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and another

Dulat, J.

This, however does not satisfactorily dispose of the present petition. As pointed out by learned counsel, the landlords did in this case alleged that they wanted to re-erect the premises but no serious notice was taken of that plea nor of its denial, and no issue was framed by the Rent Controller, and, considering the circumstances, it would, in my opinion, be unjust to dismiss the landlords' petition without affording them a chance to prove what they have in fact alleged. I would, therefore, while allowing this petition and setting aside the order of the Appellate Authority as it stands, send the case back to the Appellate Authority for framing an issue regarding the landlord's allegation that they wished to re-erect the premises and obtaining a finding from the Rent Controller on that issue after the parties have led their evidence and then deciding the appeal afresh. No costs.

PREM CHAND PANDIT, J.—I agree.

Pandit, J.

B.R.T.

REVISIONAL CIVIL

Before S. B. Capoor, J.

RAI BAHADUR SEWAK RAM TRUST SOCIETY,—
Petitioner.

Versus

MOHKAM CHAND,—*Respondent.*

Civil Revision No. 720 of 1962.

1964

Jan., 29th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 3—Notification issued under, exempting new buildings from the provisions of the Act—New building—What amounts to—Old building demolished and new construction made—Whether amounts to new building—Motive of the landlord in making new construction—Whether relevant.

Held, that the motive why the landlord incurred considerable capital expenditure during the building operations is immaterial and what has to be seen is whether taking a broad view of the case the existing constructions can be termed to be new constructions so as to attract the provisions of the notification issued by the Governor under section 3 of the East Punjab Urban Rent Restriction Act, 1949, exempting new buildings from the provisions of the Act.

Held that it is a question of degree in each case as to when any construction amounts to construction of a building within the meaning of the notification. Where the floor area of the new shop constructed in place of the old one remains the same but the height of the shop has been raised by about 30 percent thus providing more storage space in the shop which can be utilised by the construction of shelves etc., it will not be correct to say that only extensive repairs have been made in the shop. It will be more correct to say that the construction made anew amounts to a new building and as such the Rent Controller had no jurisdiction to determine its fair rent.

Petition under section 15(5) of Act 29 of 1956 for revision of the order of Shri Kul Bhushan, (Appellate Authority) District Judge, Gurdaspur, dated 27th August, 1962, affirming that of Shri Dalip Singh, Rent Controller, Pathankot, dated 27th July, 1961, fixing the fair rent of the shop in dispute at Rs. 15/- p.m. with effect from 15th April, 1959, the date of filing of this application.

BHAGIRAT DASS AND A. L. BAHRI, ADVOCATES, for the Petitioner.

H. R. MAHAJAN, ADVOCATE, for the Respondent.

JUDGMENT.

Capoor, J.

CAPOOR, J.—Rai Bahadur Sewak Ram Trust Society is the owner of a building consisting of several shops as well as residential quarters in Pathankot. Mohakam Chand is the tenant of one of these shops, the agreed rent being Rs. 45 per mensem. He filed a petition under section 4 of the East Punjab Urban Rent Restriction Act, 1949, Act No. 3 of 1949 (hereinafter to be referred

to as the Act), for the fixation of fair rent of the shop asserting that the fair rent of another shop at a short distance away was fixed at Rs. 4-8-0 per mensem only by the District Judge. The petition was resisted on behalf of the Trust and it was pointed out in the written statement that the shop had been newly constructed in the year 1956 and as such the Act did not apply to it and the Rent Controller had no jurisdiction to determine its fair rent. It was alleged that the previous shop existing at the site had been demolished and had been newly built at a considerable expense. The Rent Controller, Pathankot, framed the following issues:—

(1) Whether the shop in dispute was built in 1956 and the applicant has no *locus standi* to bring the application ?

(2) What is the basic rent of the shop ?

(3) What is the fair rent of the shop ?

Issue No. 1 was found by him against the Trust and on issue No. 2 he held that the basic rent of the shop was Rs. 10 per mensem and allowing 50 per cent increase on the basic rent the fair rent was fixed at Rs. 15 per mensem with effect from the 15th April, 1959, the date of filing that application. No order was made as to costs. Against this order the Trust appealed and the tenant filed cross-objections and the appellate authority under the Act (District Judge, Gurdaspur), dismissed the appeal as well as the cross-objections, leaving the parties to bear their own costs in that Court also. The Trust has now come in revision to this Court.

Issue No. 1 is the principal issue in the case and its finding in favour of the landlord (the Trust)

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would result in the dismissal of tenant's application under section 4 of the Act.

Section 3 of the Act lays down that the State Government may direct that all or any of the provisions of the Act shall not apply to any particular building or rented land or any class of buildings or rented lands. In exercise of the powers conferred by this section, the Governor of the Punjab issued a notification [Notification No. 9186-LB-(Ch) 53/35123, dated the 29th December, 1955] exempting all buildings constructed during the years 1956, 1957 and 1958 from the provisions of the Act for a period of five years with effect from the date of completion of such building. The case of the Trust was that the block containing the shops was dismantled by it and instead shops were built anew and to every shop one room and a kitchen was added. It must be added here that the room and the kitchen so added are not in the tenancy of Mohkam Chand. On the construction, a sum of Rs. 21,500 was incurred by the Trust and the evidence on this point has been accepted by both the Courts below. So far as this shop is concerned, the reconstruction was, as would appear from the judgment of the Rent Controller, which finding has been affirmed by the appellate authority also, as follows: The height of the shop was raised by 3 feet the wooden-battens roof was replaced with a new existing lintel roof, re-flooring and replastering were also done; the foundations of some of the walls were dug again and the front wall was built anew though the foundation of the back wall was not re-excavated. Some of the previous building material was used in the new construction also. The courts below were of the view that the whole thing appeared to have been necessitated by the landlord's desire to add a residential room and a kitchen to each shop

to increase the income and in these circumstances it could not be called a new construction.

The motive why the landlord incurred considerable capital expenditure during the building operations is, however, immaterial and what we have to see is whether taking a broad view of the case the existing constructions can be termed to be new constructions so as to attract the provisions of the notification referred to above. A recent Division Bench judgment of this Court in *Sadhu Singh* v. *District Board, Gurdaspur and another* (1), at page 19) contains a discussion on this matter and Mahajan, J., with whom Mehar Singh, J., agreed, quoted with approval the pronouncement of a Division Bench of the Madras High Court in *Commissioner of Income-tax, Excess Profits Tax, Madras* v. *Rama Sugar Mills, Limited, Bobbili.* (2):—

> "A renewal may be a repair or a reconstruction. Renewal is a repair if it is only restoration by renewal or replacement of subsidiary parts of a whole. If, on the other hand, it amounts to a reconstruction of the entirety or of substantially the whole of the subject-matter it is not a repair but a reconstruction. The test, therefore, which decides the question whether a thing is a "repair" or not is to see whether the act actually done is one which in substance is a replacement of defective parts or a replacement of the entirety or a substantial part of the subject-matter."

Thus, in each case it is a question of degree as to when any construction would amount to construction of a building within the meaning of the

(1) I.L.R. 1962 (1) Punj. 407 : 1962 P.L.R. 1.
(2) A.I.R. 1952 Mad. 689.

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notification. Here, the central fact is that while the floor area of the shop in dispute remains the same even after the construction made in 1956 yet the height of the shop has been raised by about 30 per cent and this means that there is more storage space in the shop which can be utilised by the construction of shelves, etc. In these circumstances, I am of the view that it would not be correct to say that there has been simply extensive repairs made in the shop. The appellate authority also observed that "the shop in dispute may appear to have been constructed anew but it cannot be said that the previous structure had been removed by demolition and that it was replaced by a new one". This approach is erroneous. In *Lal Chand Aggarwal* v. *Mukandi Lal and another* (Civil Revision No. 112 of 1955 decided on the 29th October, 1958) the Bench had occasion to consider a somewhat similar case and observed that while a small alteration in an old building does not make it a newly constructed building, still, if the old building has been pulled down and even though some of the old material is there, the building constructed anew is in its general appearance entirely different from the previous building, then the notification granting the exemption would be attracted. On the principle laid down by the Bench in this case I am of the view that the construction made anew amounts to a new building and as such the Rent Control Tribunal had no jurisdiction to determine its fair rent.

Mr. Hem Raj Mahajan, on behalf of the tenant, has referred to an unreported case in *Parmeshri Dass* v. *Messrs Mulk Raj Muni Lal* (Civil Revision No. 667 of 1958 decided on the 18th September, 1959), in which Bishan Narain, J., sitting singly had occasion to consider the case of *Lal Chand Aggarwal* v. *Mukandi Lal Puri and another*, but

on the facts before him was of the view that that authority could not apply. He further observed that the view stated by him was in consonance with the decision in *Messrs British Medical Stores and others* v. *L. Bhagirath Mal and others* (3). Presumably he had in mind the observations at page 462, which were relied upon by Mr. Mahajan. These were as follows:—

> "The landlord submits that the walls were already there and what has been done is that the roof was rebuilt and re-flooring was done and the walls have been plastered. These have been held to be new constructions by the learned District Judge. In my opinion, they are nothing more than mere improvements and, therefore, they are not premises to which section 7-A of the Delhi and Ajmer Merwara Rent Control Act, 1947, even if valid, would be applicable."

However, in appeal against that decision, the Supreme Court in *Roshan Lal Mehra* v. *Ishwar Dass* with *British Medical Stores, etc.*, v. *Amar Nath and others, etc.*, (4) held that the High Court was in error in interfering with the finding of fact by the Rent Controller and the District Judge, in support of which finding there was clear and abundant evidence which had been carefully considered and accepted by both the Rent Controller and the District Judge. The case relied upon by Mr. Hem Raj Mahajan, is, therefore, of no help to the respondent.

Lastly, Mr. Mahajan on the basis of the pronouncement of the Supreme Court, reproduced above, argued that the finding of the Courts below on the question raised in this issue was a finding of fact, which was not liable to be set aside by

(3) I.L.R. 1955 Punj. 639 : 1954 P.L.R. 449 (D.B.)
(4) A.I.R. 1962 S.C. 646 at p. 659.

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this Court. That was a case under the Rent Control Act applicable to Delhi. The powers of the High Court under section 15(5) of the East Punjab Urban Rent Restriction Act have been explained by the Supreme Court in *Neta Ram and others* v. *Jiwan Lal and another* (5), at page 698 of the report and it has been held that if the Rent Controller and the appellate authority had examined the acts after instructing themselves correctly about the law, a Court of revision should be slow to interfere with the decision thus reached, unless it demonstrates by its own decision, the impropriety of the order, which it seeks to revise. In the instant case, while accepting the facts as given by the Courts below, the conclusion on the authorities already cited would be that constructions made by the Trust in the year 1956 amount to new constructions for the purpose of the notification issued by the Governor of the Punjab under section 3 of the Act.

On this view, no other question arises for decision and accepting the revision petition and setting aside the orders of the Courts below, I dismiss the tenant's application under section 4 of the Act with costs throughout. Counsel's fee Rs. 50.

B.R.T.

REVISIONAL CRIMINAL

Before Inder Dev Dua and Hans Raj Khanna, JJ.

FATTA AND OTHERS,—*Petitioners.*

Versus

THE STATE,—*Respondent.*

Criminal Revision No. 1392 of 1962.

1964

Feb., 4th.

Code of Criminal Procedure (V of 1898)—S. 190—Trial Magistrate—Whether can summon persons other than those

(5) (1962) 64 P.L.R. 694.