

(1986) 09 DEL CK 0010

In the Delhi High Court

Case No : Second Appeal No. 56 of 1986 and Civil Miscellaneous Appeal No. 2010 of 1986

Rajan Dwivedi

APPELLANT

Vs

M.L. Pareekh

RESPONDENT

Date of Decision : 12-09-1986

Acts Referred:

Citation : (1986) 30 DLT 344 : (1986) RLR 593

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : S.K. Bisaria, Arun Kumar and Neeta Aggarwal, for the Appellant;

Judgement

Sultan Singh, J.

(1) This appeal u/s. 39 of the Delhi Rent Control Act (for short "the Act") is directed against the judgment and order dated 31st January, 1986 of the Rent Control Tribunal confirming the order dated 16th January, 1986 of the Additional Rent Controller fixing the interim rent of the premises in dispute at the contractual rate of rent Rs. 1600.00 per month u/s 10 of the Act. The appellant Ranjan Dwivedi is a tenant in a portion of House No. A-71. Hauz Khas, New Delhi under the respondent M.L. Pareekh. The appellant filed an application of fixation of standard rent. He has alleged that he was in possession of a portion of the house at Rs. 1600.00 per month ; the house was constructed in 1964 ; the material used in the construction of the premises was of inferior quality ; the cost of construction could not be more than Rs. 20,000.00 ; the plot was purchased by the respondent for Rs. 10,000.00 ; the rateable value of the entire house was Rs. 10,260.00 : and the rent of similar accommodation in the vicinity did not exceed Rs. 500.00 per month. The appellant Therefore prayed that Rs. 500.00 be fixed as standard rent. The petition was contested by the respondent and he denied the various allegations made by the appellant. On the question of fixation of interim rent u/s 10 of the Act the Controller and the Tribunal held that there was no evidence to fix the interim rent on the principle contained in

Section 6 of the Act. It was also held that the interim rent cannot be fixed on the basis of the rateable value. Accordingly the agreed rate of rent was fixed as interim rent u/s 10 of the Act.

(2) Learned counsel for the appellant submits that the onus is on the landlord to prove the cost of construction and market value of the land on the date of commencement of construction. He further submits that the contractual rent cannot be legally fixed as interim rent u/s 10 of the Act. Section 10 of the Act read as under:

"10.If an application for fixing the standard rent or for determining the lawful increase of such rent is made u/s 9, the Controller shall, as expeditiously as possible, make an order specifying the amount of the rent or the lawful increase to paid by the tenant to the landlord pending final decision on the application and shall appoint the date from which the rent or lawful increase so specified shall be deemed to have effect."

(3) The section provides for the Controller to make an order specifying the amount of rent to be paid by the tenant to the landlord pending final decision on the application for fixation of standard rent. The application can be filed either by the landlord or by the tenant but the onus is on the applicant under Sections 101 to 104 of the Evidence Act. Here the appellant is the applicant and Therefore the onus is on him and not on the respondent-landlord to prove the facts for determination of standard rent. Learned counsel for the appellant has referred to *Diwan Chand v. Tirth Ram* 1972 R.C.R. 88(91) wherein it has been observed that it is the duty of the landlord to produce direct evidence about the cost of construction. This authority does not lay down that the onus is upon the landlord to prove facts for determination of standard rent.

(4) Learned counsel next submits that the object of Section 10 of the Act is to give immediate relief to the applicant pending final fixation of the amount of standard rent. He Therefore submits that the contractual rent cannot be legally fixed as interim rent. The wordings of Section 10 cast a duty upon the Controller to specify the amount of rent payable by the tenant to the landlord pending final decision of the application for fixation of standard rent. But if no material is placed by either party to enable the Controller to fix standard rent or the interim rent I do not see how the Controller can reduce the contractual rent. There is no substance in the argument that the contractual rent cannot be fixed as interim rent. It is admitted by the learned counsel for the parties that the principles of Section 6 of the Act are applicable for determination of standard rent of the premises in question. It is also admitted that the standard rent is to be fixed on the basis of the cost of construction and the market value of the land in question on the date of commencement of cost of construction. This petition for fixation of standard rent was filed in September, 1984 but not material was placed by either party to enable the Controller to fix the interim rent. In the absence of any material it was not possible for the Controller to fix the interim rent. In *Shivcharan Das v. Mehar Singh*. 1976 Raj. L R 128 it has been observed that if

the parties do not give enough evidence for fixing standard rent, then agreed rent may be fixed at Standard Rent. Thus if the parties do not place material on record for fixation of interim rent u/s 10 of the Act then the agreed rent may be fixed as interim rent.

(5) The appellant has filed in this court an application (C.M. No. 2010 of 1986) for leave to place valuation report with respect to cost of construction of ground floor of suit house. No ground under Order 41 rule 27 of the CPC has been pleaded by the appellant for additional evidence in this second appeal. C.M. No. 2010 of 1986 is dismissed.

(6) There is concurrent finding of the Rent Controller and the Rent Control Tribunal fixing agreed rent in the circumstances as interim rent. There is no infirmity in the judgment and order of the Tribunal and the Rent Controller. The appeal is without any merit and the same is dismissed with no order as to costs. Parties are directed to appear before the Additional Rent Controller on 8th September, 1986.