

(1957) 05 CAL CK 0007
In the Calcutta High Court
Case No : Civil Revision No. 3798 of 1955

Corporation of Calcutta

APPELLANT

Vs

Fulkumaei Dasi

RESPONDENT

Date of Decision : 06-05-1957

Acts Referred:

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 10(1), 17(1), 17(2), 17(7), 7

Citation : (1958) 1 ILR (Cal) 566

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Krishnalal Banerjee, for the Appellant; B.C. Dutt and Sanat Kumar Dutt, for the Respondent

Judgement

Renupada Mukherjee, J.—This Rule is directed against an Appellate order confirming an order passed by the Rent Controller, Calcutta, that a certain standard rent fixed by him would take effect from October 1, 1954.

2. The facts involved in this Rule are not disputed and they may be briefly stated as follows: The Petitioner, which is the Corporation of Calcutta in this case, filed an application before the Rent Controller for standardisation of rent of certain premises which are held by the Corporation under the opposite parties for running a Free Primary School. Admittedly, the premises were in existence on December 1, 1941 and the rent of the premises was Rs. 90 per month at that time. After the West Bengal Premises Rent Control Act, 1948, came into force the above rent was increased to Rs. 111-6 per month by mutual agreement of the parties. Thereafter the present application for standardizations of rent was filed under the West Bengal Premises Rent Control Act, 1950, in the month of September, 1954. There was no difficulty in this case in fixing the standard rent because the rent which prevailed on December 1, 1941, for the same premises was admitted. The Rent Controller, therefore, fixed the standard rent at Rs. 99 per month by allowing an increase of 10 per cent, over the basic rent. He also

directed that the standard rent would take effect from October 1, 1954, that is, from the month next after the month of the filing of the application. Apparently this direction was given under Clause (i) of Section 10(7) of the Rent Control Act, 1950.

3. Against the above order of the Rent Controller an appeal was filed by the Corporation of Calcutta. The landlords also filed a cross-objection. The appellate court dismissed both the appeal and the cross-objection. The Corporation of Calcutta has filed the present revisional application in this Court contending that u/s 17(7) of the Rent Control Act, 1950, the learned Rent Controller should have given a direction that the standard rent would take effect from April 1, 1950, that is, the month following the month in which the Rent Control Act, 1950, came into operation.

4. Mr. Banerjee appearing on behalf of the Corporation of Calcutta submitted before me that the learned Rent Controller has committed an error in law in holding that Section 17(7) of the Rent Control Act, 1950, does not apply to a case of the present description. That Sub-section runs in the following terms:

Such portion of rent as exceeds the standard rent determined according to the provisions of this Act shall be irrecoverable from the month of the tenancy next after the month in which this Act comes into force, whether the said rent was fixed by agreement, or by proceeding under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.

5. On a perusal of the judgment of the learned Rent Controller I find that he is of opinion that Section 17(1) of the Rent Control Act, 1950, has got no application where standard rent is fixed under the provision of Section 9 of the same Act. He seems to be of the opinion that Section 17(7) has got only a limited application to cases where the rent which had already been standardized under the provisions of the Rent Control Act, 1948, is again re-fixed under the provisions of the Rent Control Act, 1950. In my opinion, this contention of Mr. Banerjee that the above view of the Rent Controller is incorrect must be supported. But for reasons given below the Petitioner cannot get any relief. Sub-section (1) of Section 17 of the Rent Control Act, 1950, is quite wide in its terms and the Sub-section applies to all cases where rent is determined according to the provisions of the Act of 1950. Thus, Sub-section (1) of Section 17 not only applies to a case where a standard rent which had already been fixed under the provisions of the Act of 1948 is again re-fixed under the provisions of Sub-section (2) of Section 17 of the Act of 1950, but also to cases where the standard rent is fixed under the provisions of Section 9 of the Act of 1950. It is true that under Clause (i) of Section 10(1) of the Rent Control Act of 1950 where prevailing rent is decreased in fixing the standard rent, the standard rent fixed shall be payable from the month next after the date of application unless for reasons to be recorded by the Controller, he decides that such rent should operate from any earlier or later date. It is also true that in the present case, having regard to the facts and circumstances of the case, the Controller made the standard rent payable from

October, 1954, that is, the month following the date of the application. The provision of Clause (i) of Section 10(1) of the Rent Control Act, 1950, is not, however, in any way inconsistent with the provision of Section 17(1) of the same Act. Under the former provision the Rent Controller has the power to lay down definitely from which month the standard rent would take effect and if he does not give any definite direction, then under the terms of the statute, the standard rent fixed by the Controller shall be payable from the month next after the date of the application. Section 17(1) of the Rent Control Act of 1950 lays down, on the other hand, that such portion of rent as exceeds the standard rent determined according to the provisions of the Act of 1950 shall be irrecoverable from the month of the tenancy next after the month in which the Act of 1950 came into force whether the said rent was fixed by agreement or by a proceeding under the Rent Control Act of 1948. It is quite clear that Section 17(1) of the Rent Control Act, 1960, provides for cases where the landlord has not yet realised any rent from April 1950. In such cases if the rent sought to be realised is in excess of the standard rent determined according to the provisions of the Rent Control Act, 1950, then the landlord can be at once met by a plea of the tenant that the excess rent over the standard rent is irrecoverable. The section, however, does not contemplate or cover cases where the landlord has already realised excess rent over the standard rent. The expression "shall be irrecoverable" makes it clear that the landlord has not yet realised any amount in excess of the standard rent. Where any such excess amount has already been realised, the tenant can come only u/s 7 of the Rent Control Act of 1950 by way of an application for refund made before the Controller, within the time prescribed by the subsection. If a tenant has not made any application for refund of such excess realisation in accordance with the provisions of Section 7 of the Rent Control Act, 1950, he cannot obtain any order in his favour for directing the landlord to pay back any excess amount realised by the latter from April 1950, till the date when the standard rent is made payable by the order of the Rent Controller under Clause (i) of Section 10(1) of the Rent Control Act of 1950. It was admitted in the present case that the opposite parties landlords have already realised rent in excess of the standard rent of Rs. 99 from the Corporation from April, 1950, till September, 1954. As the landlords have already realised the excess amount and as no steps were taken by the tenant-Petitioner to obtain refund in accordance with the provisions of Section 7 of the Rent Control Act, 1950, the Petitioner cannot be given any relief in the present case and the order of the Rent Controller directing that the standard rent would be payable from October, 1954, must be upheld.

6. In the result, this Rule is discharged.

7. Having regard to the circumstances of the case i do not make any order as to costs.