

CIVIL MISCELLANEOUS

Before Bhandari, C. J.

DHARAM PAUL,—Petitioner

versus

YOG RAJ,—Respondent

Civil Miscellaneous No. 260 of 1953

1953

July, 16th

East Punjab Urban Rent Restriction Act (III of 1949), Sections 4 and 15—Duty to fix fair rent, on whom lies—Parties failing to produce evidence—Whether the petition under section 4 can be dismissed—Duty of District Judge on appeal in such cases, stated.

Held, that there is a statutory obligation on the Controller to fix fair rent of the premises after holding such enquiry as the Controller may think fit. The emphasis is on the word "Controller" and it is for him to decide upon the nature of the enquiry to be held, the nature of the witnesses to be examined and documentary evidence to be produced. If parties fail to produce evidence the Controller is not expected to be a mute spectator of the events which take place before him and to make his order solely on the basis of the evidence which the parties have chosen to lead. The law requires *him* to make an enquiry and it is *his* duty to make one by calling additional evidence if he finds that the evidence produced by the parties is inherently defective or is insufficient to enable him to assess the fair rent or to pronounce judgment in the case.

Held further, that if the Controller fails to perform the duty which devolves upon him, it is open to the District Judge in appeal either to remand the case to the Controller for further inquiry or to hold a further inquiry himself. The Legislature requires the Controller, and failing him the District Judge, to determine the fair rent and neither of them can be allowed to defeat the intention of the Legislature by simply declaring that there is no evidence on the basis of which such rent can be determined.

Petition under Article 227 of the Constitution of India praying that this Hon'ble Court may be pleased to exercise its powers of superintendence under Article 227 or powers under Article 226 of the Constitution of India and after sending for the records of the proceedings of the Rent Controller and the District Judge, Hoshiarpur (Appellate Authority), pertaining to the present proceedings, quash the order, dated the 18th April, 1953, passed by the District Judge, Hoshiarpur, and restore the order, dated 31st March, 1952, passed by the Rent Controller, Kangra, fixing the fair rent of the shop in question at Rs. 11-7-4 per mensem or this Hon'ble Court may be pleased to remand the case either to the Rent Controller,

Kangra, or the Appellate Authority, Hoshiarpur, with a direction to fix the fair rent after holding further enquiry into the matter and after giving full opportunity to the parties to adduce such evidence as they think proper, further praying that during the pendency of this petition in this Hon'ble Court, the operation of the order, dated 18th April, 1953, passed by the District Judge, Hoshiarpur, be stayed, further praying that such further relief may be granted to the petitioner as this Hon'ble Court may deem fit under the circumstances of the case.

(Original Suit No. 9/2 of 1951, decided by Shri Bihari Lal Goswami, Sub-Judge, 1st Class, Kangra, exercising the powers of Rent Controller, Kangra, on the 31st March, 1952.)

H. L. SARIN, for Petitioner.

D. K. MAHAJAN, for Respondent.

ORDER

Bhandari, C.J. BHANDARI, C.J. The short point for decision in this application under Article 227 of the Constitution, is whether the learned District Judge was justified in dismissing a tenant's application for fixation of rent on the ground that the parties had failed to adduce evidence on the basis of which the rent could be fixed.

The facts of the case are simple and not seriously in dispute. On the 26th December, 1950, Dharam Paul took on lease a certain shop situate in the bazar of Palampur on a rent of Rs. 80 per mensem. On the 30th July, 1951, the tenant applied to the Rent Controller for fixation of rent under the provisions of section 4 of the East Punjab Urban Rent Restriction Act. In the enquiry which followed neither the tenant nor the landlord produced any evidence about the prevailing rates of rent of similar buildings in the neighbourhood. The Controller examined the Property Tax Assessment Register of the Town Committee at Palampur, and on the basis of the information contained in those documents, fixed the rent of the premises in question at Rs. 11-7-4 per mensem. The learned District Judge set aside this order and dismissed the application for fixation of fair rent

by means of an order the concluding portion of Dharam Paul which runs as follows :—

“The basic and fair rent fixed by the Rent Controller are not on the basis of the two factors laid down in the Act. I, therefore, accept the appeal and set aside the order of the Rent Controller. The application for fixation of fair rent shall stand dismissed.
* * * *”

v.
Yog Raj

Bhandari, C.J.

Subsections (1) and (2) of section 4 of East Punjab Rent Restriction Act, 1949, are in the following terms :—

- “ (1) The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit.
- .. (2) In determining the fair rent under this section, the Controller shall first fix a basic rent taking into consideration—
- (a) the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 1st January, 1939 ; and
- (b) the rental value of such building or rented land if entered in property tax assessment register of the municipal town or notified area committee or cantonment board, as the case may be, relating to the period mentioned in clause (a) * * * *.”

Section 15 of the said Act, which relates to appeals from the orders of a Rent Controller, runs as follows :—

“The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.”

Dharam Paul
 v.
 Yog Raj
 Bhandari, C.J.

The order passed by the learned District Judge appears to me to be wholly misconceived. The Legislature imposes a statutory obligation on the Controller to fix the fair rent of the premises after holding such inquiry as "the Controller" may think fit. The emphasis is on the word 'Controller' and it is for him to decide upon the nature of the enquiry to be held, the nature of the witnesses to be examined and documentary evidence to be produced. In most cases the evidence produced by the parties is sufficient to enable him to determine the rent without calling for further evidence or embarking upon an inquiry of his own. In such cases all that is necessary to be done is to pronounce orders in the case. But there can be cases like the present in which the parties omit to produce the necessary evidence. In such cases the Controller is not expected to be a mute spectator of the *events which take place before him* and to make his order solely on the basis of the evidence which the parties have chosen to lead. The law requires *him* to make an inquiry and it is *his* duty to make one by calling additional evidence if he finds that the evidence produced by the parties is inherently defective or is insufficient to enable him to assess the fair rent or to *pronounce judgment* in the case. If he fails to perform the duty which devolves upon *him*, *it is open to the District Judge* in appeal either to remand the case to the Controller for further inquiry or to hold a further inquiry himself. The Legislature requires the Controller, and failing him the District Judge, to determine the fair rent and neither of them can be allowed to defeat the intention of the Legislature by simply declaring that there is no evidence on the basis of which such rent can be determined.

For these reasons, I would accept the petition, set aside the order of the learned District Judge and direct him to determine the fair rent of the premises after making such inquiry as he thinks fit either personally or through the Controller. In the peculiar circumstances of the case, the parties will be allowed to bear their own costs. They have been directed to appear before the learned District Judge on the 17th August, 1953.