(84) The only ground that appears to have been pressed before the learned Single Judge was, that in matters of appointment they were governed by the 1942 Rules, and on the completion of the **maximum period of 3 years' probation fixed** by Rule 12 of those Rules, they automatically became permanent members of Punjab Service of Engineers, B. & R. Accepting this contention, the learned Single Judge allowed the petitions and quashed the impugned orders. Hence these L.P. As. by the State of Punjab.

(85) The points canvassed before us in these appeals are also the same which have been discussed above in the first bunch of 13 appeals. The reasons given in the foregoing part of this judgment will, therefore, apply *mutatis mutandis* to the cases of these respondents, also, in these appeals. In these cases also, the impugned orders terminating the services of Sushil Kumar Khullar and Bhagwan Singh Chawla were passed on October 28, 1966, but were communicated to them on or after 1st November, 1966. Though we have reversed the finding of the learned Single Judge with regard to the applicability of the 1942 Rules to the cases of the respondents, yet on the ground, that the impugned orders not having been communicated before 1st November, 1966 remained ineffective and still-born, we maintain the annulment of the impugned orders in these two cases, also, and in the result, dismiss the appeals with no order as to costs.

MEHAR SINGH, C.J.—I agree.

REVISIONAL CIVIL

Before Mehar Singh, C.J. and P. C. Jain, J.

RAM PARSHAD,—*Petitioner.*

versus

RAGHBIR SINGH,—*Respondent.*

Civil Revision No. 928 of 1967.

May 21, 1969.

East Punjab Urban Rent Restriction Act (III of 1949) Section 4—Application for fixation of fair rent—No evidence produced by the parties answering requirements of section 4(2)(a) and 4(2)(b)—Rent Controller—Whether has jurisdiction to fix fair rent.

Held, that it is apparent from the language of section 4 of East Punjab Rent Restriction Act, 1949 that when one of the parties, whether the landlord

or the tenant, moves an application for fixation of fair rent of the demised property, immediate jurisdiction is of the Rent Controller to decide such an application. When the Rent Controller proceeds to receive evidence with regard to the requirements in clauses (a) and (b) of sub-section (2) of section 4 of the Act, with the ultimate object of giving a final decision in such an application, he still does all that within his statutory jurisdiction under section 4 of the Act. At the stage of arguments when the evidence of the parties is scanned and analysed if it is found that the evidence led by the parties does not answer the requirements of clauses (a) and (b), or either clause taken separately, of sub-section (2) of section 4 of the Act, and further no indication is available from anything said or done or any information supplied by the parties that any such evidence is available from any source which the Rent Controller may tackle, the Rent Controller does not thereby lose jurisdiction and he has the authority to give final decision in disposing of the application for fixation of fair rent under section 4 of the Act. (Para 6)

Case referred by the Hon'ble the Chief Justice Mr. Mehar Singh on 19th December, 1968 to a larger Bench for decision of an important question of law involved in the case. After deciding the question referred to the Division Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Prem Chand Jain returned the case to a Single Judge on 21st May, 1969 for disposal. The case was finally decided by Hon'ble the Chief Justice Mr. Mehar Singh on 20th August, 1969.

Petition under Section 15 Sub-Section 5 of Act No. 3 of 1949 East Punjab Urban Rent Restriction Act, 1949 for revision of the order of Shri Sukhdev Singh, Appellate Authority under East Punjab Urban Rent Restriction Act, Hoshiarpur dated 12th July, 1967 affirming that of Shri Arjan Singh, Rent Controller, Hoshiarpur (Sub-Judge III Class, Hoshiarpur) dated 24th June, 1966 fixing the fair rent of the shop in dispute at Rs. 45.00 per mensem and further ordering that this order is to operate from today i.e. 24th June, 1966.

JOWALA DASS, ADVOCATE WITH B. L. GOSWAMI, ADVOCATE, for the Petitioner.

NAGINDER SINGH, ADVOCATE, for the Respondent.

REFERENCE ORDER

Mehar Singh, C.J.—The demised shop is situated at a crossing on the railway road in Hoshiarpur town. It was let by Ram Parshad, the landlord, to Raghbir Singh, the tenant, on August 18, 1961; at a rental of Rs. 100 per mensem. The tenant made an application under section 4(2) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), for fixation of fair rent of this shop. He said that its fair rent was no more than Rs. 10 per mensem, the rent which the landlord himself was paying to the Custodian before he purchased this shop from him.

(2) It is accepted on both sides that in the year 1938-39 on the railway road in Hoshiarpur town there were only four or five shops, that the demised shop was constructed in 1943, that the demised shop was burnt during the riots in the year 1947 and was let by the Custodian to the landlord in that condition at a rental of Rs. 10 per mensem, and that since 1947 this railway road has come to be a busy shopping centre, the whole of the road having been occupied with shops. On the side of the tenant was examined A.W. 4, whose shop is said to be about ten or eleven shops away from the demised shop and is a single-storeyed shop. He pays Rs. 20 per mensem as rent. A.W. 5: said that his shop is about eight or nine shops away from the demised shop, is also a single-storeyed building, and he pays Rs. 7 per mensem as rent. A.W. 6 said that his shop is thirteen or fourteen shops away from the demised shop, is a single-storeyed building and he pays Rs. 10 per mensem as rent. The shops with A.W. 4 and A.W. 6 are not shown to have been in existence in the year 1938-39 for these tenants said that they had been in their shops respectively from the years 1943 and 1942. They did not say that the shops existed in the year 1938-39. A.W. 5 said that his shop existed some thirty years earlier to the year in which he was making statement in 1964, which means that it existed ever since 1934. The evidence of none of these three witnesses has been accepted by the authorities below because in the case of none it was shown that the shop with him compared in any respect with the demised shop, apart from this that in the cases of A.W. 4 and A.W. 6 the shops have not been shown to exist in the year 1938-39. So the evidence of these witnesses was not found helpful. A.W. 9 has his shop eight or ten shops away from the demised shop. Its measurements are $13\frac{1}{2}' \times 17\frac{1}{2}'$. He took it on rent at Rs. 55 per mensem and says that its fair rent was fixed at Rs. 9 by the Rent Controller on July 18, 1964. Copy of the order of the Rent Controller is Exhibit A/X. His is a single-storeyed shop. There is then A.W. 10 whose shop is seventeen or eighteen shops away from the demised shop, consisting of two rooms and a platform, on an area of two marlas, and the witness says that the fair rent fixed has been Rs. 6.75 Paise per mensem. Copy of the order of the Rent Controller with regard to his shop is Exhibit A.W. 8/3, the date of the order being November 5, 1960. The order of the Rent Controller shows that it was claimed that the shop with A.W. 10 had been constructed in 1930 and as the tenant said that he had taken the shop at a rental of Rs. 4/8 per mensem from the very beginning, so the Rent Controller accepted that statement and after allowing the statutory increase he fixed the fair rent at Rs. 6.75 Paise per mensem. The authorities below have not accepted these two

instances as helpful in this case either, obviously on the view that those two shops are not same or similar accommodation in similar circumstances as in the twelve months preceding January 1, 1939, as compared to the demised shop. So both the authorities have discarded the whole of the evidence of the tenant. The landlord examined three witnesses. R.W. 1 said that his shop adjoins the demised shop and its rent is Rs. 60 per mensem, it being a double-storeyed building. R.W. 2's shop is opposite to the demised shop, is a single-storeyed building, and is about 6′×4′ in area with a rental of Rs. 20 per mensem. It is a **pan-wala's** shop. There is one shop that intervenes between R.W. 3's shop and the demised shop and the rent of this witness's shop is Rs. 80 per mensem. It is a single-storeyed shop. This witness was not able to say how his shop compared with the demised shop. R.W. 2's shop obviously, being a **panwala** shop, is small in size and would not compare with the demised shop at all. There is no manner of finding out how R. W. 1's shop compared with the demised shop. Not one of these shops was in existence in the year 1938-39. The demised shop is admittedly a four-storeyed building. Neither the witnesses of the tenant nor of the landlard brought evidence of a building of same or similar type as the demised shop. They could not possibly bring evidence of same or similar shop existing in 1938-39 because no such buiding of that size and dimensions existed on the railway road in Hoshiarpur town in that year. The question of assessment of property tax by the municipality as regards any building on railway road Hoshiarpur has not arisen and no evidence in this respect has been produced.

(3) So before the Rent Controller there was no piece of evidence which could be considered either under clause (a) or clause (b) of sub-section (2) of section 4 of the Act. Anyhow the Rent Controller fixed the fair rent on the application of the tenant at Rs. 45 per mensem and, on appeals by both parties the Appellate Authority has refused to interfere with the order of the Rent Controller saying that the rent fixed by the Rent Controller is not unfair. The order of the Appellate Authority is of July 12, 1967, and against that order both the parties have come in revision, the revision application of the landlord being No. 928 of 1967, and that of the tenant being No. 86 of 1968.

(4) Reference has been made on both sides to a Full Bench decision of this Court reported as *Chanan Singh* v. *Sewa Ram*, (1) in which

(1) I.L.R. (1966)2 Pb. 113=1966 P.L.R. 335.

the learned Judges held that the import of the words 'similar circumstances' used in section 4(2)(a) of the Act is that when the area, in which the building is situate, has since 1938 been developed, the building could not be said to be in 'similar circumstances', and that these words govern the word 'same' as well as the word 'similar' given in the clause; and a change in the character of a locality from undeveloped to developed locality would constitute a change of circumstances. On the evidence, therefore, there has been change in the character of the railway road in Hoshiarpur from a road with only four or five shops to a now fully developed shopping centre with the whole of the road covered with shops. On the side of the landlord reference is made to my judgment in **Hira Lal** v. **Ganga Ram,** (2) in which, after I had found that there was no evidence under clauses (a) and (b) of sub-section (2) of section 4 of the Act, I said that the order of the Appellate Authority was just and proper in saying that the contractual rent was the fair rent in that case. The learned counsel for the landlord says that that case should be followed here. On the side of the tenant it is said that the evidence led by the tenant and particularly the order, copy Exhibit A/X, fixing fair rent of a neighbouring shop should go in favour of the tenant so as to reduce the amount of the fair rent to Rs. 10 per mensem, the rent which the landlord was paying to the Custodian. In addition, reliance is also placed on two other decisions of the Rent Controller, copies Exhibits AW 8/3 and AW 8/4. The shops are situate on the same road. In order, copy Exhibit A.W. 8/3, the fair rent fixed was Rs. 6.75 Paise; and in the case of order, copy Exhibit A.W. 8/4, it was fixed at Rs. 9 per mensem. In the case of the second order rather the contractual rent of Rs. 9 per mensem was maintained. So, that case is not helpful, nor is the first case, because it has not been shown that the shop in that case has been situate in same or similar circumstances as the demised shop. A question has been raised on the side of the landlord that on the findings of the authorities below and in the state of the evidence in this case as there is no evidence for consideration either under clause (a) or under clause (b), or under both clauses, of sub-section (2) of section 4 of the Act, no fair rent can be fixed under section 4; and there being no other section in the Act under which fair rent can be fixed, the Rent Controller had no jurisdiction in this case to fix fair rent. So it is said, on the side of the landlord, that the orders of the authorities below are without jurisdiction being outside the scope of the Act. In **Chanan Singh's case**

(2) C.R. 151 of 1966 decided on 20th October, 1967.

(1) the Full Bench reviewed practically the whole of the case law under sub-section (2) of section 4 of the Act and while the learned Judges considered the meaning and scope of the language used in clause (a) of sub-section (2) of section 4, an argument of this type was never raised before them, and obviously thus not considered. It appears that in none of the earlier cases to which reference has been made in the judgment of the learned Judges in **Chanan Singh's case** (1) has this question been raised either. In **Hira Lal's case** (2) which I decided, although the finding was that there was no evidence under clauses (a) and (b) of sub-section (2) of section 4 of the Act, an argument of this type was never raised and the decision proceeded on a conclusion that the Appellate Authority was right in saying that the contractual rent was proper and fair rent between the parties. It is one thing to say that contractual rent is fair and proper rent between the parties and then to dismiss an application for fixation of fair rent on merits, but it is quite another thing to come to a finding that there is no evidence which can be considered under any of the two clauses of sub-section (2) of section 4 of the Act and then to make an order for fixation of fair rent. It is the last proposition which is questioned on the side of the landlord on the ground that the authorities under the Act, in such circumstances, have no jurisdiction to make an order fixing the fair rent. My immediate reaction to this argument has been that while where no evidence is available under sub-section (2) of section 4 of the Act for fixation of fair rent, an application to that effect may fail, but it will not be possible to say that initially the Rent Controller had no jurisdiction in such an application. The reason is that not until such an application is tried by the Rent Controller and evidence taken and considered that a conclusion can be reached whether evidence under the two clauses of sub-section (2) of section 4 is or is not there. Until the stage of reaching of that conclusion the proceedings before the Rent Controller cannot be said to be without jurisdiction. The question then is do those proceedings become without jurisdiction on a finding that there is no evidence which attracts the provisions of sub-section (2) of section 4 ? I should say apparently no, but, as the question is being raised for the first time, I would refer it to a Bench of two Judges for an answer. On the merits of the case I agree with the appraisal of the evidence of the parties by the authorities below and have already summed up the evidence above. I agree with them that there is no evidence in this case which can be considered as evidence either under clause (a) or under clause (b), or under both the clauses, of sub-section (2) of section 4 of the Act. So, the only question before the Bench will be; whether in this case, on the

conclusion as above, there is want of jurisdiction in the Rent Controller, and obviously that will also apply to the Appellate authority, or there is jurisdiction in those authorities and the decision of these applications proceeds on a finding on merits that the tenant has failed to prove in his application that it is a case of fixation of fair rent ? So these two revision applications are referred to a larger Bench and will be set for hearing at a very early date.

ORDER OF DIVISION BENCH.

The order of this Court was delivered by Mehar Singh, C.J.— The reference order of December 19, 1968, in this case will be read as part of this order. The question that has been posed in that reference order is—"Whether, in the case of an application under section 4 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), for fixation of fair rent, when the party making the application or both the parties to the application fail to produce evidence which answers the requirements of clauses (a) and (b) of sub-section (2) of section 4 of the Act, the Rent Controller has or has not jurisdiction to fix fair rent as claimed by the party making the application ?"

(6) It is immediately apparent from the very language of section 4 of the Act that when one of the parties, whether the landlord or the tenant, moves an application for fixation of fair rent of the demised property, immediate jurisdiction is of the Rent Controller to decide such an application. When the Rent Controller proceeds to receive evidence with regard to the requirements in clauses (a) and (b) of sub-section (2) of section 4 of the Act, with the ultimate object of giving a final decision in such an application, he still does all that within his statutory jurisdiction under section 4 of the Act. A stage then arises in that application when it is ready for arguments. At the stage of the arguments, when the evidence of the parties is scanned and analysed, it is found; as has been in the present case, that the evidence led by the parties does not answer the requirements of clauses (a) and (b), or either clause taken separately, of sub-section (2) of section 4 of the Act, and further no indication is available from anything said or done or any information supplied by the parties that any such evidence is available from any source which the Rent Controller may tackle. It has been said that at that stage the Rent Controller loses jurisdiction to fix fair rent in such an application. It is not quite clear how in proceedings which started with the Rent Controller within his jurisdiction, and continued to the stage

of the decision to be within his jurisdiction, his jurisdiction is lost because there is not material before him to give a decision on the merits of such an application. It is obvious that in such circumstances he retains the jurisdiction to decide the application for fixation of fair rent at the final stage.

(7) How he decides such an application on merits is entirely a different matter. His decision on merits may or may not be open to criticism in appeal or revision, but he has had jurisdiction to give the decision, and no possible attack can be made upon his jurisdiction merely because at the stage of decision what is found is that he has no evidence which answers the requirements of clauses (a) and (b), or any of them, of sub-section (2) of section 4 of the Act.

(8) So, our answer to the question posed in the order of reference is that in such a case the Rent Controller has the jurisdiction to give the final decision in disposing of an application for fixation of fair rent under section 4 of the Act. The two revision applications Nos. 928 of 1967 and 86 of 1968, will now go back for disposal before a Single Bench. The costs in this reference will abide the result of the revision applications in which this reference has been made.

K. S. K.

CRIMINAL MISCELLANEOUS

Before Gopal Singh, J.

M/S. RAKESH INDUSTRIES,—*Petitioner.*

versus

STATE,—*Respondent.*

Criminal Misc. No. 269 of 1969

in

Criminal Revision No. 117-R of 1968.

May 21, 1969.

Code of Criminal Procedure (V of 1898)—Sections 438, 439 and 440—Recommendation of a revision petition by Sessions Judge under section 438 to the prejudice of a party—Such party—Whether has a right to be heard by the High Court—Section 440—Whether gives discretion to the High Court not to hear the party.

Punjab High Court Rules and Orders, Volume V—Chapter 3-A, Rule 8—Party to a case in the High Court served for a tentative date—No Counsel