Kapur Singh *v.* The Union of India

Khosla, J.

The final argument advanced before us was that the order suspending the petitioner was illegal and therefore everything which followed it was illegal. The legality of the order of suspension was challenged on the ground that the petitioner was not given a show cause notice in respect of it. Our attention was drawn to the fact that suspension is punishment within the meaning of the Civil Services (Classification, Control and Appeal) Rules, but it is clear from the Rules that no notice need be given to a Government servant before he is suspended. But apart from this, the petitioner cannot challenge the order of suspension in the present petition because this order was passed before the Constitution came into force and he cannot in a petition under Article 226 contest the legality of an order passed before the 26th of January, 1950.

For the reasons given above, there is no force in this petition and I would dismiss it with costs which I assess at Rs. 250|-|-.

## REVISIONAL CIVIL.

*Before Falshaw, J.*

ABDUL GHANI,—*Petitioner.*

*versus*

KHARAITI RAM,—*Respondent.*

**Civil Revision No. 211-D/53**

**1955**

**Nov., 16th**

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 8—Standard Rent of premises first let after 2nd June, 1944, fixed under Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Whether bars the fixation of reasonable standard rent under the new Act.*

*Held,* that the only standard rent of premises let for the first time after the 2nd of June, 1944, which are still maintained by the Act of 1952 as inviolable are the standard

rents of premises fixed under the provisions of the Fourth Schedule of the 1947 Act which, together with section 7-A, dealt with a set of class of buildings not now recognised under the present Act and described as newly constructed premises. The new Act gives a tenant who had no remedy under the old Act the right to have his case considered and a reasonable rent determined. Such a tenant was entitled to apply under section 8 of the new Act within six months of the coming into force of the Act for the fixation of a reasonable standard rent for premises leased for the first time after the 2nd of June, 1944. Thus the fixation of standard rent in respect of premises first let after 2nd June, 1944, under the old Act is no bar to the fixation of reasonable standard rent under the new Act.

*Petition under section 35 of Act XXXVIII of 1952, for revision of the order of Shri Rameshwar Dayal, Sub-Judge, 1st Class, Delhi, dated 9th July, 1953, holding the application to be competent.*

D. K. KAPUR, for Petitioner.

GURBACHAN SINGH and RAJ KISHAN, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J. These are four connected revision petitions arising out of two cases in the following circumstances : Two tenants Kishan Chand, the proprietor of the firm called Kishan Chand Raja Ram, and Khairati Ram, occupying different premises owned by the present petitioner, Abdul Ghani, filed applications in the Court of a Sub-Judge at Delhi under section 8 of the Delhi and Ajmer Rent Control Act XXXVIII of 1952 for the fixation of the standard rent of the premises occupied by them. In both cases the landlord raised the preliminary objection that the applications did not lie since the standard rent of the premises in dispute had already been fixed in proceedings between the parties under the earlier Act, the Delhi and Ajmer-Merwara Rent Control Act of 1947, which was repealed and replaced by the Act or

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1952. The learned Subordinate Judge dealing with the cases overruled this objection and fixed a date for proceeding with the cases on their merits. Being uncertain as to whether this order was appealable or not, the landlord both instituted revision petitions direct in this Court and also appeals in the Court of the District Judge. The Additional District Judge has disposed of the two appeals by upholding the decision of the trial Court, and so revision petitions have also been filed against those decisions.

Section 8 of the new Act permits the fixation of the standard rent of any premises falling under the scope of the Act by the Court in the following cases—

> "(a) where, for any reason whatsoever, any dispute arises between a landlord and the tenant regarding the amount of standard rent payable in respect of any premises in accordance with the provisions of the Second Schedule ; or
>
> (b) where, at any time on or after the 2nd day of June, 1944, any premises are first let and the rent at which they are let is, in the opinion of the Court, unreasonable."

It is agreed that the premises now in dispute were first let after the 2nd of June 1944 and so are covered by clause (b).

In support of his contention that the fixation of the standard rent in proceedings between the parties under the earlier Act of 1947 is a bar to re-opening the matter under the new Act, the learned counsel for the petitioner relies principally on the

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provisions of section 6 (c) of the General Clauses Act X of 1897 ("Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter be made, then unless a different intention appears the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed"), and on the provisions of section 46(2) of the new Act itself. Section 46(1) merely states that the Act of 1947 is hereby repealed, and sub-section (2) reads—

> "Notwithstanding such repeal, all suits and other proceedings pending at the commencement of this Act, whether before any court or the Rent Controller appointed under the Fourth Schedule to the said Act, shall be disposed of in accordance with the provisions of the said Act as if the said Act had continued in force and this Act had not been passed."

It is contended that if, as would seem to be the case under the above provisions, proceedings had been pending under the old Act between the present parties for the fixation of the standard rent of the premises, the decision would still have to be according to the provisions of the Act of 1947, although the latter Act had superseded it, and it would make nonsense of the whole matter if on the day following the decision according to the provisions of the 1947 Act the tenant could again come to the Court under section 8 of the new Act. This argument is undoubtedly one which needs serious consideration, but at the same time there appear to be at least equally good arguments for the opposite point of view.

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It seems that under the old Act in the case of premises let for the first time after the 2nd of June 1944 the Court which had fixed the standard rent under that Act had no discretion at all in the matter The provisions of clauses 1 and 2 of Part B of the Second Schedule to the Act of 1947 read—

"1. In this Part of this Schedule, 'basic rent' in relation to any premises means—

(a) where the fair rent of the premises has been determined or re-determined under the provisions of the Ajmer Hou[illegible] [illegible]ent Control Order, 1943, the rent as so determined, or, as the case may b[illegible] re-determined;

(b) in any other case—

(i) the rent at which the premises were let on the 1st day of September, 1939, or

(ii) if the premises were not let on that date, the rent at which they were first let after that date.

(2) Where the premises in respect of which rent is payable were let for whatever purpose, after the 2nd day of June, 1944, the standard rent of the premises shall be the same as the basic rent thereof."

Thus it would seem that in the case of a first lease of premises after the 2nd of June 1944, however exorbitant the rent may have been at which the premises were so let, this constituted the basic rent and *ipso facto*, under the provisions of clause 2, the standard rent. On the other hand section

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8 (1) (b) gives the Court power to fix a reasonable standard rent if it considers that the rent at which they are let after the material date is unreasonable. Thus under the new Act a matter is thrown open to adjudication on which the Court under the earlier Act had no power to adjudicate. It has moreover been pointed out that the Act of 1947 repealed the earlier enactments, the Delhi Rent Control Ordinance XXV of 1944, the New Delhi House Rent Control Order, 1939, and the Ajmer-Merwara Control of Rent and Eviction Order, 1946, but in Part A of the Second Schedule clause 1 provided that in that Part of the Schedule 'basic rent' in relation to any premises means—

> "(a) where the fair rent of the premises has been determined or re-determined under the provisions of the New Delhi House Rent Control Order, 1939, the rent as so determined, or as the case may be, re-determined ;
>
> (b) where the standard rent of the premises has been fixed by the Court under section 7 of the Delhi Rent Control Ordinance XXV of 1944, the rent as so fixed;
>
> (c) in any other case—
>
> (i) the rent at which the premises were let on the 1st day of November, 1939, or
>
> (ii) if the premises were not let on that date, the rent at which they were first let after that date.

In the Second Schedule to the 1952 Act the first clause of Part A is the same, but sub-clause (c) reads—

> "(c) in any other case,—
>
> (i) the rent at which the premises were let on the 1st day of November, 1939, or

(ii) if the premises were not let on that date the rent at which they were first let at any time after that date before the 2nd of June, 1944."

Clause 2 is new and reads—

"2. Where the premises in respect of which rent is payable were let, for whatever purpose on or after the 2nd June, 1944, the standard rent of the premises shall be—

(a) where the standard rent of the premises has been fixed by the Rent Controller under the provisions of the Fourth Schedule to the Delhi and Ajmer-Merwara Rent Control Act, 1947, such standard rent; or

(b) where the standard rent has been fixed by the Court under clause (b) of sub-section (1) of section 8, such standard rent; or

(c) in any other case, so long as the standard rent is not fixed by the Court, the rent at which the premises were first let."

From this it is clear that the only standard rents of premises let for the first time after the 2nd of June, 1944 which are still maintained by the Act of 1952, as inviolable are the standard rents of premises fixed under the provisions of the Fourth Schedule of the 1947 Act which, together with section 7-A, dealt with a set of class of buildings not now recognised under the present Act and described as newly constructed premises.

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The position may thus be summed up as being that under the old Act if any tenants were dissatisfied with the rent they were paying for premises let for the first time after the 2nd of June, 1944 other than newly constructed premises they had no remedy in that, even if they applied to the Rent Controller for fixation of the standard rent, they could get no redress unless the rents they were paying exceeded the basic rent i.e., the rent at which the premises were first let. If they were still paying this basic rent the provisions of the Second Schedule made it also the standard rent, whereas under the new Act the Court now has power to enquire into the question whether the basic rent is reasonable or not.

In the circumstances although I appreciate the force of the argument that a ridiculous situation could arise in that a tenant who failed to obtain any redress under the provisions of the old Act because his case was pending when the new Act came into force could then immediately apply under section 8 of the new Act, the fact remains that the new Act gives a tenant who had no remedy under the old Act the right to have his case considered and a reasonable rent determined, and I agree with the Courts below in taking the view that such a tenant was entitled to apply under section 8 of the new Act within six months of the coming into force of the Act for the fixation of a reasonable standard rent for premises leased for the first time after the 2nd of June 1944. I, accordingly dismiss the revision petitions but in the circumstances order the parties to bear their own costs.