may also refer in this connection to the provisions of Order I, rule 9, Code of Civil Procedure, which provides against the dismissal of a case for want of proper parties.

I may add that a copy of this Rule was also served on the Rent Controller and he has submitted his observations. He seems to be now of opinion that he was not right in dismissing the case. He has, however, followed a decision of the President of the Tribunal which he considers to be binding upon him. He has asked us to express an opinion as to how far he is bound by the ruling of the President. In this case it is not necessary for us to decide that question.

In the result this Rule should, in my opinion, be made absolute; the order of the Rent Controller dated the 6th July 1923 set aside and the case sent back to him for a rehearing according to law. Costs will abide the result. I assess the hearing fee in this Court at two gold mohurs.

PAGE J. I am of the same opinion. On the 30th October, 1922, the petitioner applied to the Rent Controller that the rent of the premises of which he was then a tenant might be standardized under section 15 of the Calcutta Rent Act. On the 19th June 1923 the hearing of the application was adjourned until the 6th July 1923. Meanwhile, on the 14th May, a decree was passed by the Court of Small Causes ejecting the petitioner from the premises and on the 30th June he vacated the premises. When the case was called for hearing on the 6th July 1923 the Rent Controller dismissed the application on the ground that the applicant was no longer tenant of the premises. The question which we have to determine is whether or not he had jurisdiction to make that order. The determination of this issue does not appear to me to present any real difficulty. It is true that an application for the standardization of rent under section 15 must needs be made by a landlord or by a tenant of the premises in question. In this case the application

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was made by the tenant. There is nothing in the Act which provides that the application shall become inoperative although properly made in the first instance, because subsequently to the making of the application but before the rent was standardized, a change of tenant has taken place. In this case it would not appear upon the evidence as placed before us that the petitioner had any right to recover the difference between the rent which he had paid and the standard rent which under the application might be assessed, because the last payment of rent which was made by the petitioner was in February 1923, in respect of the period ending with the 31st January 1923, and under section 14, sub-section (*1*) of the Act it is provided that "where any sum has after the "commencement of the Act been paid on account of "rent being a sum which is by reason of the provisions "of this Act irrecoverable, such sum shall at any time "within a period of six months from the date of pay- "ment be recovered by the tenant by whom it was paid "from the landlord receiving the payment." But we are invited to decide this issue irrespective of the rights which had accrued, or may accrue under the Rent Act to the petitioner. In my opinion, under circumstances such as those in this case the Controller is under an obligation to grant a certificate certifying the standard rent; and for this reason that if in such circumstances the Rent Controller does not proceed to certify the rent, and neither the landlord nor a subsequent tenant applies for standardization under section 15, no standard rent will be fixed, the result would be that a tenant who might have applied, while still a tenant, for a certificate of standardization because he was desirous of recovering rent overpaid which was irrecoverable under the Act, would be deprived of an opportunity of making a claim to recover the rent

overpaid because no standard rent in fact was fixed. On the other hand, it is urged on behalf of the opposite party, that if a person who at the time when he made the application for standardization was a tenant, but who before the certificate was issued by the Controller had ceased to be a tenant, was entitled after he had ceased to be a tenant to call upon the Rent Controller to fix the rent, the result might be that the tenant of the premises at the time when the rent was standardized would have no voice in, or opportunity of, placing before the tribunal facts he might think, were material for the purpose of standardizing the rent. In my opinion, there is no substance in this contention, because under section 15, sub-section (*4*), of the Act the Rent Controller "before" exercising any of the powers conferred on him "by this Act shall give notice of his intention to the "landlord and tenant, if any, and shall duly consider "any application received by him from any person "interested within such period as shall be specified in "the notice." It would be open on this application to the present tenant, if he elected so to do, to apply to the Rent Controller to be heard on the question as to what was the right sum to be fixed for the standard rent. In these circumstances it seems to me that if the contention of the opposite party were held to be valid, injustice might result to persons who were tenants at the time when they made the application for the standardization of the rent, whereas, if the Rent Controller in such circumstances as those prevailing in this case were to continue the proceedings, and to certify the standard rent, no hardship, so far as I can see, would result to anybody. In my opinion, therefore, this Rule should be made absolute in the sense in which my learned brother has stated.

A. S. M. A. *Rule absolute; case remanded.*