

Iron Traders
(Private) Ltd.,
and others
v.
Hira Lal Mittal
and another

Shamsher
Bahadur, J.

had ceased to be a member of the company after the shares had been transferred in the name of the first respondent and there is no reason why it was necessary to implead the firm. In this view of the matter, this appeal must fail and is dismissed with costs.

B.R.T.

REVISIONAL CIVIL

Before S. B. Kapoor, J.

BAL KISHAN AND ANOTHER,—*Petitioners.*

versus

GOPI CHAND AND ANOTHER,—*Respondents.*

Civil Revision No. 265 of 1961

1961

December, 19th.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 4—Fair rent fixed under the Pepsu Urban Rent Restriction Ordinance (VIII of 2006 Bk.) in 1954 on the application of the tenant—Whether can be reopened after merger of Pepsu with Punjab and application of the East Punjab Act to the transferred territories in place of the Pepsu Ordinance—Principle of res judicata—Whether applicable—Punjab Laws (Extension No. 4) Act (XVIII of 1958)—Section 6—Effect of.

Held, that by virtue of the proviso to section 6 of the Punjab Laws (Extension No. 4) Act, 1958, the fixation of fair rent by the Controller under the Pepsu Urban Rent Restriction Ordinance, 2006 Bk, was to be construed as fixation of fair rent by the Controller under section 4 of the East Punjab Urban Rent Restriction Act, 1949, and thereafter it could be varied only according to the provisions of the Act, that is, only if there was some change in the circumstances of the tenancy. The principle of *res judicata* is of universal application and applies to the fixation of fair rent in proceedings under the East Punjab Urban Rent Restriction Act also. The tenant cannot be allowed to agitate the matter over and over again. The decision of the Rent Controller, dated the 15th March,

1954, was by a Court of competent jurisdiction between the parties to the present dispute and had become final and, on the principle of *res judicata*, it cannot be allowed to be agitated again without proof of any change of circumstances and is not liable to be reopened merely because of some difference between the Pepsu Ordinance which was repealed and the East Punjab Act, which was substituted for it.

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, for revision of the order of Shri B. L. Goswamy, District Judge, Sangrur, dated the 13th March, 1961, affirming that of Shri J. P. Gupta, Rent Controller, Sangrur, dated the 18th October, 1960, fixing the fair rent of the property in dispute at Rs. 343.75 nP. per annum from the date of the order and leaving the parties to bear their own costs.

D. C. GUPTA, ADVOCATE, for the Petitioner.

SIRI CHAND GOYAL, ADVOCATE, for the Respondent.

JUDGMENT

CAPOOR, J.—This is a revision petition by the landlords Bal Kishan and others against the order of the District Judge, Sangrur, an Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (Act No. III of 1949) (hereinafter to be referred to as the Act), whereby the order of the Rent Controller, Sangrur, fixing on the petition of Gopi Chand, etc., tenants the fair rent of the premises in suit at Rs. 343.75 nP. per annum, was confirmed.

Capoor, J.

An application by the tenants was made under section 4 of the Act. The land in suit was situated within the municipal limits of Sangrur. In the year, 1952-53 the contractual rent was Rs. 900 per annum. The tenants moved the Rent Controller, Sangrur, under the provisions of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, 2006 Bk. (Ordinance No. VIII of 2006 Bk), (hereinafter to be referred to as the Ordinance) for fixation of fair rent. Under Section 4

Bal Kishan
and another
v.
Gopi Chand
and another
Capoor, J.

of the Ordinance, the Controller while fixing the fair rent was required first to fix the basic rent taking into consideration the rates of rent prevailing in the locality for the same or similar accommodation, in similar circumstances, during the twelve months preceding the first day of Baisakh 2004 Bk. and also the rental value of such building or rented land if entered in property tax assessment register of the municipal, small town or notified area committee, relating to the aforesaid period. This period would correspond to the year, 1946-47. By his order dated the 15th March, 1954, the Controller fixed the fair rent at Rs. 62-8-0 per mensem. Subsequently on the merger of the erstwhile State constituting the Patiala and East Punjab States Union with the Punjab, the Punjab Laws (Extension No. 4) Act, 1958 (Punjab Act No. 18 of 1958) was passed. By section 4 of this Act, all the enactments mentioned in Schedule I as in force immediately before the 1st November, 1956, in the State of Punjab were extended to the transferred territories, that is, the State formerly constituting the Patiala and East Punjab States Union. The East Punjab Urban Rent Restriction Act, 1949, was one of the Acts mentioned in Schedule I. It was pointed out in the petition that according to the latter Act fair rent was to be fixed keeping in view the basic rent for the year 1938. It was contended that in 1938 the basic rent of the land in suit was Rs. 250 per annum. The tenants maintained that the present rate of rent as fixed by the Rent Controller in 1954 was excessive and the fair rent be fixed at Rs. 250 per annum.

One of the pleas taken up by the landlords was that this application was barred by the principle of *res judicata* and was not maintainable in view of the previous order of the Rent Controller dated the 15th March, 1954. This objection was repelled by both the Courts below and the only question arising for decision in this revision petition is whether the application by the tenants for fixation of fair rent was barred or not in view of the previous order of the year 1954. Mr. Dalip Chand Gupta, on behalf of the petitioners, has

not attempted to argue that if this question is decided against the landlords the fair rent should not be as fixed in the order under revision.

Bal Kishan
and another
v.
Gopi Chand
and another

Capoor, J.

The first question which arises for determination in this connection is whether, when once the fair rent has been fixed by the Controller under section 4 of the Act, it is open to the party on whose application that fair rent had been fixed to move the Controller again for re-fixation of the fair rent. Section 5 of the Act provides that when the fair rent of a building or rented land has been fixed under section 4, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out at the landlord's expense and if the building or rented land is then in the occupation of a tenant, at his request. There are certain provisos in this section which are not material for the decision of this revision petition. Section 5 of the Ordinance is exactly the same as section 5 of the Act. Under section 9 of the Act, rent may be increased by the landlord if after the commencement of this Act a fresh rate, cess or tax is levied in respect of the building or rented land by any local authority, and to the same effect is section 9 of the Ordinance. Neither the Act nor the Ordinance made any provision for deduction of fair rent but it may be presumed that such applications for reduction could be made by the tenant if the area in his occupation came to be reduced or if there was any reduction or abolition of any rate, cess or tax. But if the conditions of the tenancy remain the same it would be not only unjust but contrary to all legal principles to allow the parties to agitate over again the question of fixation of the fair rent of the property after a decision thereon had been made by the Rent Controller.

It is not disputed that the order of the Rent Controller dated the 15th March, 1954, between the parties as regards the land in dispute had become final. By virtue of section 6 of the Punjab

Bal Kishan
and another
v.
Gopi Chand
and another
—————
Capoor, J.

Act No. 18 of 1958, the Ordinance which corresponded to the East Punjab Urban Rent Restriction Act, 1949, was repealed, but according to the further proviso to this section, anything done or any action taken under any law so repealed shall be deemed to have been done or taken under the corresponding provision of the enactment extended by section 4, that is, the East Punjab Urban Rent Restriction Act, 1949, in this case, to the transferred territories, and shall be continued to be in force accordingly unless and until superseded by any thing done or any action taken under the enactment so extended. This means that fixation of fair rent by the Controller under section 4 of the Ordinance should be deemed to have been made under section 4 of the Act and was to continue to be in force accordingly. The result is that the fixation of fair rent by the Controller under the Ordinance was to be construed as fixation of fair rent by the Controller under section 4 of the Act, and thereafter it could be varied only according to the provisions of the Act, that is, only if there was some change in the circumstances of the tenancy. The principle of *res judicata* is of universal application and as held in *Amar Nath v. Khushi Ram* (Civil Revision No. 532 of 1960, decided on the 23rd May, 1961 by this Court) it applies to the fixation of fair rent in proceedings under the East Punjab Urban Rent Restriction Act also. The tenant cannot be allowed to agitate the matter over and over again. The decision of the Rent Controller dated the 15th March, 1954, was by a Court of competent jurisdiction between the parties to the present dispute and had become final and I am of the view that on the principle of *res judicata* it cannot be allowed to be agitated again without proof of any change of circumstances.

The learned counsel for the respondents to this petition was unable to give any good ground why the principle of *res judicata* should not be applied to these proceedings. He pointed out that under section 14 of the Act, the Controller shall

summarily reject any application under sub-section (2) or under sub-section (3) of section 13 which raises substantially the issues as have been finally decided in a former proceeding under this Act, and he argued that if the Legislature considered that the fixation of fair rent by the Rent Controller was not liable to be challenged by a subsequent application on the same matter, provisions similar to section 14 should have been made with regard to orders passed under section 4 also. I do not consider this argument to be of much weight, as the Legislature has indicated in section 5 the circumstances under which disputes between the landlord and the tenant as to any increase claimed on the fair rent are to be decided by the Controller.

Bal Kishan
and another
v.
Gopi Chand
and another

Capoor, J.

The Courts below have referred to *Abdul Ghani v. Kharaiti Ram* (1), for the proposition that the fixation of the standard rent in respect of premises first let after the 2nd June, 1944, under the Delhi and Ajmer-Marwara Rent Control Act, 1947, is no bar to the reopening of the matter for fixation of reasonable standard rent under section 8 of the Delhi and Ajmer Rent Control Act, 1952. The reason upon which this view proceeded was that the new Act gave the tenant, who had no remedy under the old Act, the right to have his case considered and a reasonable rent determined. In the instant case, the provisions of the Act and the Ordinance are precisely the same with the exception that a different date has been adopted for determination of the basic rent. Moreover, in the present case there is also the further proviso to section 6 of the Punjab Laws (Extension No. 4) Act, 1958, the effect of which is that the fixation of fair rent by the Controller under the Ordinance shall be deemed to have been made under section 4 of the Act and shall continue to be in force despite the substitution of the Act for the Ordinance. The underlying object of this proviso seems to be that the decisions already given in the transferred territories under the Acts which were

(1) 1956 P.L.R. 86

Bal Kishan
and another
v.
Gopi Chand
and another
—
Capoor, J.

repealed by virtue of section 6 of Punjab Act No. 18 of 1958, and substituted by the corresponding laws as in force in the State of the Punjab, should not be liable to be reopened merely because of some difference between the laws formerly in force in the transferred territories and the laws substituted for them by the Punjab Act No. 18 of 1958.

The rulings cited by the learned counsel for the respondents, *Sri Babu Lal v. Ganga Saren* (2), *New Singhal Dal Mill v. Firm Sheo Prasad-Jainti Parsad* (3), and *Waheed Hasan Khan v. State of Hyderabad* (4), do not contain anything helpful to the interpretation of the further proviso to section 6 of the Punjab Act No. 18 of 1958 on which Mr. Dalip Chand Gupta relied.

Accordingly, reversing the judgments of the Courts below, I am of the view that the application by the tenants for fixation of fair rent was not maintainable. The revision petition is, therefore, allowed and the application by the tenants before the Rent Controller dismissed. But in view of the difficulty and novelty of the legal question involved, the parties are left to bear their own costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

BARA HINDU RAO,—*Petitioner.*

versus

THE KAPRA MAZDOOR EKTA UNION AND
OTHERS,—*Respondents.*

Civil Writ No. 278-D of 1958

*Industrial Disputes Act (XIV of 1947)—Section 18
(3)—Tribunal—Whether competent to implead a party
in the reference before him.*

1961
December, 19th

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- (2) A.I.R. 1952 All. 48
(3) A.I.R. 1958 All. 404
(4) A.I.R. 1954 Hyd. 204