CIVIL RULE.

Before Cuming and B. B. Ghose JJ.

S. G. P. SINGH

v.

PRABODH KUMAR DAS.*

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Dec. 14.

Standard Rent—"Premises", meaning of—If house consisting of different blocks is "premises" within the meaning of the Calcutta Rent Act—Expenditure made by a third person, if can be taken into consideration in fixing the Standard Rent—Calcutta Rent Act (Beng. III of 1920), ss. 2 (e), 5, 15, cl. (e), prov. (ii).

It cannot be said that because a house consists of different blocks, consisting of servants' quarters, out-office, garage and the main building, it is not "premises" within the meaning of s. 2, clause (*e*) of the Calcutta Rent Act.

The expenditure to be taken into account, under s. 15, clause (*e*), proviso (*ii*), read with s. 5, must be made by the landlord who applies for standardisation of rent or against whom an application for standardisation has been made.

CIVIL RULES obtained both by the sub-tenant and the lessee-landlord.

One S. G. P. Singh was a tenant under the lessee-landlord, Prabodh Kumar Das, of premises Nos. 5 and 6, Shibnarayan Das Lane, Calcutta, *minus* 6 rooms (being premises No. 6, Shibnarayan Das Lane). Prabodh Kumar Das was the lessee of the entire premises, viz., Nos. 5 and 6, Shibnarayan Das Lane, under the owner Ramkissen Dalmia. The sub-tenant's tenancy commenced from the 1st December, 1923, at a rent of Rs. 300 per month, inclusive of taxes, while under a lease, the lessee was paying at the rate of Rs. 150 per

* Civil Rules Nos. 818 and 1020 of 1925 against the order of S. C. Banerjee, President of the Improvement Tribunal, Calcutta, dated June 13, 1925.

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month, inclusive of taxes, for a period of five years commencing from the 1st August, 1923.

In February, 1924, the sub-tenant applied to the Controller of Rents for fixation of Standard Rent, making the lessee the first opposite party and the owner the second party. The owner did not appear and did not take any interest in the proceedings before the Controller or in the subsequent proceedings in revision before the President of the Tribunal.

The lessee filed his written statement before the Controller contending that the rent in November, 1918, was unduly low and that considerable additions and improvements had been made to the demised premises by the owner since November 1, 1918.

The Controller fixed the Standard Rent at Rs. 155 per month, inclusive of taxes, holding the rent to have been unduly low in November, 1918.

Thereupon the lessee applied to the President of the Tribunal to revise the order of the Controller on the ground that the Controller had not taken into account the improvements that had been made in the premises. The owner not appearing in these revision proceedings, the case was contested between the lessee and the sub-tenant.

The lessee gave oral evidence of an engineer showing that the additions and improvements made to the demised premises by the owner were likely to have incurred an expenditure of about Rs. 18,000 and claimed statutory allowance thereon under section 5 of the Calcutta Rent Act. The lessee also contended that the rent in November, 1918, was unduly low and that, as the demised premises consisted of three separate blocks of buildings on three sides of the courtyard, the demised premises did not come within the scope of the definition of the term "premises" in the Calcutta Rent Act.

The President held that the premises demised did come within the scope of the Calcutta Rent Act, that the rent in November, 1918, was not unduly low and that the lessee was entitled to the statutory increase on the amount of expenditure incurred by the owner in effecting the additions and improvements to the demised premises. The President found that the rent of the premises in November, 1918, worked out to Rs. 73, which increased by ten per cent., would be Rs. 80 as the Standard Rent. In his view of the case the President fixed the Standard Rent at Rs. 80 *plus* Rs. 150 for statutory allowance, *i.e.*, at Rs. 230 per month.

Both the sub-tenant and the tenant, thereupon, moved the High Court and obtained Rules calling upon the other side to show cause why the order of the President should not be set aside. Both the Rules were heard together.

The case for the lessee was heard first.

Mr. Amulyacharan Chatterjee, Advocate (with him *Babu Apurba Charan Mukerjee*), for the lessee. The demised building, consisting of separate blocks, did not constitute "premises" as defined in the Calcutta Rent Act and as such the Courts below had no jurisdiction to fix any Standard Rent.

The demised premises was in the course of construction at the time of the commencement of the Act, inasmuch as the out-houses were constructed from the foundation in 1921 and 1922 and as such the Calcutta Rent Act did not apply to such premises.

The President had jurisdiction to fix one Standard Rent for all the parties and, as such, in the case between the lessee and the sub-tenant, he properly granted the statutory allowance in favour of the lessee in fixing the Standard Rent. Section 5 of the Calcutta

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Rent Act applies to this case, even in the absence of the owner in the proceedings, and although the expenditure was not incurred by the lessee himself, but by the owner, the lessee can get the benefit of the same in getting the Standard Rent fixed in Court against his tenant.

Babu Hiralal Ganguli, for the sub-tenant. The demised premises, although consisting of separate blocks of building, did constitute a premises, as defined in the Calcutta Rent Act, as it formed the subject matter of a single tenancy.

The inner part of the demised premises, viz., the out-houses, although erected during the operation the Calcutta Rent Act, did not take away the demised premises from the scope and jurisdiction of the Calcutta Rent Act. The major and substantial portion of said premises having been in existence from before November, 1918, and this question being purely one of fact and the Courts below having found against the lessee on this point the High Court should not interfere with this decision on a question of facts.

The provisions of section 5 of the Calcutta Rent Act enabled the party, who actually incurred the expenditure, to get the Standard Rent increased in the shape of statutory allowance as provided in that section. The lessee, who admittedly did not incur any such expenditure, could not avail himself of the benefits of section 5 as against his sub-tenant. Section 5 did not apply to the facts of the case and the President acted without jurisdiction in misconstruing this section and applying the same in favour of the lessee and to the prejudice of the sub-tenant. The owner not being the "landlord" of the sub-tenant, the expenditure incurred by him did not render the sub-tenant liable for any increase of Standard Rent as

contemplated within the meaning of section 5 of the Calcutta Rent Act.

Cur. adv. vult.

GHOSE J. These two Rules arise out of the same proceedings taken before the Rent Controller at the instance of a sub-tenant for fixing Standard Rent with regard to certain premises against his own landlord, the tenant under the superior landlord. These two persons will be called tenant and landlord henceforth. The Rent Controller fixed the rent of the premises, which is called premises No. 6, at Rs. 155 per month, including the occupier's share of taxes, as the Standard Rent. The landlord made an application for revision before the President of the Tribunal. The President framed several issues in his Court and he has fixed the Standard Rent at Rs. 230 per month, inclusive of taxes. The landlord has obtained a Rule against the decision of the President: it is numbered 1020. The tenant has also obtained a Rule against the same decision, which is Revision Case No. 818. It will be convenient to dispose of the Rule obtained by the landlord first. The arguments addressed on his behalf by his learned advocate are three-fold. The first is that the subject matter of these proceedings cannot be called "premises" within the meaning of section 2 (*e*) of the Rent Act and therefore Standard Rent could not be fixed for it. The contention is that the premises referred to does not consist of *a* building but *several* buildings. This argument is based upon the fact that on the western portion of the land leased to the tenant, an old structure was pulled down to a certain extent and new structures were built in its place. This was done before the lease was given to the tenant. Both the Courts below rejected this argument. The learned President says, with regard to

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one of the blocks, that some old doors and windows have been replaced, a small *verandah* has been constructed and some other changes have been made. And he further says "that the building on the west of the courtyard was constructed on the site of an old structure. The evidence is that the western block has lower rooms than the main building and is used ordinarily as servants' quarters and kitchen". His finding is that the premises constitutes one building and the fact that it consists of different blocks does not take it out of the definition of "premises" in the Rent Act. With this conclusion I entirely agree. It cannot be said, because a house consists of different blocks, consisting of servants' quarters, out-office, garage and the main building, that it is not "premises" within the meaning of the Act.

The second contention of the learned advocate for the landlord is that the Rent Act does not apply to the premises in question as it was in the course of erection at the time of the commencement of the Rent Act, as provided by section 25 of the Act. This, as the learned President has observed, is a pure question of fact and he has come to the conclusion upon the evidence that the premises in question was not either erected after the commencement of the Act, nor was it in the course of erection at the commencement of the Act. We cannot interfere with this finding in revision and the decision of the President of the Tribunal must be accepted.

The third point is rather complicated and it arises in this way, that the Rent Controller in fixing the Standard Rent of the premises in question takes into account the rent assessed by the municipality in 1915 with regard to the premises in question as well as another holding which is No. 5. This was taken to be Rs. 110. The Rent Controller

finds that if in 1915 these two premises had been in the same condition as they are now, the rent could have been Rs. 165 inclusive of taxes. Having come to this opinion, he takes the fact into consideration that the rent of No. 5 in 1915 was assessed by the municipal authorities at Rs. 25 and for No. 6, Rs. 85 per month. Then he calculated that the present rent of No. 5 should be taken as Rs. 27 per month. Deducting that amount from what would be the Standard Rent of the two premises according to his view, which was Rs. 182 per month, he fixed the Standard Rent of No. 6 at Rs. 155 per month. As against this, the tenant did not present any petition for revision to the President of the Tribunal, but the landlord did. In disposing of this matter, the President of the Tribunal did not take the municipal assessment of rent of Rs. 110 as the basis for fixing the Standard Rent, but he took the actual rent received by the landlord which was Rs. 95 for the two premises, as the basis, and from that he worked out the proportion which should be assessed for No. 6, that is the premises in question, and he found that it ought to be Rs. 73 per month, and on that figure the President added Rs. 150 on account of the expenditure on improvements and thereby he arrived at the figure of Rs. 230 as the Standard Rent. The objection on behalf of the landlord is that he should have proceeded not upon the basis of the rent actually received in 1918, that is Rs. 95, but upon the basis taken by the Rent Controller, as the tenant did not object to that. This would only lead to a difference of Rs. 12 per month over the rent fixed, assuming that the principle on which the Standard Rent has been fixed by the President was correct, but as I am going to state later on why this mode of fixing the Standard Rent adopted by the President cannot be

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accepted, it is unnecessary to decide this question. The Rule, therefore, obtained by the landlord should be discharged with costs, hearing fee being assessed at five gold mohurs.

Now I come to the Rule obtained by the tenant and his objection is based on this :—The owner of the premises, who is described as one Dalmia, has spent certain sum of money in making improvements and the President of the Tribunal found that it would amount to about Rs. 18,000. The President was of opinion that this was the expenditure made by the landlord within the meaning of section 5 and section 15, sub-section 3, clause (*e*) of the Rent Act and he has added Rs. 150 per month on the basis of the expenditure made on improvements on the rent payable by the tenant. The contention on behalf of the tenant is that the expenditure was not made by his landlord and therefore those sections of the Rent Act do not apply to the present case. It seems to me that this contention is sound. The definition of "landlord" includes a tenant who sublets any premises. Therefore the person from whom the sub-lessee took his lease was his landlord, although he might be himself a tenant of a third person. It has not been found that the landlord of the sublessee has incurred any expense on the improvements and therefore section 5 of the Rent Act does not apply to him. It is contended on behalf of the opposite party that section 15, sub-section 3, clause (*e*) does not refer to any improvement made by the landlord, but refers to a change in the condition of the premises and, therefore, if any change is made in the condition of the premises by whoever it may be, that should be taken into consideration, in fixing the Standard Rent. That, however, can hardly be a proper construction of the section. Section 15 commences by a reference to the fact

that the Standard Rent should be fixed on the application by the landlord or tenant, and in Proviso (2) of clause (*e*), it is enacted that the Controller shall not increase the rent by more than 10 per cent. per annum on the amount spent on the improvement or structural alteration of the premises as provided for section 5. This implies that the expenditure to be taken into account must be made by the landlord who applies for standardization of rent or against whom an application for standardization has been made. In my opinion, therefore, the learned President was not correct in taking into consideration the expenditure made by Dalmia for the purpose of making improvements on the premises in fixing the Standard Rent.

It is contended by the learned advocate for the opposite party that the superior landlord would be entitled to have the expenditure made for the improvements taken into consideration in an application made by that landlord for fixing the Standard Rent as against himself and it would lead to anomalous results if the expenditure for improvements is not taken into consideration in fixing the Standard Rent as between himself and his sub-tenants. It is not necessary for us to consider in this case whether the result would be anomalous in any way. It seems to me upon the plain construction of the sections of the Rent Act that the expenditure made by a third person cannot be taken into consideration in fixing the Standard Rent as between these two contending parties before us. This Rule, therefore, is made absolute. The Standard Rent fixed by the President of the Tribunal is set aside and the decision of the Rent Controller fixing the Standard Rent at Rs. 155 per month including the occupier's share of the taxes is restored. The applicant will be entitled to his costs—hearing fee three gold mohurs.

CUMING J. I agree.

S. M. *Order set aside.*