

Gobind Ram Vs. Sumat Parkash

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Court : Delhi

Decided On : Apr-24-1973

Reported in : 9(1973)DLT321; 1973RLR383

Judge : S.N. Andley and; S.N. Shankar, JJ.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 9

Appeal No. : Second Appeal No. 145 of 1972

Appellant : Gobind Ram

Respondent : Sumat Parkash

Advocate for Pet/Ap. : H.R. Khanna and; J.D. Jain, Advs

Judgement :

S.N. Andley, J.

(1) The question that arises in this appeal is whether Messrs. Sheo Chand Rai Ram Partap v. Jagdish Pershad Shrivastava (I.L.R. 1966 Punjab 269) was correctly decided.

(2) The appellant Gobind Ram is the tenant of the premises in question. The respondents are the landlords. The appellant applied to the Rent Controller under section 9 of the [Delhi Rent Control Act, 1958](#) for fixation of standard rent. Pending

this application, the Rent Controller fixed interim rent at Rs. 95.00 per month under section 10 of the Act. The appellant did not pay or deposit the interim rent as fixed by the Rent Controller. On July 15, 1970, the respondents made an application to the Rent Controller praying for a direction to the appellant to deposit the interim rent fixed by the Rent Controller within a time to be fixed and, upon the appellant failing to do so, to dismiss the application for fixation of standard rent.

(3) The appellant did not plead any payment but he contended that there was no power with the Rent Controller to pass the orders prayed for by the respondents. The Rent Controller, by order dated March 17, 1971 accepted the respondents' application and ordered that unless the appellant deposited arrears of rent at the rate of Rs. 95.00 per month which was the interim rent fixed within two months from the date of the order, the standard rent petition shall remain stayed. The appellant did not comply with this order and, instead filed an appeal against it before the Rent Control Tribunal. By his order dated March 6, 1972, the Rent Control Tribunal dismissed the appeal and that is how this second appeal came to be filed in this Court.

(4) Both the Rent Controller and the Rent Control Tribunal relied upon the above mentioned decision. When the second appeal came up before Deshpande J., he desired that the matter may be heard by a larger Bench to determine the question whether the Controller has any jurisdiction at all to order the tenant to pay to the landlord interim rent fixed by the Controller under section 10 of the Act in an application for fixation of standard rent filed under section 9.

(5) Shamsheer Bahadur, J. who decided Sheo Chand Rai Ram Partap's case (supra) held that in proceedings for the determination of standard rent before the Rent Controller, the Rent Controller has inherent power to enforce payment of the sum so settled. The learned Judge compared the provisions of section 15 with the provisions of section 10 and observed that,-

'WHAT is lacking in section 10 and what is actually provided for in sub-section (3) of section 15 is that the interim rent so fixed becomes payable within one month of the date when the order is passed and the absence of this provision in section 10 has induced the learned counsel to argue that though the interim rent in the

present instance could have been fixed under section 10, the direction that its payment should be made within one month is unenforceable.'

(6) He further held that this submission was without force because, as observed by the learned Judge,

'CONCEDEDLY, the proceedings for fixation of rent are still pending and the Rent Controller has the power under section 10 to direct fixation of interim rent during these proceedings. It would be indeed a futile proceedings for the fixation of interim rent if the Rent Controller is held to be devoid of authority in enforcing such a payment. Powers to enforce its orders inhere in every Court of law and there is nothing to justify the conclusion which is sought to be deduced from a comparison of section 10 and sub-section (3) of section 15 that direction for payment of interim rent can be made in one case and not the other. Section 10 would be lost of all meaning and content if it were to be construed in the manner contended for by the learned counsel for the appellants.'

(7) Now, section 10 appears in Chapter Ii of the Act which contains provisions regarding rent. Section 9 requires the Controller to fix the standard rent in respect of any premises on an application made to him in this behalf either by the landlord or by the tenant in the prescribed manner. Then, section 10 of the Act provides,-

'If an application for fixing the standard rent or for determining the lawful increase of such rent is made under section 9, the Controller shall, as expeditiously as possible, make an order specifying the amount of the rent or the lawful increase to be paid by the tenant to the landlord pending final decision on the application and shall appoint the date from which the rent or lawful increase so specified shall be deemed to have effect.'

(8) Section 15 of the Act appears in Chapter Iii which deals with control of eviction of tenant's. Sub-section (1) of section 15 empowers the Controller in a petition for eviction on the ground of non-payment of rent to make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order rent calculated at the agreed rate and to continue to do so month by month, by the fifteenth of each succeeding month. Sub-section (2) provides that

in a petition for eviction on any other ground, the Controller, on the application of the landlord may make an order directing the tenant to pay the rent in the same manner as is provided in sub-section (1) of section 15. Sub-sections (1) and (2) of section 15 will apply in cases where there is no dispute as to the amount of rent payable by the tenant. Sub-section (3) of section 15 covers the situation where there is a dispute as to the amount of rent payable by the tenant and it provides:-

'If, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, until the standard rent in relation thereto is fixed having regard to the provisions of this Act, and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf.'

(9) It is not necessary to refer to sub-sections (4) to (6) of section 15 but sub-section (7) has a bearing. It provides,-

'If a tenant fails to make payment or deposit as required by this section, the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application.'

(10) SUB-SECTIONS (1) to (6) of section 15 of the Act provide a locus paenitentiae to the tenant to avoid eviction but if the direction of the Controller to make payment of agreed rent or interim rent is not complied with, the tenant is liable to have his defense against eviction struck out.

(11) Controllers appointed under the Rent Control Act, 1958, are statutory authorities and they have to proceed in accordance with the provisions of the statute. It is true that they have inherent powers as has been held by this Court in *Subhash Chander v. Rehmat Ullah* : 1972RLR154 (2) but such inherent power has to be exercised for achieving the purposes of the Act.

(12) It appears to us clear from a reading of section 10 of the Act that pending the disposal of the application for fixation of standard rent, the only power exercisable by the Controller is to make an order specifying the amount of the rent or the lawful increase to be paid by the tenant to the landlord and to appoint the date from which the rent or lawful increase so specified shall be deemed to have effect. No penalty is provided for not complying with an order made under section 10 as it is provided in sub-section (7) of section 15 of the Act. Section 10 merely authorises the Controller to fix the rent which is payable by the tenant to the landlord during the pendency of the application for fixation of standard rent and the words 'to be paid' in this section merely mean 'payable'. The Controller has no further function of enforcing its order fixing interim rent. If the tenant does not make payment of the interim rent fixed by the Controller, it is open to the landlord to seek eviction of the tenant under section 14 of the Act. Under section 10, the Controller has no power to determine whether any rent or interim rent has been paid by the tenant or not for the period of operation of the order fixing interim rent. thereforee, the Controller cannot merely by reason of having passed an order under section 10 compel the tenant to pay the interim rent. If the tenant does not pay, he only takes the risk of the petition for eviction being filed against him under section 14 of the Act where he may raise the plea of payment which will be determined by the Controller. But such a plea will not be entertainable in the application for fixation of standard rent where an order for payment of interim rent under section 10 has been made.

(13) It is, thereforee, difficult for us to see how section 10 would be lost of all meaning and content if it were to be construed so as to hold that the Controller cannot enforce an order made under section 10 of the Act as observed by the learned Judge in M/s. Sheo Chand Rai Ram Partap's case (supra).

(14) The inherent power of Courts as also of the Controller can be invoked only if it is necessary for the ends of justice or to prevent the abuse of the process of the Court. We do not see how the ends of the justice will be defeated or the abuse of the process of the Court will be prevented by conceding to the Controller the power to enforce its order fixing interim rent under section 10. It would bear repetition to say that the object of fixing interim rent under section 10 is to enable

the landlord to recover it pending the disposal of the application for fixation of standard rent and nothing more. On neither ground, therefore, which appeared to the learned Judge in the cited case, can the existence of such power be justified. We, therefore, conclude that if an order is made fixing interim rent under section 10 of the Act, the Controller cannot enforce its payment nor can it refuse to proceed with the application for fixation of standard rent as has been done in the present case. We disagree with the view taken in *M/s. Sheo Chand Rai Ram Partap's case* (supra).

(15) We may only state that both the Controller and the Rent Control Tribunal were justified in following the aforesaid decision because they were bound by it. In these circumstances, this appeal is allowed, the order of the Rent Control Tribunal appealed against and the order of the Rent Controller dated March 17, 1971 are set aside and the Rent Controller is directed to proceed with the application for fixation of standard rent. The parties are directed to appear before the Rent Controller on May 11, 1973 for further proceedings. In the circumstances of this case we make no order as to costs of this appeal.