REVISIONAL CIVIL

Before Harbans Singh, C.J.

RAJ KUMAR,—*Petitioner.*

versus.

GIRJA SHANKER,—*Respondent.*

Civil Revision No. **1041 of 1970.**

April 20, 1971.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 4 and 19—Fair rent fixed by consent of the parties—Such fixation of rent—Whether amounts to "fair rent" under section 4—Landlord charging more than the rent fixed by consent—Whether liable to be prosecuted under section 19.

Held, that when on an application under section 4 of East Punjab Urban Rent Restriction Act, 1949 for fixation of fair rent, the Rent Controller fixes the fair rent not in accordance with direction given in that section but on the mere statements of the parties, the rent so fixed is only a fair rent fixed by consent and not a "fair rent" by the Court under section 4 of the Act. The mere fact that there is the command of the Court superimposed on the agreement between the parties will not make any difference. A landlord charging more than the rent fixed by consent is not liable for prosecution under section 19 of the Act. (Paras 6 and 7).

Petition under section 15(5) of East Punjab Urban Rent Restriction Act 1949, for revision of the order of Shri Bhagwan Singh, Sub-Judge 1st Class, Jullundur dated 3rd August, 1970 allowing permission to the tenant to file a complaint against the landlord.

A. L. BAHRI, ADVOCATE, for the petitioner.

KARAMPAL SINGH, ADVOCATE, for the respondent.

JUDGMENT

HARBANS SINGH, C. J.—(1) On an application made by the tenant under section 19 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) for permission to file a criminal complaint against the landlord because he was realising rent at the rate of Rs. 22 which was in excess of the fair rent fixed of the premises at Rs. 16, the Rent Controller came to the following findings:—

(i) That fair rent had been fixed at Rs. 16, per mensem of the premises in dispute ;

(ii) That the premises in dispute also included the additional area known as *'Taki'*, which according to the landlord had been given subsequently.

Consequently, the Rent Controller allowed permission to the tenant to file a complaint against the landlord. The landlord has come up in revision.

(2) The only point urged is that no fair rent of the premises in dispute had been fixed. The position is like this. Another tenant, who was occupying these premises earlier, had filed an application under section 4 of the Act against his landlords, who were the predecessors-in-interest of the present landlord (petitioner before me). The Rent Controller did not fix the fair rent after determining it in a judicial manner, but he fixed Rs. 16 as the fair rent on the basis of the statements of the tenant and the landlord, both agreeing that the fair rent be fixed at Rs. 16 per mensem. These facts are not challenged.

(3) The only point for determination is, whether this fixation of rent amounts to "fair rent" fixed under section 4 of the Act, for charging more than which amount the landlord is liable to be prosecuted on an application being made by the tenant under section 19 of the Act.

(4) One thing is now well settled. If an application is filed by a landlord for the ejectment of a tenant under section 13 of the Act and an order of ejectment is passed, not after the Court has given a finding that one or more of the conditions precedent for directing an order of ejectment under section 13 of the Act do exist but merely on the statement of the tenant that a decree for ejectment may be passed and that he will put the landlord in possession of the premises after certain period, then such a decree would be a nullity and unenforceable. See in this respect *Smt. Kaushalya Devi and others* v. *K. L. Bansal* (1). There a compromise was arrived at between the parties in the following terms:—

"Decree for ejectment be passed in favour of the plaintiff against the defendant, the decree will be executable after

(1) A.I.R. 1970 S.C. 838.

the 31st December, 1958, if the defendant does not give possession till then.

* * *."

(5) Relying upon an earlier judgment of the Supreme Court in *Bahadur Singh's case* (2), it was held that on the plain wording of section 13(1) of the Act the Court was forbidden to pass the decree and that the decree is a nullity and cannot be enforced in execution.

(6) The question, therefore, arises whether the same result ensues when on an application under section 4 of the Act for fixation of the fair rent, the Court fixes the fair rent not in accordance with the direction given in that section, but on the mere statement of the parties. A Bench of this Court in *Baij Nath* v. *Firm Monga Lal Murari Lal* (3) gave its answer in the affirmative. Chief Justice Falshaw, with whom Khanna J., (as he then was) agreed, observed as follows:—

> "In matters of ejectment this Court has held that a tenant cannot be ejected by consent except if he admits that one or more of the grounds on which ejectment can be ordered exists, and in my opinion equally a tenant cannot be allowed to accept as the fair rent a rent which is in excess of the fair rent as it would be determined under the provisions of section 4 of the Act. It is to be borne in mind that the rent is not for the tenant, but for the premises and once the fair rent is determined it will remain the fair rent for any tenants who succeed the present incumbent."

Therefore, it was held in that case that a second application for fixation of the fair rent does lie.

(7) From the above it is clear that the fair rent fixed by the agreement of the parties is only a fair rent fixed by consent and not a fair rent fixed by the Court under section 4 of the Act. The mere fact that there is the command of the Court superimposed on the

(2) C.A. Nos. 2464 & 2468 of 1966 decided by Supreme Court on 16th October, 1968.

(3) 1966 P.L.R. 732.

agreement between the parties would not make any difference. This was so observed in *Baij Nath's case* (3) (supra) at page 734 of the report in the following words:—

> "... ... ... where a decree is passed in consequence of a compromise and gives effect to the will of the parties without any adjudication by the Court itself, the contract cannot be said to have any greater sanctity in spite of the fact that the command of a Judge has been added to it, and the contract in cases of this kind must be taken to have been adopted with all its incidents, and so as it is open to a party to plead that a contract was void or unenforceable it would be equally open to him to urge that the contract, although embodied in a decree, still remains void and unenforceable."

(8) I am, therefore, of the view that the so called fair rent in the earlier litigation could not be held to be a fair rent under section 4 of the Act, which would be treated as the fair rent of the premises binding on all the tenants who may come there. Thus there being no "fair rent" fixed in the eye of law, there is no question of any prosecution or a complaint being filed under section 19 of the Act.

(9) In view of the above, I accept this revision and set aside the order of the Rent Controller. There would be no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Harbans Singh, C.J.

RAGHVIR PARSHAD ETC.,—*Petitioners.*

versus.

CHET RAM,—*Respondent.*

Civil Revision No. 850 of 1970.

April 20, 1971.

Code of Civil Procedure (Act V of 1908)—Order 6 Rule 17—Plaintiff filing a suit for possession on the basis of inheritance—Amendment of the plaint