

Zohra Bai Vs. Abdul Wali

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Court : Delhi

Decided On : Aug-28-1980

Reported in : 18(1980)DLT407; 1980(1)DRJ120

Judge : Rajinder Sachar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal No. 332 of 1973

Appellant : Zohra Bai

Respondent : Abdul Wali

Advocate for Def. : Mr. Aggarwal

Advocate for Pet/Ap. : Harihar Prasad and; G.N. Aggarwal, Advs

Judgement :

Rajinder Sachar, J.

(1) This is an appeal against the order of the Rent Control Tribunal by which he set aside the order of the Rent Controller and directed the respondent/tenant to pay the arrears of rent @ Rs. 18.00 per month w.e.f. 13/11/1969. The Rent Controller had directed the payment of arrears @ Rs. 50.00 per mensern.

(2) The petitioner/landlord has filed an eviction petition on the ground of nonpayment of arrears of rent under clause (a) of proviso to sub-section (1) of section 14 of the Delhi Rent Control Act (to be called the Act). The landlord who had purchased his property from the custodian had been given the sale certificate in 1964. He moved application for fixation of standard rent. The Rent Controller by an order of 22/9/1966 fixed Rs. 50.00 per mensem as the standard rent. That order was sought to be set aside by the tenant but he failed before the Rent Control Tribunal. At the time when the eviction petition was filed by the landlord on 29/3/1972 the tenants' appeal against the fixation of standard rent being S.A.O. 253/69 was pending in this court (which was however, ultimately dismissed on 17/2/1975). When the application under Section 15(1) of Act was taken up by the Rent Controller a plea was made by the tenant/respondent that as the second appeal for fixation was pending in the High Court the Standard Rent has not been finally fixed and therefore the order that could be passed under section 15(1) could only be the amount calculated at the rate of rent at which it was last paid which was admittedly (Rs. 18.00 per mensem. The Rent Controller however, accepted the landlord's plea and directed the payment of arrears of rent @ Rs. 50.00 per mensem. It may be mentioned that he also held that the standard rent was liable to be paid w.e.f. 1/1/1966. The arrears of Rs. 2854.00 that were directed to be paid undoubtedly included the rent for the period from 12/1/1964 to 31/2/1965, @ Rs. 18 per mensem and from 1/1/1966 to 31/3/1972 @ Rs. 50.00 per mensem. It was common case that the last rent which the tenant had paid was up to 12/11/1969 and that he had paid (c) Rs. 18.00 p.m. The tribunal on appeal by the tenant held that the rent which could be asked for by the landlord must be legally recoverable rent. On that finding evidently the arrears prior to 3 years before the filing of the suit were time barred and could not be ordered to be recovered. As the landlord did not dispute that rent of Rs. 18.00 per mensem had been paid up to 12.11.1969 the tribunal directed the tenant to pay arrears (a) Rs. 18.00 per mensem w.e.f. 13/11/1969. The landlord has come up in appeal against the said order.

(3) So far as the finding of the tribunal that the landlord is not entitled to an order of payment of arrears prior to 13.11.1969, is concerned the counsel for the appellant Mr. Mathur cannot seriously dispute it. The recovery for the period prior to 3 years

before the institution of the suit is obviously time barred and the rent for that period is not legally recoverable. The tribunal was thereforee right in ordering payment only with effect from 13/11/1969.

(4) The serious dispute however is as to at what rate the tenant should be directed to pay the arrears of rent. The tribunal has directed that the arrears could only be ordered @ Rs. 18.00 p.m. because that was the rate of rent at which it was admittedly last paid up to 12/11/1969, notwithstanding that the standard rent @ Rs. 50.00 p.m. had earlier in 1966 been fixed both by the Rent Controller as affirmed by the tribunal. In coming to this decision the tribunal relied upon 1970 Rcr 347 M. L. Ahuja v. Lachhman Das. Mr. Aggarwal the learned counsel for the respondent naturally relied upon the said Judgment especially on the passage in para 9 to the effect that, 'language employed in this sub-section (i.e. Section 15(1)) clearly means that the amount which can be ordered to be paid has no connection with the standard rent of the premises even if standard rent has been fixed already and that the Rent Controller cannot make an order for payment of rent at a rate calculated according to the standard rent fixed and the order will only be in respect of the rate of rent which was last paid or, in other words, the contractual or actual rent last paid'.

(5) torn from the context of the facts of that case the observations made may somewhat seem to support Mr. Aggarwal. However, a closer look at the facts will show that the learned Judge was not considering the matter in the context of an order of the standard rent already existing at the time when an order under section 15(1) is to be passed. In that case in eviction application was filed on 8/11/1958. An order was passed under Section 15(1) on 16/3/1961 directing the payment of rent @ Rs. 57.00 per mensern which was admittedly the agreed rate of rent. A standard rent application which had been filed in February 1961 was decided on 15/7/1961 and the standard rent was fixed at Rs. 245.00 per mensern. That order was further affirmed by the Rent Control Tribunal by its order of 10/2/1964. It was thereafter only on 20/8/1964 that the landlord moved the Rent Controller for direction to the tenant to deposit the difference of short deposit between Rs 245.00 and Rs. 57.00 and to pay future rent @ Rs. 245.00. This plea found favor both with the controller and the tribunal but the appeal against those orders was allowed by

S. N. Andley, with the remarks above. It is apparent that at the time when the order under section 15(1) was passed on 16/3/1961 there was no dispute as to the rate of rent which was payable; nor had the parties raised a dispute and invoked the power of the Rent Controller to fix the interim rent under Section 15(3). The standard rent had also not been determined and the only material on the record was the rate of rent @ Rs. 57.00 which had been last paid, and the order under Section 15(1) could only be at the said rate. Evidently, therefore, the order under section 15(1) already passed cannot be made subject to and modified in 1964 simply because in subsequent proceedings the standard rent had been fixed at a higher rate. This decision was followed by P. N. Khanna, J. in 1971 Rcr 955 Shri Labh Singh v. Shri Jagan Nath Bahl. In that case the eviction application was filed on 19/9/64 on the ground of nonpayment of rent. Admitted rent appears to have been paid and the landlord did not seek any order under Section 15(1) or under Section 15(3) at that time. In subsequent standard rent proceedings started by the landlord in 1967 the rent was fixed at Rs. 40.00 w.e.f. 12/5/1960. The appeal against that order having been dismissed the landlord moved on 20/9/1968 seeking an order under Section 15(2) for direction from the Rent Controller that the tenant be asked to pay arrears in terms of the rate at which the standard rent had been fixed. Rent Control Tribunal directed payment at Rs. 40.00 instead of Rs. 10.00 which was the rate at which it had last been paid. The learned Judge noted that no order had been obtained under Section 15(1) and 15(3). It was in that context that the learned Judge referred to the earlier Judgment of S.N. Andley, J. and opined that the fixation of standard rent @ Rs 40.00 p.m. will have no relevance for the purpose of Section 15(2) of the Act. I do not find that this authority in any way advances the case of the respondent. It is apparent that the question arising here did not come up for decision in that case. In the present case when the application was moved under section 15(1) standard rent had already been fixed by the Rent Controller as affirmed by the Rent Control Tribunal. As a matter of fact specific plea was taken by the respondent/tenant that because of the pendency of the matter in the High Court the direction to pay the arrears should be restricted at the rate last paid i.e. Rs. 18.00 and not at Rs. 50.00 which was the standard rent fixed. Thus as rent was disputed in the proceedings under section 15(1) it had to be read together with section 15(3) of the Act. A case more opposite to the present one is

Moh. Atique Siddiqui v. Munsif Anis Ahmed (1974 RLR 422). In that case the admitted rate of rent last paid was Rs. 110.00 p.m. An application for fixation of standard rent was filed on 17/8/1971 and an interim rent under section 10 was fixed at Rs. 55.00 during the pendency of the application by an order of 7/3/1972. The Rent Controller in eviction application filed in November 1971 passed an order under section 15(1) on 22/3/1972 directing the arrears to be paid @ Rs. 110.00 per mensem. Both the Rent Controller and the Rent Control Tribunal relying on Ahuja's case (supra) had passed an order directing the tenant to pay @ Rs. last paid. Tatachari, J. held that section 15(1) is not to be read in isolation but has to be read along with section 15(3) and an order under section 15(1) has to be made with reference to the interim rent mentioned in section 15(3) and not with reference to the rate of rent at which the rent was last paid by the tenant to the landlord. Ahuja's case was referred to before the learned Judge but it was distinguished and in my opinion, and I say so with respect, correctly by the observation - 'It has to be noticed that the said observation was made in a situation falling under section 15(1) only and not in a situation in which there is a dispute about the rate of rent payable within the meaning of Section 15(3)'. His Lordship therefore modified the order of the Controller and the Tribunal and directed the arrears of rent to be paid @ Rs. 110.00 per month from September 1971 to 7/3/1972 i.e. the date when the interim rent was fixed under section 10 by the Rent Controller and thereafter @ Rs. 55.00 fixed in the standard rent proceedings. It is apparent that the learned Judge accepted the law that if on the date of disposing of an application under section 15(1) interim rent has already been fixed under Section 10 (during the fixation of standard rent proceedings) it is that rate which has to be directed to be paid by the tenant and not the agreed rate of rent or the rate at which rent was last paid. Justification would be there for standard rent to be directed to be paid when standard rent has been finally determined under Section 9 of the Act. Reference to Section 15(3) would show that in case of dispute, though, the tenant is to pay interim rent as directed by the Rent Controller, the tenant is liable to pay the arrears as soon as the standard rent is determined. Thus importance is given to the determination of standard rent. Here standard rent already stands determined. Therefore it is at that rate that the direction by the Rent Controller can be given. That Ahuja's case is distinguishable and cannot

apply to a case where standard rent has already been fixed prior to the passing of the order under section 15(1) was also recognised by M.L. Jain, J. in (1980 Dlt 382) Sampuran Singh Vs.R.Gopal. In that case standard rent was fixed at Rs. 160 p.m. by an order of 18/8/1971. Rent Control Tribunal passed an order for the first time under section 15(1) of the Act on 16/4/1974 to pay @ Rs. 120.00 p.m. presumably following Ahuja's case. Jain, J. allowed the appeal and directed the rent to be paid @ Rs. 160.00 p.m. This was done with the observation by M.L. Jain, J. and in my opinion correctly, and I say so with respect, that 'It appears to me quite clear that where standard rent has already been determined, neither the landlord can demand more, nor does the acquire a right to pay less, than the standard rent within the meaning of sub-section (1) of S. 15. When the learned Tribunal made the order, the standard rent had already been fixed. therefore, the rate at which the rent should have been directed to be paid would be the rate of the standard rent fixed by the High Court.'

(6) It appears to me that the scheme for the payment of the arrears of the rent in Section 15(1) contemplates that if parties are not in dispute about the rate of rent then an order will be passed at the rate at which rent was last paid. But if a dispute is raised then an order that has to be passed under Section 15(1) must take notice of Section 15(3) and if standard rent stands determined already, payment must be directed to be made on the said rate. Scheme of Section 15 will show that under sub-section (1) there is no dispute about the rate of rent, the rate at which the rent was last paid would be the basis for calculation of the arrears. This of course assumes that standard rent has not yet been determined or that the same has been determined and the parties are naturally not at issue. What has to be seen is that even if there is a dispute, section 15(3) provides for interim rent being fixed until the standard rent in relation thereto is fixed and the amount of arrears, if any, calculated on the basis of 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 that (he controller may allow in this behalf. It will thus be seen that the statute makes it clear that the moment the standard rent is determined the arrears and the difference between the standard rent and the interim rent fixed under section 15(3) will have to be paid by the tenant. This is the position where the standard rent is determined after an order has been passed under section 15(1). Can we say with

any logic that when at the time when order is to be passed under section 15(1) and standard rent already stands determined, the tenant can be asked to pay not at the standard rent but at the rent which was last paid by him notwithstanding that the agreed rate of rent may be much higher than that of the standard rent fixed. I cannot understand any reason on which such a strange conclusion can be arrived at. In my view the only jurisdiction of the Rent Controller, would have to be to direct the payment at the rate of the standard rent. Not to do so would be not only contrary to the whole scheme of Section 15 of the Act but would 'frustrate the law and would work great hardship to the tenants in several cases where standard rent is less than the contractual rent' as has been aptly put by Jain, J. To take the present case but with reverse illustration if the agreed rate of rent had been Rs. 50.00 p.m. and which had been last paid by the tenant, on the argument of Mr. Aggarwal the tenant would have to be directed to pay the arrears @ Rs. 50.00 per mensem even though earlier to the date of passing of the order under section 15(1) of the Act the standard rent had already been determined @ Rs. 18.00 per month and this notwithstanding the statute as interpreted by the Supreme Court in *M.M. Chawla V.J.S. Sethi* (1969 Rcr 861, para 10) that 'so long as the standard rent is not determined by the Controller the tenant must pay contractual rent. If the standard rent is determined the landlord becomes disentitled to recover an amount in excess of the standard rent from the date on which the determination operates.' I cannot accept an interpretation which would have the effect of compelling a person to pay other than the standard rent which has already been determined. Any such order would be plainly without jurisdiction. As on the date of order of Rent Controller, 11/7/1973 standard rent stood determined at the rate of Rs. 50.00 p.m. as far back as 1969. direction could only be to pay at the rate of standard rent has been fixed at a higher rate and thereforee apparently the tenant is in unfavorable position, but in most of the cases standard rent may be less than the agreed rent. Now admittedly from the date the standard rent is fixed and if it is at a lower rate than the agreed rate of rent the landlord cannot ask for recovery of arrears of rent from the said date at the rate fixed higher than the standard rent, even if agreed rent was at a higher rate. To ask the Rent Controller to ignore the standard rent would be asking him to act against the statute. Thus if on the date an order has to be passed under section 15(1) of the Act, it comes to the notice of

the Rent Controller that standard rent has already been fixed, than he has no jurisdiction to pass an order fixing the rate of rent higher or lower than that of the standard rent. In the present case the tribunal has fixed the rate of rent @ Rs. 18.00 which is lower than that fixed as the standard rent i.e. Rs. 50.00 p.m. This decision is plainly illegal and against the statue. The landlord/respondent is, thereforee, entitled to the recovery of rent @ Rs. 50.00. I would, thereforee, allow the appeal and modify the order of the Tribunal to the extent that the direction to pay the arrears of rent from 13/11/1969 will be calculated @ Rs. 50.00 instead of Rs. 18.00, in other respects the findings will be affirmed. I am told that the tenant has already paid the appears @ Rs. 18.00. He will naturally now have to pay only the the difference calculated @ Rs. 50.00 p.m. instead of Rs. 18.00 p.m. This difference of arrears will be paid within a period of 3 months from today. The tenant will also pay in future rent @ Rs. 50.00 per month. There will be no order as to costs.