

For these reasons I would accept the petition, set aside the order of the Courts below and direct that the possession of the streams be restored to the *zamindars* of the village.

Rana Uttam
Singh, etc.
v.
Kidar Nath,
etc.

REVISIONAL CIVIL.

Before Bhandari, C. J.

Bhandari, C.J.

NIRANJAN SINGH,—*Petitioner.*

versus

MURTI SHRI BHAGWAN RAM, installed in the temple, known as Mandir SHRI BHAGWAN RAM at Ambala,—
Respondent.

Civil Revision No. 298 of 1954

East Punjab Urban Rent Restriction Act (III of 1949)—Section 4—Protection afforded by the Act—Whether can be waived by agreement—Section 4—Fair rent fixed by agreement—Subsequent proceedings for fixation of fair rent—Previous order, whether operates as a bar to subsequent proceedings.

1955

March, 24th

Held, that the protection afforded by the East Punjab Urban Rent Restriction Act, 1949, cannot be waived by agreement.

Held further, that when a Controller proceeds to determine the fair rent of a premises, not on the basis of an inquiry under the provisions of section 4 but on the basis of an agreement between the landlord and tenant, and in a subsequent proceeding an objection is taken that the rent as determined originally is excessive, it is open to the Controller to refuse to be constrained by the previous consent decree if he is satisfied that the said consent decree was contrary to the provisions of the Rent Restriction Act.

Barton v. Fincham (1), *Brown v. Draper* (2), *Solle v. Butcher* (3), *Griffiths v. Davies* (4), and *Punamchand Mohta v. S. Mukherjee* (5), relied upon.

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- (1) (1921) 2 K.B. 291
(2) 1944 K.B. 309
(3) (1950) 1 K.B. 671
(4) (1943) 1 K.B. 618
(5) 56 C.W.N. 15

Petition under Section 227 of Constitution of India, for revision of the order of Shri I. M. Lall, District Judge, Ambala, dated 27th April, 1954, reversing that of Shri Parshotam Sarup, Senior Sub-Judge (Rent Controller), Ambala, dated 23rd February, 1954, accepting the two appeals and ordering that the two petitions shall stand dismissed, and leaving the parties to bear their own costs.

B. S. CHAWLA, for Petitioners.

H. L. SARIN and RUP CHAND, for Respondent.

JUDGMENT.

Bhandari, C.J. BHANDARI, C. J. This petition raises the question whether the protection of the Rent Restriction Act 1949 can be waived by agreement and whether an order of a Tribunal, which is passed in consequence of the consent of the parties and not in consequence of an enquiry held by it under the provisions of the Act, can operate as a bar in subsequent proceedings.

It appears that an idol known as Murti Shri Bhagwan Ram is the owner of a certain shop situate in Ambala which was in the occupation of one Budh Singh. On the 1st December, 1948 the tenant applied for fixation of the fair rent and on the 11th February, 1949 the Rent Controller fixed the rent of Rs. 25 per mensem on the basis of an agreement between the landlord and the tenant. On a later date this shop was let out to Niranjjan Singh petitioner and on the 11th July 1953 he applied for fixation of the fair rent thereof. The Rent Controller held an enquiry in accordance with the provisions of the Punjab Urban Rent Restriction Act, 1949, and fixed the rent at Rs. 3/5/- per mensem in respect of the shop. The landlord appealed to the District Judge and the learned District Judge held that as the fair rent of the premises had already been determined at Rs. 25 per

mensem it was not within the competence of the Rent Controller, in view of the doctrines of estoppel and *res judicata*, to reopen the question and to redetermine the rent. The appeal was accordingly allowed and the application of the tenant was dismissed. The tenant has now come to this Court under the provisions of Article 227 of the Constitution, and the question for this Court is whether the learned District Judge has come to a correct determination in point of law.

Niranjan
Singh

v.

Murti Shri
Bhagwan Ram
installed in
the temple
known as
Mandir Shri
Bhagwan Ram
at Ambala

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The Punjab Urban Rent Restriction Act was enacted in the year 1949 to prevent a landlord from charging exorbitant rent and to enable a tenant to continue in his house so long as he paid the fair rent for the premises occupied by him. This measure was enacted solely for the protection of tenants. Section 4 requires the Controller to fix the fair rent of a premises after holding such inquiry as he thinks fit ; section 5 invalidates an increase in rent greater than the permitted increases and section 6 prohibits a claim for rent in excess of fair rent. These sections impose a statutory obligation on the Court to refrain from making an order which is contrary to the provisions of the Act. A consent decree involves no judicial inquiry into the facts or law and must for all practical purposes be regarded as a contract. If an agreement for payment of rent which is in excess of fair rent contravenes the provisions of the Act of 1949 and if a Controller's order which is based upon the consent of the parties and not on the judgment of the Court embodies that agreement it is obvious that the order itself contravenes the provisions of the Act.

It may be that a consent decree is based on an agreement to which the tenant himself is a party, but it must be remembered that even a party for

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whose benefit a measure has been enacted is not competent to contract out of the protection of the Act, *Barton v. Fincham* (1), and *Brown v. Draper* (2). Neither the conduct of a party *Solle v. Butcher* (3), nor the existence of a judgment *Griffiths v. Davies* (4), *Punamchand Mohta v. S. Mukherjee* (5), can prevent him from asserting the invalidity of an order which is made in contravention of the Rent Restriction Act. It may thus be stated as a general proposition that when a Controller proceeds to determine the fair rent of a premises, not on the basis of an inquiry under the provisions of section 4 but on the basis of an agreement between the landlord and tenant, and in a subsequent proceeding an objection is taken that the rent as determined originally is excessive, it is open to the Controller to refuse to be constrained by the previous consent decree if he is satisfied that the said consent decree was contrary to the provisions of the Rent Restriction Act.

As the Controller's order dated the 11th February, 1949 was in consequence of the consent of parties the Controller who was called upon to decide the present case was in my opinion fully justified in opening up the previous order in order to satisfy himself whether the rent of the shop had been properly assessed and whether it had been determined in accordance with law.

For these reasons, I would accept the petition, set aside the order of the District Judge and remand the case to the learned District Judge for determining the fair rent of the premises in question.

The parties have been directed to appear before the lower appellate Court on the 15th April, 1955.

(1) (1921) 2 K.B. 291
(2) 1944 K.B. 309
(3) (1950) 1 K.B. 671
(4) (1943) 1 K.B. 618
(5) 56 C.W.N. 15