

Rahim Baksh Vs. S.M. Rice

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Court : Allahabad

Decided On : Jan-02-1913

Reported in : 18Ind.Cas.708

Judge : Chamier, J.

Appellant : Rahim Baksh

Respondent : S.M. Rice

Judgement :

Chamier, J.

1. The appellant is the owner of a house in the Jhansi Cantonment. The respondent occupied the house from October 16th, 1909, till the end of June 1910, and from the beginning of November 1910 till the end of March 1911. The question for decision in this appeal is whether the respondent is liable to pay rent during the period of his tenancy at the rate of Rs. 75 per mensem as contended by him or at the rate of Rs. 100 per mensem as contended by the appellant. The Munsif decided in favour of the appellant. The District Judge decided in favour of the respondent.

2. The house was built and became ready for occupation in 1905. A Major Stevens, who was Brigade Major, offered to take the house at a rent of Rs. 100 per mensem but the appellant demanded a higher rent. At the instance of Major

Stevens, a notice was issued to the appellant under Section 6 of the Cantonments (House Accommodation) Act, 1902. The appellant lodged an objection under Section 18 of the Act and a committee of arbitration was constituted to inquire into the matter. The committee fixed the rent at Rs. 75 per mensem. Major Stevens entered into possession and, notwithstanding the decision of the committee, paid rent at the rate of Rs. 100 per mensem, the rate which he had himself offered in the first instance. It is common ground that rent was paid at that rate so long as the house was occupied between 1905 and 1909.

3. The respondent arrived upon the scene in October 1909, and entered into occupation of the house on the 16th of that month. The Munsif finds that he agreed to pay rent at the rate of Rs. 100 per mensem, but the District Judge finds that there was no express or implied agreement on the part of the respondent to pay rent at that rate. The learned Judge has accepted the account given by the respondent, namely, that he went to the appellant's shop to take the house, that appellant then demanded rent at the rate of Rs. 100 per mensem, that the respondent demurred to that, made no agreement at all and entered into possession, feeling certain that the rents of all houses in Cantonments were fixed and thinking that he would have to pay the fixed rent and no more.

4. In February 1910, the appellant applied to the authorities, under Section 21 of the Act, that the dispute between himself and the respondents should be referred to a committee of arbitration. He stated, what is now admitted, that the preceding tenants had paid him Rs. 100 per mensem and he also alleged that the house had been much improved since the decision of the committee of 1905. The second committee decided that the rent should be Rs. 100 per mensem. The respondent was not satisfied with this and the Cantonment Authorities consulted the Legal Remembrancer, who advised them that the committee of 1910 had acted ultra vires because the only ground on which they could have been asked to reconsider the rent was that additions or improvements had been made to the house, whereas they had not been asked to proceed upon that ground and that they had in fact determined the rent on other considerations. Accordingly, a third committee was constituted and they proceeded to fix the rent at Rs. 75 per mensem. The Courts below have found, and the respondent's Counsel here admits, that the third

committee was constituted illegally and that their decision may be disregarded. The District Judge seems to have accepted the view of the Legal Remembrancer that the committee of 1910 acted ultra vires, and he has, to use his own words, 'fallen back' on the decision of the first committee. He seems to have held that the decision of the first committee held good not only during the tenancy of Major Stevens but during the tenancy of any successor in the appointment of Brigade Major.

5. It appears to me that the opinion of the Legal Remembrancer followed by the District Judge was clearly wrong. Section 21 of the Act provides that if the owner and the tenant of a house disagree (a) as to any change in the rent of the house which is proposed in consequence of dilapidations or additions to buildings or for any similar reason or (b) any matter relating to rent or repairs not otherwise provided for by this Act, either the owner or the tenant may require that the matter be referred to a committee of arbitration.

6. The appellant desired a reference to arbitration upon two grounds as already stated and the committee was convened 'to consider the rent.' The Act declares that the decision of the committee shall be final. The fact, (if it be a fact), that the committee were not asked to consider and did not consider the question of alterations and improvements, cannot affect the finality of their decision, for the appellant did not ask for a reference on that ground only. There was a dispute between the appellant and the respondent as to the rent payable, which clearly came within Section 21 of the Act, and the committee were required to 'consider the rent.' In my opinion, there can be no doubt that the decision of the committee was binding upon both parties.

7. Supposing, however, that the committee acted ultra vires, as the Legal Remembrancer advised and the District Judge has decided, the result appears to me to be the same. The rent fixed by the committee of 1905, appointed at the instance of Major Stevens, was to be deemed under Section 18 of the Act to be the rent payable by that officer, but I cannot agree with the District Judge that the words 'a military officer' and 'the military officer' in Sections 6, 8 and 18 refer not only to the particular military officer, at whose instance a notice is issued, under

Section 9, but also to his successors-in-office. The words obviously and unmistakably refer only to the former. The District Judge observes that if this is the correct construction, there should be a fresh 'appropriation' under Section 6, whenever a fresh tenant wishes to occupy a house, and that there is no object in 'registering' the rent. It appears to me that the Act does contemplate a fresh appropriation whenever the owner of a house in Cantonments refuses to let it at reasonable rent to a military officer, who can bring himself within Section 8(2) of the Act, and that the object of registering the rent is shown by the first explanation to that section.

8. But that explanation, of course, applies only to an application made by a military officer under Section 8. It cannot be treated as an independent provision allowing any military officer to take possession of a house without following the procedure laid down in Section 8 and to decline, in any event, to pay more than the registered rent. Where the procedure prescribed by the Act is not followed, the amount of rent payable by a military officer is a matter of contract, express or implied, between the owner and himself. Ordinarily, no doubt, the owner would be willing to accept the registered rent, for he knows that if he sets the procedure of the Act in motion, the committee of arbitration will not award him a higher rent than the registered rent, unless for good cause shown.

9. Apart from the Act, the case is perfectly clear. The appellant demanded Rs. 100 as rent. The respondent did not agree to pay that amount, according to the District Judge, but he took possession knowing that the appellant had not agreed to accept a lower rent. If the case had rested there, I should have held that the respondent was liable to pay rent at the rate of Rs. 100 per mensem. That was the rent which had been paid by previous tenants and the respondent was not led to believe that the appellant would accept less. As a matter of fact, the respondent's locum tenens paid rent at the rate of Rs. 100 per mensem for the four months during which he occupied the house in 1910, though this does not affect the issue.

10. In my opinion, any doubt that there might have been as to the amount of rent payable was set at rest by the second committee of arbitration. For the above reasons, I hold that the decision of the Munsif was right and should not have been

disturbed. I allow the appeal, reverse the decision of the District Judge and restore that of the Munsif. The respondent must pay the appellant's costs throughout.

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