

(1922) 08 CAL CK 0051
In the Calcutta High Court
Case No : Civil Rule No. 545 of 1922

Asutosh Chatterjee

APPELLANT

Vs

Upendra Chandra Aich of 14, Brindaban Mullick Lane,
Calcutta

RESPONDENT

Date of Decision : 17-08-1922

Acts Referred:

Citation : (1922) 08 CAL CK 0051

Judgement

Chatterjee, J.—This Rule arises out of proceedings under the Calcutta Rent Act, and the question involved is whether the President of the Tribunal is right in holding that an application for revision u/s 18 of the Act could not be made in this case because there was no decision of the controller fixing the standard rent.

2. The landlord stated that the premises were let out at a rent of Rs. 70 the tenant, on the other hand, stated that it was Rs. 50 only. The tenant applied to the Rent Controller for certifying the standard rent.

3. The Rent Controller after a consideration of the evidence came to the conclusion that the rent should not be more than Rs. 50 per month inclusive of taxes, and that the rent was fixed at this rate when the applicant came in, and he made the following order: "Rupees fifty inclusive of taxes is therefore the standard rent of this portion (eastern) of the premises occupied by the applicant under Sec. 2(f)(ii) of the Act.

4. Both parties applied to the President of the Tribunal under Sec. 18 of the Act, and he was of opinion that an application for revision under S. 18 could be made only in cases where the Rent Controller fixes the standard rent under the provisions of S. 15 of the Act, that as the Controller's decision in the present case has been given expressly under S. 2(f)(ii) of the Act, he did not fix any standard rent for the premises and that therefore the order was one which could not be revised under S. 18 of the Act.

5. Now S. 18 provides for an application for revision to the President of the

Tribunal, if the decision of the Controller fixing the standard rent for any premises is questioned. There is no doubt that there was a decision of the Controller in this case. The only question is whether there was a decision fixing the standard rent.

6. The standard rent is defined in S. 2 cl. (f), and it means (i) the rent at which the premises were let on the first day of November 1918, or when they were not let on that date, the rent at which they were last let before that date and after the first day of November, 1915, with the addition, in either case, of ten per cent on such rent; (ii) in the case of any premises which were or shall be first let after the first day of November 1918, the rent at which the premises were or may be first let; (iii) in the cases specified in Section 15, the rent fixed by the Controller.

7. The word "fix" has not been defined in the Act. It no doubt means "to settle" and that is the view which has been taken by the learned President. It also means "to specify "or" to determine" (see the Oxford Dictionary). In the absence of any definition of the word in the Act, we do not see any sufficient reason for limiting the word to the case of settlement of the rent by the Controller, unless there is a clear indication in the Act that the word is used in that restricted sense. We do not and any such indication. On the other hand, reference to some of the other sections would indicate that the expression "fixing" is applicable not only to the cases specified in Section 15, but also cases coming under the 1st and 2nd clauses of Section 2(f). Thus Section 8 provides that "wherever an increase of the rent of any premises is allowable under the provisions of this Act, no such increase shall be recoverable until the expiry of one month after the landlord has served on the tenant a notice in writing of his intention to increase the rent accompanied by a certificate from the Controller fixing the standard rent". It appears from the terms of this section that no increase of the rent, allowable under the Act can be recovered, unless notice be served upon the tenant accompanied by a certificate from the Controller fixing the standard rent. This will cover a case of the rent originally payable on the 1st November, 1918 with the addition of the statutory 10 per cent on such rent.

8. It is contended, however, by the learned Pleader for the opposite party that that Section contemplates a case where the rent exceeds the standard rent because the additional 10 per cent is included in the standard rent under S. 2(f).

9. There is no doubt that the ten per cent is included in the standard rent but the 10 per cent addition is an "increase of the rent" which is allowable under the provisions of this Act, because S. 2(f) is also a provision of the Act, and the Section seems to lay down that no sum in excess of the rent originally payable can be recovered without a certificate from the Controller fixing the standard rent, where of course there is a dispute between the parties.

10. The learned pleader for the opposite party pointed out that S. 8 of the Burma Rent Act (II of 1890) which has been followed by the Calcutta Rent Act, lays down that the certificate of the Controller fixing the standard rent must be

served along with a notice upon the tenant only in cases mentioned in Ss. 5 and 7, but that the clauses (a) and (b) of S. 8 which thus limit the application of the Section, have been omitted from the Calcutta Rent Act. The natural inference however from that omission would be that instead of confining the operation of S. 8 to certain cases i.e. Ss. 5 and 7, the Calcutta Rent Act provides generally for a notice wherever an increase of the rent of any premises is allowed. The learned Pleader also contended that the word "certifying" has been used in the Act as distinguished from "fixing". But the two expressions refer to two different things. The certificate is to be granted after the rent is fixed and it is to be granted to either of the parties. We do not think therefore, that the use of the two expressions leads to the conclusion that the fixing of rent by the Controller can be made only under the provisions of S. 15.

11. It appears therefore that the Act contemplates fixing of the standard rent by the Controller even in cases not coming under S. 15; in other words, in cases coming under S. 2(f)(i): and if the word "fix" has been used in that Section in a particular sense, we must give the word the same meaning in other portions of the Act where it occurs. We are accordingly of opinion that the order under S. 2(f)(ii) of the Rent Controller is liable to revision under S. 18 of the act. The order of the President is therefore set aside and the case is sent back to his Court in order that he may hear the applications made to him by both the landlord and the tenant and dispose of them according to law.

12. The Opposite party, however, must pay the costs of the petitioner, the hearing-fee in this Court being assessed at 2 gold mohurs. The costs in the lower Courts will abide the result.