REVISIONAL CIVIL

Before D. Falshaw, C.J.

RAMJI DASS,—*Petitioner.*

versus

ROSHAN LAL,—*Respondent.*

Civil Revision No. 20 of 1962.

1963

May, 16th.

East Punjab Urbant Rent Restriction Act (III of 1949)—Ss. 4 and 5—Fair rent—Whether can be increased on account of improvements made before the fair rent is determined.

Held, that under section 4 of the East Punjab Urban Rent Restriction Act, 1949, the basic rent is to be determined and then fair rent fixed with the permissible addition. The addition referred to in section 5 cannot possibly be taken into account in arriving at the basic rent under section 4, which lays down specific principles on which this is to be determined. Moreover if section 5 referred to improvements made before proceedings taken by either landlord or tenant under section 4 for the determination of the fair rent, the first proviso in section 5 would become meaningless. The words 'and it shall not be chargeable until such addition, improvement or alteration has been completed' can only possibly refer to improvements or alterations carried out after the determination of the fair rent under section 4.

Petition under Section 15(5) of Act III of 1949 for revision of the order of Shri Ram Lal, District Judge, Jullundur, dated the 30th October, 1961, reversing that of Shri Gian Chand, Rent Controller, Jullundur, dated the 15th June, 1961, fixing the fair rent of the premises in dispute at Rs. 21 p.m.

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

H. L. SARIN, ADVOCATE, for the Respondent.

JUDGMENT

Falshaw, C.J.

FALSHAW, C.J.—This revision petition arises out of an application filed by the tenant Roshan Lal for the fixation of the fair rent for a double-storeyed shop situated in Bazar Boharwala, Jullundur City. The tenant's allegations were that the rent of the shop in 1938-39 was Rs 15 per mensem and he had paid rent at that rate up to 1953 when on the pressure from the landlord he began to pay rent at Rs 30 per mensem.

The landlord denied that the rent in 1938-39 was only Rs 15 and he alleged that certain improvements were carried out at the instance of the tenant in 1953 when the rent was fixed at Rs. 30. He claimed that the fair rent was Rs. 60 per mensem. The learned Rent Controller after considering the evidence of the parties fixed the basic rent at Rs 20 and the fair rent at Rs 27.50 nP.

Both parties filed appeals against this decision, the result being the dismissal of the appeal of the landlord, the present petitioner and the acceptance of the tenant's appeal to the extent of fixing the basic rent at Rs 15 and the fair rent at Rs 21 per mensem.

It is not now contested that the actual rent in 1938-39 was Rs 15 and, therefore, this must constitute the basic rent under the provisions of section 4 of the East Punjab Urban Rent Restriction Act, and the only permitted increase on the basic rent where it does not exceed Rs 50 per mensem is according to sub-section (5) 37½ per cent which the learned Appellate Authority has calculated at Rs 6 as a round figure, this being slightly in excess of the exact amount.

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There is no doubt that in 1953 certain improvements were carried. The shop originally had a verandah, the front of which simply had an archway, and in 1953 doors and a lintel were fitted so as to make the area of the verandah completely enclosed in the shop. The learned Rent Controller considered that these improvements justified the addition of Rs 5 to the basic rent for the purpose of calculating the fair rent.

The learned Appellate Authority was undoubtedly right in holding that section 4 makes no provision for adding anything to the rent paid during the 12 months prior to the 1st of January, 1939, on account of improvements made thereafter, the only permissible increase being that provided in sub-section (5).

However, the learned counsel for the landlord has urged that section 5 of the Act should also be taken into account. This reads :—

> "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:
>
> Provided that the fair rent as increased under this section shall not exceed the fair rent payable under this Act for a similar building or rented land in the same locality with such addition, improvement or alteration and it shall not be chargeable until

such addition, improvement or alteration has been completed;

Provided further that any dispute between the landlord and tenant in regard to any increase claimed under this section shall be decided by the Controller:

"Provided further that nothing in this section shall apply to any periodical increment of rent accruing under any subsisting agreement entered into before the first day of January, 1939".

It is contended that when the fair rent has been fixed in accordance with the provisions of section 4, it is then open to the Rent Controller in the same proceedings to take account of and add to the fair rent something extra on account of an improvement carried out at the landlord's expense and at the tenant's request.

On the other hand it is contended on behalf of the tenant that section 5 can only refer to any improvements or additions carried out after the fixation of the fair rent under section 4.

This point never appears to have been raised before, and my own impression is that the contention of the learned counsel for the tenant is correct. Under section 4 the basic rent is to be determined and then the fair rent fixed with the permissible addition, and I cannot see how an addition referred to in section 5 can possibly be taken into account in arriving at the basic rent under section 4, which lays down specific principles on which this is to be determined. Moreover if section 5 referred to improvements made before proceedings taken by either landlord or tenant under section 4 for the determination of the fair rent,

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the first proviso in section 5 would become meaningless. The words 'and it shall not be chargeable until such addition, improvement or alteration has been completed' can only possibly refer to improvements or alterations carried out after the determination of fair rent under section 4. I thus consider there is no ground for interfering with the order of the learned Appellate Authority and dismiss the revision petition, but leave the parties to bear their own costs.

B.R.T.

FULL BENCH

Before S. B. Capoor, Daya Krishan Mahajan and Prem Chand Pandit, JJ.

M/S. RAMESHWAR LAL SARUP CHAND,—*Petitioner.*

versus

U. S. NAURATH AND ANOTHER,—*Respondents.*

Civil Writ No. 798 of 1962

1963

May, 29th.

East Punjab General Sales Tax Act (XLVI of 1948)—S. 11—Assessment to sales-tax under various sub-sections—Whether to be completed within three years—"Proceed to assess"—Meaning of—When are the proceedings to assess said to be taken—Constitution of India (1950)—Article 226—Alternative remedy—When not a bar to granting of writs—Interpretation of statutes—Taxing statutes—Interpretation of, when to be in favour of assessee and when in favour of Revenue.

Held, by majority (S. B. Capoor and D. K. Mahajan, JJ., Pandit, J., Contra)—

(1) That under sub-sections (4), (5) and (6) of section 11 of the Act the assessment must be completed within three years from the expiry of the period within which the return had to be filed; it is not enough that initiation of proceedings by issue of notice has taken place within the prescribed period of three years.