

**(1956) 09 PAT CK 0005**

**In the Patna High Court**

**Case No :** Civil Revision No's. 972 of 1954 and 149, 151 and 217 of 1955

Ram Krishna Shukla and Others

APPELLANT

Vs

Thakur Sri Ramjanki and Others

RESPONDENT

**Date of Decision :** 13-09-1956

**Acts Referred:**

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 5(2), 6(1), 6(2), 8(2), 8(3)  
Civil Procedure Code, 1908 (CPC) — Section 100, 115  
Provincial Small Cause Courts Act, 1887 — Section 25

**Citation :** AIR 1957 Patna 168

**Hon'ble Judges :** Ramaswami, C.J.; Raj Kishore Prasad, J

**Bench :** Division Bench

**Advocate :** S.B. Sanyal, in Nos. 149 and 151 of 55, Chunnilal and Sudhir Chandra Ghosh, in Nos. 217 of 55 and 972 of 54, for the Appellant; Ganesh Sharma, (in Nos. 149 and 151 of 55), Jagdish Pandey, (in No. 217 of 55) and Padmanand Jha, (in No. 972 of 54), for the Respondent

## Judgement

Raj Kishore Prasad, J.—These four applications in revision, u/s 25 of the Provincial Small Cause Courts Act, by the defendants, have been referred to a Division Bench, as a common point of law, which involves the interpretation of Section 6 (2) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, (Bihar Act III of 1947), hereinafter referred to as "the Act", arises for decision.

2. The question for consideration is, can a landlord, who has let out his house on rent, in contravention of Section 6 (2) of the Act, recover the rent, from his tenant, at the contract rate?

3. It is necessary for a proper understanding, and determination, of the question at issue, to read Sections 5, 6 and 8 of the Act. These sections are in these terms:

"5. (1) When, on application by the tenant in" possession of a building or otherwise, the Controller has reason to believe that the rent of that building is

excessive, he shall hold a summary inquiry and record a finding,

(2) If, on a consideration of all the circumstances of the case including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition to the rent, the Controller is satisfied that the rent of the building is excessive he shall determine the fair rent for such building.

6. (1) The Controller may, on his own motion, and shall, on the application of the landlord or a prospective tenant and after making such inquiry as he thinks fit, determine the fair rent for any building in the occupation of a tenant and such fair rent shall be determined as for a tenancy from month to month.

(2) It shall not be lawful for a landlord to let any building the fair rent of which has not been previously determined under the provisions of Sub-section (2) of Section 5 or Sub-section (1) of this section.

8. (1) .....

(2) When the fair rent of a building has been determined or re-determined, any sum in excess of such fair rent paid, whether before or after the notified date in respect of occupation for any period after such notified date, shall be refunded to the person by whom it was paid or at the option of such person, otherwise adjusted.

(3) In every, case in which the Controller determines or redetermines the fair rent of a building, he shall appoint a date with effect from which the fair rent so determined or redetermined shall take effect.

Provided, ..... .."

4. From the above provisions of the Act, its intendment is quite clear. . The Act was enacted to regulate the letting of buildings, to control rent of such buildings and to prevent unreasonable eviction of tenants therefrom in the State of Bihar. The Act provides that if a tenant is already in possession of a building, obviously at the ""notified date", which means, u/s 2(f), of the Act, the date of the commencement of the Act, or the date on which the Act is applied to any local area, other than the local areas specified in the schedule to the Act, and, if he thinks that the rent of the building in his occupation is excessive, he can make an application, to the Controller u/s 5(1), for determination of fair rent of the building in his possession. u/s 5(1) the Controller can even "suo motu" take action under it, if he is satisfied that the rent is excessive.

Under Section 5 (2) the Controller thereafter, if he is satisfied that the rent of the building is excessive, shall determine the fair rent for such building, on a consideration of all the circumstances of the case mentioned in Section 5 (2). If, however, the building is not in occupation of any tenant, here also, obviously at the "notified date", and if the landlord desires to let out his building on rent, he shall get, first of all, the fair rent of such a building determined by the Controller u/s 6(1) before he actually lets out the building. Section 6(1), therefore, gives a

right to the landlord as also to the prospective tenant to make an application to the Controller for determination of fair rent of the building, which is proposed to be let out on rent. Section 6 (1) gives power to the Controller, even, On his own motion, to determine fair rent of any such building; but if the application for determination of the fair rent is made either by the landlord or the prospective tenant the Controller has no discretion, but to determine the fair rent.

Section 6(2) with which we are concerned, is important. It provides that it shall not be lawful for a landlord to let any building, the fair rent of which has not been previously determined under the provisions of Sub-section (2) of Section 5, or Sub-section (1) of Section 6. Section 8 (3) requires the Controller in every case, in which he determines, either u/s 5 (2) or Section 6 (1). or redetermines u/s 7, the fair rent of a building, to appoint a date with effect from which the fair rent so "determined, or redetermined, shall take effect. Section 8 (2) provides that when the fair rent is so determined, or redetermined, any sum in excess of such fair rent paid by the tenant, whether before or after the notified date, but in respect of occupation for any period after the notified date, shall be refunded to the person by whom it was paid, or at his option otherwise adjusted.

5. The words ""it shall not be lawful", with which Section 6 (2) of the Act opens, are, in my opinion, the key to its interpretation. It is a cleat manifestation of the intention of the Legislature that it is obligatory on a landlord to get the "fair rent" of his building first determined, either u/s 5 (2), or Section 6(1), of the Act, as the case may be, before he actually lets out any such building on rent. If he does not do so, obviously he will be acting against the express provisions of Section 6(2) of the Act, and his act will be a clear infringement of the law.

6. The words "it shall not be lawful", occurring in Section 6(2), leave no room for doubt that a, contract, in violation of it, is void and unlawful and of no legal effect. Section 6(2) contains an absolute prohibition, and, therefore, no contract can circumvent, or override, that prohibition. It is not permissible to the parties to contract themselves out of the prohibition contained in Section 6 (2). It is not open to any person to put forward a contract in order to make something permissible which the law says is prohibited. That this is the true meaning and correct interpretation of the words "it shall not be lawful", in Section 6 (2) of the Act, is supported by both English and Indian decisions.

7. The English cases are: Gaslight and Coke Co. v. Samuel Turner (1839) 132 ER 1257 (A), and The King v. Inhabitants of Gravesend (1832) 110 ER 90 (B). In both of the above cases, in the statutes under construction, the words used were either "it should not be lawful"", or "it shall not be lawful", and it was held that any contract, in contravention of such a statute, was void and not merely voidable, on the ground that it would be contrary to the spirit of the statute to consider it only voidable where the provision was introduced for a public purpose and to protect those who were incapable of protecting themselves, and, as such, the contract contrary to the provisions of such a statute is absolutely void in law to all intents and purposes.

8. The Indian decisions, amongst others, are: P.D. Aswani Vs. Kavashah Dinshah and Others, and Lakhidas. v. Smt. Jyotsnaben Chhaganlal AIR 1954 Kutch 7 (D). In the former case, like Section 6(2) of the present Act, Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) also contained the words "it shall not be lawful. ...." Section 15 of that Act provided that "it shall not be lawful after the coming into operation of this Act for any tenant to sublet. ..." Changle C. J., held that on the plain construction of Section 15 there could be no doubt that sub-letting had been prohibited by law after Act 57 of 1947 came into force.

9. In the present case, coupling the two sec-Sons 5 and 6 together and considering them with reference to the object which the Legislature had in view, the statute--Section 6(2)--does not amount to a legislative "declaration that a contract by a landlord with his tenant, to pay the rent, which is not the "fair rent", previously determined, either u/s 5 (2) or Section 6 (1) of the Act, is void "ab initio", as the letting out of the building on rent in such a case is absolutely prohibited, because its performance involves a breach of the law.

10. True, Section 20(1) of the Act provides that if any person contravenes any of the provisions of this act, he shall except as otherwise provided in Section 14, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. There is no doubt, therefore, that the Act inflicts a penalty on the offender, who contravenes Section 6 (2). Penal consequences follow infractions of the provisions of the Act. But, it is well established that every contract, made for, or about, any matter, or thing, which is prohibited, and made unlawful, by any statute, is a void contract, though the statute itself does not mention that it shall be, but only inflicts a penalty on the offender, because a penalty implies a prohibition, though there are no prohibitory words in the statute; yet it has always been held that such contracts, being against law, are void:

11. The vital question now, for determination, is, if such a contract, in violation of Section 6(2), is void, is an action for its enforcement maintainable?

12. Now, how does the law stand on this subject? In my opinion the position of the law is that such a contract sued on is unenforceable. The Court of law will not lend its aid to enforce the performance of such a contract between the parties, which appears to have been entered into by both the contracting parties for the express purpose for carrying into effect that which is prohibited by law. Even if there is a voluntary agreement, between the landlord, and the tenant for "payment of any rent in respect of any building the fair rent of which has not been previously determined, as required by Section 6 (2), it being unlawful, it could not be enforced in law, because its performance would involve the breach and violation of the mandatory provisions of Section 6(2) of the Act.

If the real object and intention of the parties necessitates them joining is an endeavour to perform some act which is illegal by the law, such a contract or act

should and will be held invalid on account of illegality. Such a contract would be hit by Section 23 of the Indian Contract Act, and, no right to sue the tenant can accrue to the landlord on the basis of such a contract. The well known legal maxim "*ex turpi causa non oritur actio*", which means, that "no right of action can spring out of an illegal contract," or, in other words, that "out of a turpitude no cause of action arises," would obviously apply to such a case, because to enforce such a contract would mean to defeat the provisions of Section 6(2) of the Act.

No court ought to enforce an illegal contract, or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract, or transaction, which is illegal, if the illegality is duly brought to the notice of the Court, and, if the person invoking the aid of the Court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality, or whether he has not. If the evidence adduced by the plaintiff proves the illegality, the Court ought not to assist him.

13. The above view finds support also from the decision in *In re: An Arbitration between Mah-moud and Ispahani* (1921) 2 KB 716 (E), in which, at page 729, Scrutton, L. J., said as below:

"As I understand, two reasons are given why in this case the Court should enforce this contract. First of all, it is said that the Court will not listen to a person who says, "Protect me from my own illegality." In my view the Court is bound, once it knows that the contract is illegal, to take the objection and to refuse to enforce the contract, whether its knowledge comes from the statement of the party who was guilty of the illegality, or whether its knowledge comes from outside sources. The Court does not sit to enforce illegal contracts. There is no question of estoppel; it is for the protection of the public that the Court refuses to enforce such a contract."

14. In *Scott v. Brown* (1892) 2 QB 724 (F)", Lindley, L. J. also observed as under:

"The plaintiff's purchase was an actual purchase, not a sham purchase; that is true but it is also true that the sole object of the purchase was to cheat and mislead the public. Under these circumstances, the plaintiff must look elsewhere than to a court of justice for such assistance as he may require against the person he employed to assist him in his fraud, if the claim to such assistance is based on his illegal contract. Any rights which he may have irrespective of his illegal contract will, of course, be recognised and enforced. But his illegal contract confers no rights on him ..... I am quite aware that what the plaintiff has done is very commonly done; it is done every day. But this is immaterial. Picking pockets and various forms of cheating are common enough, and are nevertheless illegal. The plaintiff was not entitled to judgment in the Court below, and he has no right to a new trial."

15. Very recently, my Lord the Chief Justice, Ramaswami, J., as he then was,"had to construe Section 6(2) of the Act, in *Rajkishore Bhagat v. Dharam-*

Jay Satiu 1956 BLJR 442 (G). His Lordship observed:

"in view of the admitted facts in this case, there can be no doubt that the contract of letting was illegal and was in violation of the provisions of Section 6 (2) of the Bihar Act 3 of 1947. It is not permissible for the trial Court to treat the claim of the plaintiff not as a claim for house rent, but as a claim for damages for occupation and grant a decree. The reason is that such a procedure would indirectly violate and nullify the provisions of Bihar Act 3 of 1947."

I respectfully agree with the above observation of his Lordship, which, in my opinion, represents the correct legal position, and brings out the true scope and meaning of Section 6(2) of the Act.

16. In this connection, I may also refer to two unreported decisions of this Court:

17. First, Criminal. Revn. No. 579 of 1954, Rikhab Chand Sarangi v. State of Bihar (H), decided by my Lord the Chief Justice, Ramaswami, J. as he then was, and, Imam, J., on the 6th December, 1955. In this case, my Lord, the Chief Justice, who delivered the judgment of the Court, and, who was considering the conviction of the petitioner of that case u/s 20 of the Act, for violating the terms of Section 6(2), by letting out his shop on a monthly rent, without getting its fair rent fixed according to the requirement of Section 6 (1) of the Act, observed:

"It is, therefore, clear that even according to Section 5(1) before the amendment made by Bihar Act 5 of 1951 it was open to the landlord to make an application to the Controller for fixation of fair rent, That was also the position u/s 6(1)."

His Lordship, further observed as follows:

"If Section 6 (1) is read in the context of section 20, it is clear that the liability created by Section 6(2) is not civil liability, but criminal liability punishable under the terms of Section 20 of the statute. I see no justification of the argument that the legislature was not creating an offence by the use of the language found in Section 6(2).

" The conviction, therefore, of the petitioner of that case, was maintained. " In my opinion, the observations of my Lord the Chief Justice in the above case apply "proprio vigore" to the present case also.

18. Second, the case decided by Mr. Justice B. N. Rai, in which his Lordship took a contrary view. This case is Civil Revn. No. 493 of 1953, Sagar Mal Khaitan v. Nand Kishore Choudhary (I), which was heard along with Civil Revision Nos. 510 and 523 of 1953, and, decided on the 10th December, 1954.

19. I now read an extract from the judgment of Rai, J. :

""If, according to Section 6(2) of the Act, letting out of a building was unlawful after "notified date", then the tenant was entitled to refund of the entire rent paid by him on the argument of Mr. Jha, but Section 8(2) of the Act authorises refund of only, the excess amount, meaning thereby that the landlord was

entitled to realise rent equal to the fair rent settled subsequently for the period between the "notified date" and the date from which the fair rent is to take effect. In my opinion, on the correct interpretation of the provisions of Section 6(2) and Section 8(2) of the Act, the plaintiff" is entitled to rent for the period before and after the 6th of September, 1952 (which was the date of the application made by the tenants before the Controller for fixing fair rent) at the rate of the rent fixed by the Controller. It is well-known that the interpretation which renders two provisions of the same Act harmonious is to be preferred to that interpretation which makes them antagonistic to each other."

20. The view of Rai, J., therefore, impliedly, is that the letting out of a building, by its landlord, . after the "notified date", in breach of Section 6(2) of the Act, is not unlawful, because his Lordship definitely held that the landlord was entitled to recover rent at the rate of the fair rent, determined by the Controller, even for the period to the date of application made by the tenant for determination of the fair rent, which obviously his Lordship took to be the date of the commencement of the fair rent. This view of his Lordship, in my opinion, cannot be accepted, as the correct interpretation of Section 6 (2), and as laying down the correct legal position.

21. The language of Section 6(2) of the Act, as I have said before, leaves no room for doubt that any contract, entered into between the landlord and the tenant to pay rent, which is not the fair rent, previously determined either u/s 5(2), or Section 6(1) of the Act, being expressly prohibited by Section 6(2), would be absolutely void, because it will be defeating the object of the Act for which it was enacted, and would be contrary to the provisions of Section 6(2) of the Act. If the construction put by Rai, J., be accepted, then Section 6(2) will be rendered nugatory, and, such a manner of enforcement of Section 6(2) would indirectly violate and nullify the provisions of the Act. Section 6(2) is the "spark of life" without which Section 5(2), or Section 6(1), or, as a matter of fact, the object of the Act, would be a dead inert affair.

22. As an agreement, which is prohibited by law, cannot be enforced, the landlord obviously cannot recover any rent at all from the tenant at the contract rate for the period he is in occupation of the building prior to the date of the commencement of fair rent determined by the Controller.

23. To obviate such a hardship to the landlord, the Legislature has enacted Section 8 (3) of the Act, which gives power to the Controller, after he has determined, or redetermined the fair rent of a building, to appoint a date with effect from which the "fair rent"" so determined, or redetermined, shall take effect. Section 8(3), therefore, gives power to the Controller to fix the date of the commencement of the .fair rent so determined, or redetermined, either retrospectively, or prospectively. There is nothing in the language of Section 8(3) to suggest, expressly, that the Controller cannot fix the date of the commencement of the fair rent retrospectively, even from before the date of the application u/s 5(1), or Section 6(1), or the date of- the order u/s 5(2), or

Section 6(1).

Under Section 8(3), therefore, the Collector can" fix the date of commencement of the fair rent determined, or redetermined by him, retrospectively even from the date of the occupation of the tenant, when, for the first time, the landlord let out the building to him. In such a case, the landlord would be entitled to recover the fair rent so fixed from the date of the occupation of the tenant. The hardship of the landlord, therefore, is obviously met by Section 8(3).

24. Section 8(2) meets the hardship of the tenant also, by providing that if he has paid any rent in excess of the fair rent, no determined, or re-determined, whether before, or after the notified date", in respect of the occupation prior to "the date of the fixation of the rate, but after the notified date, he can get it refunded, or adjusted, according to his choice. In such a case, therefore, if the fair rent determined is made to take effect from a date subsequent to the date of the occupation of the building by the tenant, he would be entitled to a refund of the excess rent, which he has paid, whether before or after the notified date, in respect of his occupation for any period after the notified date, and, prior to the date of the commencement of the fair rent, to the landlord on the basis of the original contract.

25. Thus, Section 8(2) and Section 8(3) "pari passu" mitigate the hardships of both the landlord and the tenant. If Section 6(2) is thus construed along with Section 8(2) and Section 8(3), the provisions of these sections would be harmonious; but on the construction put by Raj J., the landlord can with impunity disregard the express prohibition contained in Section 6(2) of the Act, and, realise, at least, a portion of the contract rate, at the rate, at which the fair rent is fixed, if it is lower than the agreed rate, even for the period prior to the date of the commencement of the fair rent. In such a case, Section 6(2) would obviously be contravened, and Section 8(3) will become meaningless and ineffective. An unlawful contract is a nullity and void in toto, and, as such, it can't be given effect to even partially or implicity. Therefore, the interpretation given by Rai, J., is not correct; and, as such his decision must be overruled.

26. My concluded opinion, therefore, is that the true meaning of Section 6(2) of the Act is that the landlord is not entitled to recover rent, from his tenant, at the contract rate, for the period prior to the determination of the fair rent u/s 5(2), or Section 6(1), and, prior to the date appointed u/s 8(3) of the Act for commencement of the fair rent so determined by the Controller. I would, accordingly, answer the question posed by me in the negative.

27. In the light of the above principles, I will now proceed to consider the four cases on their merits.

28. Civil Revision Nos. 149 and 151 of 1955 are between the same parties, and in respect of the same holding.

29. In Civil Revision No. 149, the suit was for recovery of the house rent for

November, 1953, to May, 1954, at the rate of Rs. 30 per month, besides Rs. 20/- as electric charges. The petitioner's defence was that the rent was only Rs. 25/- and Rs. 5/- was monthly charges for electricity. The learned Small Cause Court Judge held that the plaintiff was entitled to rent at the rate of Rs. 30/- per month for the period claimed besides 1/4th of the electric charges shown by the receipts, Exts. 3(b) and 3(c). The plea that the plaintiff claim was not maintainable in view of Section 6(2) of the Act was . not pleaded. The suit was, accordingly, decreed in part.

30. In Civil Revision No. 151, the plaintiff's claim was for June to August, 1954, at the rate of Rs. 30/- per month, in respect of the same holding for which the earlier suit for the earlier period had been brought. In this case, the plea, that the plaintiff's claim was not maintainable because of Section 6(2) . of the Act, was taken, but the learned Small Cause Court Judge negatived the plea, and decreed the suit of the plaintiff. It was admitted in this case by the defendant-petitioner that he never applied to the House Controller for determination of fair rent. It is obvious, therefore, that the letting out of the house to the defendant was unlawful in view of Section 6(2) of the Act.

The plaintiff, therefore, would not be entitled to recover any rent. The learned Small Cause Court Judge has obviously taken a wrong view of Section 6(2) of the Act. In view of my decision, Civil Revision No. 151 of 1955 must be allowed, the order of the Court below set aside, and the plaintiff's suit dismissed.

31. It is true in Civil Revision No. 149 of 1955, the plea based on Section 6(2) was not taken by the petitioner, and therefore, it was not considered by the learned Small Cause Court Judge, but as the present application is u/s 25 of the Provincial Small Cause Courts Act, the High Court can interfere on a question of law. It is well established that the High Court u/s 25 of this Act has wider powers of interference than u/s 115 of the Code of Civil Procedure.

Of course, the High Court cannot reverse the, decision of the trial court on a question of fact, unless the judgment is perverse, or, has overlooked essential evidence, but it can interfere where the trial court has taken an erroneous view" of law. In revisions u/s 25 of this Act, questions of law can certainly be raised, as they are raised in second appeals u/s 100, Civil Procedure Code, even if such a question of law was not raised in the first court, provided it does not involve an investigation of facts.

In the present case, as the decree granted by the learned Small Cause Court Judge to the plaintiff is contrary to Section 6(2) of the Act, the High Court has the power to interfere," and to set aside the order of the court below. Civil Revision No. 149 of 1955, therefore, is also allowed, the order of the court below is set aside, and the plaintiff's suit is dismissed.

32. In Civil Revision No. 217 of 1955, the plaintiff's claim for house rent was at the rate of Rs. 25/- per month from November, 1952 to November 1953. In this case, the plaintiff's suit was decreed as claimed. In this case, the house was let

out, but there is no evidence whether fair rent had been fixed or not to, the case as the plea based on Section 6(2) of the Act was not taken. In the absence of evidence, therefore, whether fair rent was fixed not, and, whether Rs. 25A did not represent the fair rent fixed by the Controller, it is not possible for this Court to interfere. In the circumstances, Civil Revision No. 217 of 1955, must be dismissed, and, the order of the court below upheld.

33. In Civil Revision No. 972 of 1954, the plaintiff's claim for arrears of house lent was from January to March, 1954, at the rate of Rs. 22/- per month. In this case, the defence, based on Section 6(2) of the Act, was taken, but it was negatived, and the plaintiff's suit was decreed. The learned Small Cause Court Judge has mentioned in his order that the house in question was let out to the defendant some time before the Act came into force.

It was also admitted by the plaintiff that the house in question was in occupation of another tenant before it was let out to the defendant. It was admitted that the fair rent had not been determined either u/s 5(2) or Section 6(1) of the Act. The learned Small Cause Court Judge held that Section 6(2) was not applicable, and, in that view of the matter, he negatived the plea of the defendant. In view of my decision, it must be held that no fair rent having been determined either u/s 5(2) or Section 6(1) of the Act, the plaintiff was not entitled to recover any rent at the contract rate. In my opinion, therefore this Civil Revision must also be allowed, the order of the Court below set aside, and the plaintiff's suit dismissed.

34. In the result, Civil Revision Nos. 149 and 151 of 1955, and 972 of 1954 are allowed, and Civil Revision No. 217 of 1955 is dismissed. But, in the circumstances of the case, the parties will bear their own costs of this Court as well as of the Court below, and, therefore there will be no order for costs of any of the two courts.

Ramaswami, C.J.

35. I agree.