CIVIL RULE.

Before Cuming and B. B. Ghose JJ.

L. R. COUNSELL

v.

SUKUMARI DEBI.*

1925

Nov. 16.

Revision—Nature of revision—Point not raised before the Rent Controller, if can be considered by the President of the Tribunal—Jurisdiction of President to start new case—Calcutta Rent Act (Beng. III of 1920), ss. 18, 24.

It is a wrong application of the word "revision" to say that although the decision of the Rent Controller was not sought for on a particular question it was open to any of the parties, by an application for revision to the President of the Tribunal, to start a new point altogether and to have his decision.

The President of the Tribunal is bound to follow the procedure laid down in section 24 of the Calcutta Rent Act in revising a decision of the Rent Controller. The President cannot treat the application for revision as a suit irrespective of what was done before the Rent Controller. Where there is a decision of the Controller on a particular question, the President in revising that decision may take further evidence and come to his own conclusion having the decision of the Controller before him.

CIVIL RULE obtained by the tenant.

In 1922, the petitioner took a lease for five years of the upper flat of No. 6, Rawdon Street, Calcutta, and a "pleasure garden" at Russa from the opposite party, Sukumari Debi, on a monthly rent of Rs. 450. Afterwards, the opposite party, not having put the petitioner in possession of the "pleasure garden," the petitioner applied before the Rent Controller, to fix standard rent of the upper flat of premises No. 6, Rawdon Street. The Controller, upon the evidence before him, found the rent of the identical premises to have been Rs. 235 per month in November, 1918

* Civil Rule No. 1085 of 1925, against the order of S. C. Banerjee, President of the Calcutta Improvement Tribunal, dated Aug. 17, 1925.

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and fixed standard rent at Rs. 259 after allowing the statutory increase.

Against this order, the opposite party moved the President of the Tribunal in revision and he held that as a plot of land at Russa had been demised along with the plot in question, the subject matter of the lease was not a premises within meaning of clause (*e*) of section 2 of the Calcutta Rent Act, and therefore neither he nor the Controller had any jurisdiction to deal with the case at all. He, accordingly, discharged the order of the Controller.

Thereupon the petitioner obtained a Rule from the High Court which was made absolute and the case was sent back to the President for decision upon other issues raised in the case.

Upon remand before the President, the petitioner adduced the evidence of the former tenant of the flat who had been in occupation from 1916 to 1918 on a rent of Rs. 235 per month and produced the rent receipts granted by the opposite party's husband, who was then the owner of the house. But the President, relying upon certain previous orders of the Rent Controller between different parties in respect of a portion of the premises in question which had not been produced before the Rent Controller, held that the rent of Rs. 235 a month had been unduly low and fixed standard rent at Rs. 350 a month.

The petitioner then moved the High Court again and obtained this Rule.

Dr. Dwarkanath Mitter (with him *Babu Hiralal Ganguli*), for the petitioner. The President misdirected himself in taking into consideration a higher rent which had been agreed to be paid by a previous tenant on compromise with the landlord and which was not fixed by the Controller to show that the rent was

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unduly low. There had not been such evidence before the Controller and he had not exercised his discretion on the point and he had not given his decision upon it. There was, therefore, nothing to be revised by the President under section 18 of the Calcutta Rent Act. The President no doubt could revise the decision of the Controller. He could not, however, exercise his discretion in revision on a new matter not decided by the Controller, who, under the Act, was the only authority to exercise such a discretion.

Sir Provash Chandra Mitter (with him *Babu Hiralal Chakrabarty*), for the opposite party. The Controller is not exactly a Court. He is rather an enquiring officer. He is not bound to record any evidence or raise issues in a case. The proceedings before the President are in the nature of a retrial before a higher Court: *Robeiro* v. *Jacob* (1). The President decided upon fresh pleadings and upon fresh evidence and not upon the pleadings and evidence before the Controller. The President was not exactly a revising Court. The Calcutta Rent Act contemplated such a procedure, viz., that of adducing fresh evidence before the President, even when he revises an order of the Rent Controller. Such a procedure has been, as a matter of fact, followed since the Act came into existence. I concede that the legality of such a procedure is questionable and it has not yet been considered by the High Court. Lastly, I contend that the standard rent fixed in the case between Tuni Meerza and Wishart, the case relied on by the President, was a judgment *in rem* and could certainly be relied on by the President.

B. B. GHOSE J. This case came before this Court once on a previous occasion from a decision of the

(1) (1923) 27 C. W. N. 569.

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President of the Tribunal. On that occasion the President had dismissed the application for fixing a standard rent on the ground that the demised premises did not fall within the provisions of the Calcutta Rent Act. The decision of the learned President of the Tribunal was set aside by this Court and the case was sent back to him for trial of the other issues involved in the case.

The present Rule was obtained by the tenant for the revision of the judgment now pronounced by the President fixing the standard rent in revision of the standard rent fixed by the Rent Controller.

Before the Rent Controller the relevant question that was raised apparently was that the premises were let out on a higher rent than what was alleged by the tenant on the 1st of November, 1918. The pleader for the landlady made an application before the Rent Controller to the effect that the hearing of the matter should be adjourned till the decision of an appeal arising out of a suit for rent brought in the Alipur Court was decided. This the Controller refused to do. Upon that the pleader appearing for the landlady did not choose to take any part in the proceedings and did not cross-examine any of the witnesses examined on behalf of the tenant, who was the petitioner before the Rent Controller. On the evidence, the Rent Controller found that the premises were let out on a rent of Rs. 235 per month on the 1st of November, 1918, and, adding 10 per cent. to that amount, he fixed Rs. 259 as the standard rent for the demised premises.

The landlady applied for revision of that order under section 18 of the Rent Act on various pleas. A large number of issues were framed by the President. The material finding with regard to the rent at which the premises were let on the 1st of November, 1918, as found by the Controller, was affirmed by

the President of the Tribunal. The learned President then took up for his consideration what were the 5th and 6th issues before him. These had reference to the fact whether a standard rent had been previously fixed with regard to the premises between two persons, namely, Tuni Meerza and Wishart, and to a previous order with regard to the fixing of standard rent of a portion of the building which is now in question, which is said to have been 6/7th of the disputed premises. The President, while observing that fixing of standard rent is an order *in rem*, did not accept the fixing of the standard rent between Tuni Meerza and Wishart as such, on the ground that the order was passed on compromise between the parties. He, therefore, used the fact that the rent was standardized only as a piece of evidence in coming to his conclusion and he made the same use of the standard rent fixed for the portion of the premises. The argument which he used was that in fixing the rent for the portion (6/7th of the demised premises) the Rent Controller took into account what he thought to be proper standard rent of the entire premises. This finding he used for the purpose of coming to his conclusion, which is the vital question in this case, that the rent at which the premises were let on the 1st November, 1918, was too low. There was another fact which he took into consideration in coming to his conclusion and it was that the premises were let out at Rs. 280 in November, 1913.

The decision of the President turned upon the question involved in the 4th issue before him.

The point taken on behalf of the petitioner before us may be shortly stated thus: Under section 15, sub-section (*3*), clause (*d*), the Rent Controller may fix the standard rent at such amount as he deems just, where the rent paid on the 1st day of November,

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1918, was in the opinion of the Controller, unduly low, and the discretion of the Controller is limited by the 1st portion of the proviso (*i*), where it is stated that under clause (*d*) the standard rent shall not be fixed at a higher amount than the highest rent actually paid for the premises at any time since the 1st day of November, 1918. As I have already stated, the procedure followed by the opposite party before the Rent Controller was such that the Rent Controller was not called upon to exercise his judgment and to give his opinion as to whether the rent which was paid on the 1st November, 1918, was unduly low or not. The Rent Controller found the rent as it was on the specified date. There was a dispute as regards the amount of rent paid at the time which he decided in favour of the allegation made by the tenant and which has been found to be correct by the President of the Tribunal. Can the landlady, under such circumstances, by an application for revision of the order of the Rent Controller under section 18 of the Act, start a new point and allege that the rent at that time was unduly low and ask for the opinion of the President and get a standard rent fixed on that basis by the President?

It seems to me that the contention on behalf of the petitioner is sound. I think that under the Act the Controller should first form his opinion whether the rent on the prescribed date was unduly low under clause (*d*) of section 15 (*3*) of the Rent Act; and then he is to exercise his discretion in fixing the standard rent. When he does that it is open to the President of the Tribunal to revise that order on an application made by any of the parties. It seems to me a wrong application of the word "revision" to say that although the decision of the Rent Controller was not sought for on a particular question it was open to any

of the parties by an application for revision to the President of the Tribunal to start a new point altogether and to have his decision, not revising a decision of the Rent Controller, but a new decision of his own for the first time.

It is contended on behalf of the opposite party that section 24 of the Rent Act, which lays down that in revising the decision of the Rent Controller the President of the Tribunal shall follow, as nearly as may be, the procedure laid down in the Code of Civil Procedure for the regular trial of suits, implies that the President can treat the application for revision as a suit irrespective of what was done before the Rent Controller. It seems to me that that is not the proper reading of the section. Although it is difficult to understand what is really meant by that provision, it seems to be clear that the President of the Tribunal is to follow the procedure laid down in 'revising' a decision of the Rent Controller. If there is no decision of the Rent Controller to revise, there is nothing which the President of the Tribunal can revise. Apparently this section lays down that where there is a decision of the Controller on a particular question, the President in revising that decision may take further evidence and come to his own conclusion having the decision of the Controller before him.

It seems to me, therefore, that the President of the Tribunal had no jurisdiction under section 18 or section 24 of the Rent Act to express his opinion as to whether the rent paid on the 1st November, 1918, was unduly low or not in the absence of anything to show that the Rent Controller was invited to express his opinion upon that point.

It has been further argued on behalf of the opposite party that assuming that the President had no

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jurisdiction to fix the standard on the basis that the rent paid on the 1st of November, 1918, was unduly low he has fixed the standard rent after taking into consideration the two proceedings before the Rent Controller to which I have already referred. But the judgment of the President of the Tribunal can hardly be construed in that way. It is quite clear that he treats the decision in both the proceedings as evidence for the purpose of coming to the conclusion that the rent paid on the 1st November, 1918, was too low.

An attempt was made to support the decision of the President of the Tribunal on the ground that the standard rent fixed in the case between Tuni Meerza and Wishart should be considered as a decision *in rem*, because although it is stated in the judgment that the decision was on consent, the Rent Controller was not authorised to fix a standard rent on consent of the parties. That may be so. But it is quite clear that the Rent Controller who had decided that case treated his decision as having been arrived at on consent of parties. If that is so, the President of the Tribunal was quite right in his opinion that it could not operate as a judgment *in rem*. Nor could the decision fixing a standard rent of a portion of the premises be so considered as the two premises are not identical.

In my opinion, therefore, the judgment of the President of the Tribunal cannot stand and must be reversed and the decision of the Rent Controller restored.

The Rule is made absolute with costs. The hearing-fee will be five gold mohurs.

CUMING J. I agree.

S. M. *Rule absolute.*