Giani Ram
v.
Uttar Chand
and others

Dua, J.

acquitting the respondents the lower appellate Court should itself have passed the necessary order transferring the proceedings to a Panchayat after setting aside the order of the Magistrate. It is clear that whatever order the Magistrate could pass, the appellate Court while dealing with the appeal was also fully competent to pass. It is, however, unnecessary to pursue this matter any further.

For the reasons given above, the appeal is allowed, the order of the learned Sessions Judge acquitting the respondents set aside and the case sent back to the lower appellate Court for decision of the appeal on the merits. The parties have been directed to appear before the learned Sessions Judge on 8th June, 1959, when another date would be given for further proceedings.

Falshaw, J.

Falshaw, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw and I. D. Dua, JJ.

BASANT RAM,—*Petitioner.*

versus

GURCHARAN SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 232 of 1957

Patiala & East Punjab States Union Urban Rent Restriction Ordinace (VIII of 2006 Bk.)—Proviso to clause (i) of section 13(2)—Meaning of—"Arrears" and "rent due"—Meaning of—Whether amount of rent due on the date of application as claimed by the landlord or the amount of rent due up to the date of payment or tender—Interpretation of Statutes—Words used ambiguous—Meaning, how to be ascertained.

1959

May, 16th

Held, that the proviso to clause (i) of section 13(2) of the Patiala & East Punjab States Union Urban Rent Restriction Ordinance, 2006 Bk., means that the amount to be deposited is the amount due as arrears according to the landlords application upto the date on which the application for ejectment is made. When a landlord or a tenant approaches the Rent Controller for adjudication of his dispute with his tenant or landlord, as the case may be, the subject-matter of the controversy is, normally speaking, confined to the respective rights and liabilities of the parties as they exist on that day. The word "arrears" is not a term of art; it is commonly used to described sums overdue and payable in respect of periods of time; it means something which is behind in payment or which remains unpaid, implying a duty and a default; it signifies money unpaid at the due time. The word "due", which has a variety of meanings depending on the context, would, in the present context, obviously mean the amount of rent which has matured or for which the tenant is in arrears. The object and purpose of enacting section 13 also seems to suggest that the proviso has been intended for the benefit of the tenant and not for conferring on the landlord an additional advantage for securing payment of rent which may fall due after the date of his petition. The legislature, therefore, should not be fixed with the intention of placing on the tenant an additional burden to pay the rent which may have falllen due after the institution of the proceedings by the landlord.

Held, that the universal and most effective way of discovering the true meaning of a law when its expressions are dubious is by considering the reasons and spirit of it, or the cause which induced the legislature to enact it. Again, if the words used are ambiguous, their meaning may be sought by examining the context with which such words may be compared, in order to ascertain their true effect and meaning. .

.. *Case referred by Hon'ble Mr. Justice Mehar Singh, to a larger Bench on 26th August, 1958, for decision of the legal points involved in it. The case finally decided by a Division Bench consisting of Hon'ble Mr. Justce Falshaw and Hon'ble Mr. Justice Dua, on 16th May, 1959.*

Petition under Article 227 of Constitution of India for revision of the order of Shir Sant Ram Garg, Appellate

Authority, under the Rent Restriction Ordinance, 2006 (District Judge), Kapurthala, dated 8th May, 1957, affirming that of Shri Jaala Nath Verma, Rent Controller, Kapurthala, dated 14th March, 1957, passing an order for eviction of the petitioner from the house in question and directing the petitioner to hand over the possession of the house in question to the landlord within 2 months.

H. L. SARIN and BALKISHAN JHINGAN, for Petitioner.

S. D. BAHRI, for Respondents.

JUDGMENT

DUA, J.—This revision has been referred to a larger Bench by Mehar Singh, J., by his order, dated 26th of August, 1958 because of two conflicting decisions in *Gopal Mal* v. *Firm Dwarka Dass & Company* (1), decided by Mehar Singh, J., on 31st of January, 1955, in Pepsu and in *Jagdish Parshad* v. *Beni Parshad* (2), decided by Bhandari, C.J., on 17th of May, 1955. Dua, J.

Basant Ram petitioner was a tenant of the house in question under Gurcharan Singh, Autar Singh and Gurdial Singh, sons of Jowala Singh. On 2nd of January, 1956, the landlord presented an application to the Rent Controller, Kapurthala, under section 13 of the Patiala & East Punjab States Union Urban Rent Restriction Ordinance, 2006 Bk., for eviction of Basant Ram tenant from the house in question on the allegations that they had let out the house to the respondent by means of a rent deed dated 12th of May, 1954 on rental of Rs. 15 per month from 1st of May, 1954, that the tenant had failed to pay the rent from August, 1954 to the end of November, 1955, for which a notice had also been sent to him but without any effect; on these grounds they claimed eviction of the

(1) A.I.R. 1955 N.U.C. 1878 (Pepsu)
(2) C.M. 159 of 1955

Basan Ram
v.
Gurcharan Singh and others

Dua, J.

tenant from the house in dispute. The tenant resisted this petition admitting the *factum* of lease but pleading that he had, on the first hearing deposited the entire rent due from him in Court and alleging in consequence, that on account of this deposit no question of default in payment of rent arose for the purposes of these proceedings. He also raised some other pleas but we are not concerned with them at this stage. Only two main issues were fixed for trial—(1) whether the respondent has been paying rent regularly; and (2) whether the respondent has deposited the arrears of rent in the Court on the first hearing, if so, what is its effect? The Rent Controller as well as the Appellate Authority, following the decision of Mehar Singh, J., in *Gopal Mal* v. *Firm Dwarka Dass & Company* (1), decided issue No. 2 against the tenant and granted to the landlords their prayer for eviction.

When the matter came up on revision, in this Court, at the instance of the tenant, Mehar Singh, J., was inclined to stick to his opinion as expressed in *Gopal Mal's case* (1) and to disagree with the view taken in *Jagdish Parshad's case* (2).

The question for consideration before us is as to the meaning of the proviso to clause (i) of section 13(2) of the Patiala & East Punjab States Union Urban Rent Restriction Ordinance No. VIII of 2006 Bk. It may be mentioned that this proviso is exactly similar in language to the proviso to clause (i) of section 13(2) of the East Punjab Urban Rent Restriction Act No. III of 1949. In *Gopal Mal's case* (1) Mehar Singh, J., construed the proviso in the Patiala Ordinance to mean that the deposit must consist of the entire amount due as arrears up to the date of the first hearing when the

(1) A.I.R. 1955 N.U.C. 1878 (Pepsu)
(2) C.M. 159 of 1955

deposit is made in Court, whereas Bhandari, C.J., in *Jagdish Parshad's case* (2), construed the proviso in the Punjab Act to mean that the amount to be deposited should only be the amount due as arrears according to the landlord's application up to the date on which the application for ejectment is made.

The counsel for the petitioner has contended that the view taken in *Jagdish Parshad's case* (2), is the correct view. No other precedent or authority has been cited at the Bar and the question is really of first impression. The relevant portion of section 13 of the Patiala Ordinance is in the following terms:—

"13. (1) * * * *

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied—

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment

(1) C.M. 159 of 1955

Basant Ram
v.
Gurcharan
Singh and others

Dua, J.

after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid; or

* * * *

* * * *."

The counsel for the tenant submits that in clause (i) the ground on which an application for eviction can be filed is failure on the part of the tenant to pay or tender the rent due from him in respect of the premises in question within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence of any agreement, by the last day of the month next following that for which the rent is payable. If by means of payment or tender the tenant is to be deemed to have duly paid or tendered the rent within the time specified in clause (i), then, according to the counsel, the arrears for the purposes of the proviso should be construed in the same sense in which the expression "the rent due from him" has been used in clause (i).

As against this, Mr. Bahri, on behalf of the landlords, has submitted that the legislature has deliberately and consciously used the expression "pays or tenders the arrears of rent etc." in the proviso in contradistinction with the word "paid or tendered the rent due from him" used in clause (i). This contention is that the word "arrears" should be construed to mean arrears up to the date of the first hearing when the amount is deposited. With the exception of the two unreported cases to which our attention has been

invited. no other precedent or authority has been cited at the Bar. After considering the respective contentions raised by the parties, I would respectfully agree with the view expressed in *Jagdish Parshad's case* (1).

When a landlord or a tenant approaches the Rent Controller for adjudication of his dispute with his tenant or landlord, as the case may be, the subject-matter of the controversy is, normally speaking, confined to the respective rights and liabilities of the parties as they exist on that day. In the case before us for instance the subject-matter of the conroversy was confined to the default committed by the tenant up to the date of the landlord's application for eviction and its effect on the parties' rights. By means of the proviso to section 13(2) (i) in question, in my opinion, the legislature has apparently conferred a favour on the tenant and given him a concession that if he makes good, on the first date of the hearing of the dispute by the Controller, his default, which has given rise to the petition for his eviction, then he would be relieved of the penal consequences flowing from such default. This *locus poenitentiae* is afforded to the tenant for the purposes of the proceedings initiated by the landlord, and, unless there is a clear provision to the contrary, it should be intended to be confined only to the rights and liabilities of the parties of which the Rent Controller is seized. The object and purpose of enacting section 13 also seems to suggest that the proviso has been intended for the benefit of the tenant and not for conferring on the landlord an additional advantage for securing payment of rent which may fall due after the date of his petition. The legislature, therefore, should not be fixed with the intention of placing on the tenant

(1) C.M. 159 of 1955

Basant Ram
v.
Gurcharan Singh and others

Dua, J.

an additional burden to pay the rent which may have fallen due after the institution of the proceedings by the landlord. In so far as the argument based on the literal meaning of the word "arrears" in the proviso, in contract with the word "due" in clause (i), is concerned, in my view, this is a distinction without any real or substantial difference. The word "arrears" is not a term of art; it is commonly used to described sums overdue and payable in respect of periods of time; it means something which is behind in payment or which remains unpaid, implying a duty and a default ; it signifies money unpaid at the due time. The word "due", which has a variety of meanings depending on the context, would, in the present context, obviously mean the amount of rent which has matured or for which the tenant is in arrears. Thus the argument based only on the use of the word "arrears" is not available to Mr. Bahri. The question, in the circumstances however, boils down to this: Are the arrears of rent, to be paid or tendered, according to the proviso, to be computed up to the date of such payment or tender, or are they to be ascertained merely by a reference to the amount alleged in the landlord's petition to be due from the tenant and unpaid, and which is the basis of his cause of action?

The language used in the proviso does not appear to me to be clearly and indubitably in favour of the respondent's contention. The universal and most effective way of discovering the true meaning of a law when its expressions are dubious is by considering the reasons and spirit of it, or the cause which induced the legislature to enact it. Again, if the words used are ambiguous, their meaning may be sought by examining the context with which such words may be

compared, in order to ascertain their true effect and meaning. It is not denied, that the rent Acts are primarily meant for the protection of the tenants, in the present case, however this aspect has been contended not to be conclusive because it may well be that the legislature, while affording a *locus poenitentiae* to the tenant, also desired to compensate the landlord by securing to him payment of rent due up to the date of the first hearing. But as stated above, one would have expected such an intention, in the present context, to be manifested by the legislature, by explicit and unequivocal language. The word "arrears" being in normal parlance almost synonymous with the word "due", in my view, the legislature has used the expression "the rent due from him" in clause (i) of the section in question, and the expressions "the arrears of rent" and "the rent within the time aforesaid" occurring in the proviso in the same sense and representing the same amount of the rent in default. Even if the word "arrears", as contended by Mr. Bahri, were to be given a meaning slightly different from that of the word "due", I think reading section 13 of the Ordinance as a whole, and construing it in the light of the purpose and the object of this law, the word "arrears" appears to me to have been used, in the proviso, to connote the same amount of the arrears of rent due from the tenant for which the landlord has made a grievance in this petition. The effect of the proviso would thus seem to have been intended to be confined only to the case dealt within the main clause, so as merely to afford a further opportunity for *locus poeniteniae* to the tenant, and if he complies with the demand of the landlord with respect to the arrears of rent due from him constituting the cause of action for the petition for eviction, he should be deemed to have satisfied his landlord's claim. This view also gets some

Basant Ram
v.
Gurcharan Singh and others

Dua, J.

support from the general rule that the scope of enquiry by the judicial and quasi-judicial tribunals is normally confined to the disputes set out by the contesting parties in their respective pleadings; in other words the rights and liabilities of the parties as they exist on the date of the initiation of the proceedings alone fall within the scope of the investigation of which the tribunal is properly seized, and it is generally incompetent for a tribunal to adjudicate upon any controversial matter which does not find place in the pleadings of the parties.

Mr. Bahri has next contended that the case should be sent back to the learned Single Judge for deciding other points. In my opinion, the whole case having been placed before us for decision, it will serve no useful purpose to send it back to the learned Single Judge for final disposal. The counsel has contended that the tenant had made a statement that he had merely deposited rent and not interest. It is urged that in the light of this statement the amount deposited in excess of the rent due up to the date of the landlord's petition cannot be considered to be deposit towards interest. I do not find any merit in this contention. As the referring order shows, default in payment of rent for a period of 16 months only (from 1st of August, 1954 to 30th of November, 1955) was claimed by the landlord in his petition, which at the rate of Rs. 15 per month amounted to Rs. 240. The tenant actually deposited a sum of Rs. 285 on the first date of hearing which shows that a sum of Rs. 45 was deposited in excess: Interest on the arrears of rent up to the date of the application as admitted by both sides comes to Rs. 12-14-0. The Controller does not seem to have assessed any costs in the instant case. On these facts there can be no question of the deposit being

inadequate. The tenant seems to have made the above statement merely intending thereby that even if the law contained in the proviso enjoined upon him to deposit rent up to the date of the first hearing, he had deposited the full amount of rent due; he could not have meant to state that the amount of rent, due only up to the date of the landlord's application, exclusive of interest, had been deposited. Indeed, even Mr. Bahri does not contend that the full amount actually deposited does not cover the amount of interest due on the date of the petition. But this apart, the point now sought to be raised by Mr. Bahri was not raised either before the Rent Controller or before the Appellate Authority and, in my opinion, it is not open to him on revision even as a respondent, to raise this mixed question of fact and law in this Court.

For the reasons given above, the revision is allowed and the orders of the Appellate Authority as well as of the Rent Controller are set aside and the petition of the landlord dismissed. In the circumstances of the case, however, the parties will bear their own costs throughout.

FALSHAW, J.—I agree.

B. R. T.

SUPREME COURT

Before Sudhanshu Kumar Das, A. K. Sarkar and K. Subba Rao, JJ.

ASSOCIATED HOTELS OF INDIA LTD.,—*Appellant*

versus

R. N. KAPOOR,—*Respondent*

Civil Appeal No. 38 of 1955

May, 19th 1959

Delhi and Ajmer-Merwara Rent Control Act (XIX of *1947)—Section 2(b)—Room in a hotel—Meaning of—Room*