

the application and shall appoint the date from which the rent or lawful increase so specified shall be deemed to have effect."

The Birla
Cotton Spinning
and Weaving
Mills, Ltd.

v.

Hari Chand
and others

Falshaw, C.J.

I can see nothing wrong with the principle underlying this section, but it is objected that it contains no guiding principles on which an interim rent is to be fixed. It is, however, to be borne in mind that the officers who are exercising the powers of Rent Controllers are judicial officers, who are presumed to act judicially, and whose orders are controlled by a higher authority and by this Court. Indeed any order of a Rent Controller is appealable to the Tribunal under section 38, and a second appeal lies to the High Court on a point of law under section 39. For these reasons I am of the opinion that there is no force in these petitions which I would accordingly dismiss with costs. Counsel's fee Rs. 100 in each case.

MEHAR, SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

BALWANT SINGH,—Appellant.

versus

SANT RAM SHARMA,—Respondent.

S.A.O. No. 2-D of 1961.

1964

Delhi Rent Control Act (LIX of 1958)—S. 38—Order made by Rent Controller as to whether relationship of landlord and tenant existed between the parties on preliminary issue—Whether appealable.

Jan., 9th.

Held, that when a question arises in proceedings before the Rent Controller under the Delhi Rent Control Act, 1958, whether relationship of landlord and tenant

exists between the parties, the order disposing of that issue is not one which is made under any of the provisions of the Act. That question has to be decided for settling whether the Rent Controller would have jurisdiction to entertain and proceed with the application for fixation of standard rent or for eviction, as the case may be, which has been filed before him. But while deciding that matter the Rent Controller is not making any order under the Act although he may have to consider the definitions of the expressions "landlord" and "tenant" given in section 2. It is difficult to hold that every order made by the Rent Controller in the exercise of his jurisdiction as such would be an order made under the Act. No appeal, therefore, lies from an order made by the Rent Controller on a preliminary issue as to whether relationship of landlord and tenant exists between the parties or not.

Second Appeal from the order of Shri Diali Ram Puri, Rent Control Tribunal, Delhi, dated 1st November, 1960, confirming that of Shri G. C. Jain, Controller, Delhi, dated 7th December, 1959, holding that the relation of landlord and tenant exists between the parties.

P. S. SAFEER, ADVOCATE, for the Petitioner.

HARA SINGH, ADVOCATE, for the Respondent.

ORDER

Grover, J.

GROVER, J.—The sole point in this appeal is whether the order made by the Rent Controller deciding a preliminary issue whether the relationship of landlord and tenant exists between the parties was appealable.

The tenant had filed an application for fixation of standard rent regarding a portion of House No. 5969 in Karol Bagh, Delhi. The landlord contested the application on the ground that the relationship between the parties was one of licensee and licensor and not of tenant and landlord. The Rent Controller by an order dated 7th December, 1959, held that the relationship of the nature asserted by the tenant existed between

the parties and therefore, it was directed that evidence be produced in the matter of fixation of standard rent. The landlord filed an appeal and in a fairly lengthy order the Rent Control Tribunal held that the order made by the Rent Controller was not final and was not appealable under section 38 of the Delhi Rent Control Act, 1958 (to be hereinafter referred to as the Act).

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The main contention of Mr. P. S. Safeer, who appears for the appellant, is that the order deciding the preliminary question whether the relationship of landlord and tenant exists between the parties—is an order made under the Act and, therefore, an appeal would lie under section 38 of the Act to the Rent Control Tribunal. The aforesaid section provides that:—

“(1) An appeal shall lie from every order of Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the official Gazette.

Section 36 deals with the powers of the Controller and section 37 with the procedure to be followed by him. According to sub-section (2) of section 37, the Controller while holding an enquiry must follow as far as may be the practice and procedure of a Court of Small Causes. Section 43 makes the order of the Controller or the order passed on appeal final. The expressions “landlord” and “tenant” are defined by clauses (e) and (1) of section 2 of the Act. The contention of Mr. Safeer is that the decision given by the Rent Controller with regard to relationship between the parties has to be given with reference to the definition contained in section 2 and since the Controller

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has the jurisdiction to make such an order it must be deemed to be an order made under the Act and as it finally and conclusively determines the question of relationship, the order must be deemed to be final with the result that it would be appealable under section 38 (1). In *South Asia, Industries Private Limited v. S.B. Sarup Singh and others* (1). Gosain J. had an occasion to interpret the meaning of words made under this Act is section 38(1). It was pointed out by him that the orders which are made by the Rent Controller may be in the nature of interim orders or final orders. All those orders when made must be deemed to have been made under the Act and must therefore be appealable. But these words refer to the express provisions of the Act and not to the provisions contained in the Civil Procedure Code. In the case which was decided by him, an order by which the name of the tenant had been struck off the records was held not to be covered by section 38(1) as it was not an order made under the Act. In *Messrs Lachhman Das Moti Ram v. Shori Lal* (2), in the proceedings before the Rent Controller for fixation of standard rent a preliminary issue had been framed and decided on the question of limitation. It was held that such an order could not be regarded as an order under the Act and was not appealable as such. In *Niadre v. Nanneh* (3), I held that an order allowing substitution of legal representatives was not an appealable order. The basis of all these decisions is that in order to be appealable the order must have been made under the provisions of the Act.

When a question arises in proceedings before the Rent Controller whether relationship of landlord and tenant exists between the parties, the order disposing of that issue is not one which is made under any of the provisions of the Act. That question has to be decided for settling whether the Rent Controller would

(1) 1962 P.L.R. 65

(2) 1960 P.L.R. 254

(3) I.L.R. 1960 (2) Punj. 76 : P.L.R. 451

have jurisdiction to entertain and proceed with the application for fixation of standard rent or for eviction, as the case may be, which has been filed before him. But while deciding that matter the Rent Controller is not making any order under the Act although he may have to consider the definitions given in section 2 of the expressions "landlord" and "tenant". It is difficult to hold that every order made by the Rent Controller in the exercise of his jurisdiction as such would be an order made under the Act.

Mr. Safer relies on a decision of Mahajan J, in *Pokar Mal v. Prem Nath and others* (4), in which it was held that an order of the Rent Controller refusing to set aside an *ex parte* order is an order under the Act. The learned Judge referred to section 37 and relied on the provisions therein that the procedure which the Rent Controller has to follow is the procedure prescribed for the Courts of Small Causes. He was of the view that if the Judge, Small Cause Court, had the power by virtue of section 37 of the Act, the Rent Controller had also the power and that being so the order refusing to set aside an *ex parte* order must be held to be an order under section 37. I cannot see how that decision can be of an assistance in deciding whether an order deciding one issue in proceedings relating to standard rent of the nature that was decided in the present case would become appealable under Section 38. It is noteworthy that in the case decided by Mahajan J. the order which was sought to be appealed against was final and was not of an interlocutory nature as it is in the present case. It may be that certain interlocutory orders which are made under the Act would be appealable but I cannot accede to the contention that the Legislature could have ever intended that an order of a preliminary nature deciding the question of relationship of landlord and tenant was to be appealable.

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(4) 1963 P.L.R. 1056

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 Grover, J.

The Rent Control Tribunal referred to decisions under the Indian Companies Act, the Provincial Insolvency Act etc., where similar language is employed and in which it had been held that an interlocutory order is not appealable. He was of the opinion that only a final order of the Controller was appealable. There is a good deal of force in the view expressed by the Rent Control Tribunal but no final opinion need be expressed on the nature of the orders which will be appealable, be they interlocutory or final under the Act. Suffice it to say that so far as the order sought to be appealed against is concerned, it could not possibly be regarded as falling within the provisions of section 38(1) on the Act. I would, therefore, dismiss this appeal with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Mehar Singh, J.

THE HAMDARD DAWAKHANNA. AND ANOTHER,—
Petitioners.

Versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 258-D of 1957

1964

 Jan., 13th.

Essential Commodities Act (X of 1955)—S. 3—Fruits Products Order (1955)—Provisions of—Whether ultra vires S. 3 of the Act or Article 19(1)(g) of the Constitution of India.

Held, that the language of section 3 of the Essential Commodities Act is wide enough to permit the regulation of the manufacture of an essential commodity inasmuch as the manufacture of a commodity is nothing but production of the commodity and the power conferred by the section carries with it the power to lay down conditions upon which the production of an essential commodity could be permitted and such a condition could