SUPREME COURT.

†S.C. 1949

Aug. 9.

L. HOKE SEIN (APPLICANT)

v.

THE CONTROLLER OF RENTS FOR THE CITY OF RANGOON AND ONE (RESPONDENTS).*

Urban Rent Control Act, s 2 (c), (d) *and 19* (1)—*Meaning of the words "landlord" and "premises"—In case of a joint lease of the premises and other properties whether rent can be fixed by the Rent Controller—Court whether a person—Effect of appointment of a Receiver by Court—Rule for interpretation of a Statute.*

Held : That the Receiver appointed by the Court is within the definition of the word "landlord."

That the definition of the word "premises" in s. 2 (*d*) of the Act includes industrial concern like Rice Mill.

Held furher : That the proceeding taken without the leave of the Court against Receiver does not affect the jurisdiction of the Court trying the suit and leave can be obtained in the course of the suit.

K. P. Ammukutty and others v. *K.P.K.P.T. Manavikraman and others*, A.I.R. (1920) Mad. 709, followed.

When an application is made to the Rent Controller under s. 19 (*l*) of the Urban Rent Control Act he is bound to exercise his jurisdiction conferred on him by law and fix the fair rent. Whether that order supersedes the agreement to pay a consolidated rent for the premises and other properties is not for the Controller to consider.

S. 32 of the Act does not apply to property in possession of a Court of law through its Receiver. It refers to properties in possession of Government or Public bodies.

Held further : That the Court is not a juridical person.

Raj Raghubar Singh and another v. *Jai Indra Bahadur Singh*, 46 I.A. 228 at 238, followed.

The effect of the appointment of a Receiver is to bring the subject matter of litigation in *custodia legis* and the Receiver ordinarily is not the representative or agent of either party but his appointment is for the benefit of all parties.

Harihar Mukherji v. *Harendra Nath Mukherji*, I.L.R. 37 Cal. 754, followed.

The Court should not read into an Act of Parliament words which are not there, in the absence of clear necessity.

Thompson v. *Goold*, (1910) 79 L.J. (K.B.) 905 at 911, followed.

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* Civil Misc. Application No. 41 of 1949.

† *Present :* SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

P. K. Basu for the applicant.

Ba Sein for the 1st respondent.

Dr. Ba Han for the 2nd respondent.

The judgment of the Court was delivered by

SIR BA U, C.J.—In Civil Regular Suit No. 172 of 1947 of the High Court one Hwe Eye Hain filed a suit against the 2nd respondent, Hwe Ngwe Chew and four others for recovery of possession of C-1 Rice Mill, Dalla, and five cargo boats or in the alternative for dissolution of partnership regarding the rice mill and accounts. The petitioner was appointed Receiver by consent in that suit. One of the terms of the appointment was that, other terms being equal, the 2nd respondent, Hwe Ngwe Chew should be given the lease of the mill. In pursuance of the terms of the appointment the 2nd respondent was given the lease of the rice mill and five cargo boats for Rs. 2,000 a month. The lease was later confirmed by the learned Judge sitting on the Original Side of the High Court. Subsequent to the confirmation of the lease the 2nd respondent applied to the Controller of Rents under section 19 (*1*) of the Urban Rent Control Act to fix the rent of the rice mill only. The Controller of Rents fixed the rent of the rice mill at Rs. 1,100 a month. The present application is for issue of directions in the nature of a writ of certiorari calling for the record of the Controller of Rents resulting in the order fixing the rent of rice mill and to quash it thereafter.

In support of the application the learned Counsel for the applicant submits that the Controller of Rents had no jurisdiction to entertain the application presented by the 2nd respondent to fix the rent of the rice mill, inasmuch as section 19 (*1*) of the Urban

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Rent Control Act read with section 2 (*c*) does not apply to property in charge of a Receiver appointed by Court. Secondly, the learned Counsel submits that the rice mill, being an industrial concern, does not come within the definition of premises as given in the Urban Rent Control Act and consequently the Controller of Rents had no jurisdiction to fix the rent of the rice mill. Thirdly, the learned Counsel submits that as the rent of Rs. 2,000 was not only for the lease of the rice mill but also for the lease of five cargo boats, the Controller of Rents had no jurisdiction to split the said rent into two and fix the rent of the rice mill separately. Lastly, the learned Counsel submits that the jurisdiction of the Controller of Rents is barred by section 32 of the Urban Rent Control Act.

Dealing with the first submission, we may, leaving out what is not relevant to the point in hand, quote the definition of landlord as given in section 2 (*c*) of the Urban Rent Control Act as follows :

> "'Landlord' means any person for the time being entitled to receive rent in respect of any premises . . . as receiver for any other person who would so receive the rent or be entiled to receive the rent, if the premises were let to a tenant."

Does the word "receiver", as used in this definition, mean a Receiver appointed out of Court or does it mean a Receiver appointed by Court or does it mean a Receiver appointed either by Court or out of Court ?

The learned Counsel for the applicant contends that the "receiver" as used in the definition means a Receiver appointed not by Court but out of Court. In elaboration of his contention he makes the following submission. When a Receiver is appointed by Court of property which is the subject-matter of litigation before it the possession of the Receiver is the possession of the Court. The Receiver is, as he is commonly

called, the "hand" of the Court. Therefore when the Receiver receives rents and profits from the property of which he is the Receiver he receives them for and on behalf of the Court. The Court is not a juridical person. As the Court is not a juridical person and as the Receiver as defined in section 2 (*c*) of the Urban Rent Control Act means a "receiver for any other person", the Receiver, as defined in the aforesaid Act, must and, in fact, means a Receiver appointed out of Court and not by Court. In support thereof the learned Counsel cites the case of *Raj Raghubar Singh and another* v. *Jai Indra Bahadur Singh* (1). In that case Lord Phillimore delivering the judgment on behalf of the Board observed :

"The Court is not a juridical person. It cannot be sued. It cannot take property, and as it cannot take property it cannot assign it."

We accept the principle as laid down by Lord Phillimore as a correct principle of law but, in our opinion, it does not in the least support the contention of the learned Counsel for the applicant for the purpose of this case. When the Court takes charge of property which is the subject-matter of litigation before it through one of its appointed officers, namely, a Receiver, it does so simply for the purpose of protecting and preserving the property for the party who may ultimately be entitled thereto. The same view was expressed by Mookerjee and Carnduff JJ. in the case of *Harihar Mukherji* v. *Harendra Nath Mukherji* (2) where the learned Judges observed :

"The effect of the appointment of a Receiver is to bring the subject-matter of the litigation in *custodia legis*, and the Court can effectively manage the property only through its officer, who is the Receiver. In other words, the Receiver ordinarily is not

(1) 46 I.A. 228 at 238. (2) 37 Cal. 754.

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the representative or agent of either party in the administration of the trust, but his appointment is for the benefit of all parties, and he holds the property for the benefit of those ultimately found to be the rightful owners."

It is true that the possession of the Receiver is the possession of the Court. The possession of the Court is for the benefit of those who would ultimately be found to be the rightful owners. That is, in our opinion, what is meant by the Legislature when it says "receiver for any other person who would so receive the rent and be entitled to receive the rent if the premises were let to a tenant." The rents and the profits received by the Receiver would ultimately go to the rightful owners. To say that the Receiver, as used in the Urban Rent Control Act, means a Receiver appointed not by Court but out of Court amounts to putting in words which are not to be found in the Act. "It is a strong thing to read into an Act of Parliament words which are not there and, in the absence of clear necessity, it is a wrong thing to do," *per* Lord Mersey in *Thompson* v. *Goold* (1). We are therefore clearly of opinion that the word "receiver" as used in section 2 of the Urban Rent Control Act, as amended by Act No. LIII of 1948, means a Receiver appointed either by Court or out of Court.

Dealing with the second contention we must refer to the definition of "premises" as given in the Urban Rent Control Act :

> "'premises' means—
>
> (1) any land on which a building has been erected and any building or part of a building let separately for any purpose whatever, including a stall let for the retail sale of goods in a market or any other buildings, and any land, furniture or fixture let together with such building or part of a building."

(1) (1910) 79 L.J. (K.B.) 905 at 911.

Leaving out what is not pertinent to the purpose in hand, we get the definition of premises as follows: Any land on which a building has been erected and let for any purpose whatsoever. Now, a rice mill means a piece of land with a building with machinery for rice-milling purposes therein together with out-houses thereon. This clearly comes within the definition of "premises" as given in the Act. This is made clear by section 16A which refers to "any premises other than residential premises." Premises other than residential premises are premises for business or industrial concerns. We are therefore of opinion that a rice mill is included within the term "premises" as defined in the Urban Rent Control Act.

In elaboration of the third point the learned Counsel for the applicant submits that as Rs. 2,000 was the sum agreed upon between the Receiver and the lessee, the second respondent, for the lease of the rice mill and five cargo boats and as this agreement was subsequently confirmed by the High Court, the Controller had no jurisdiction to split the agreement into two and fix the rent of the rice mill only. In so doing the Controller, according to the learned Counsel, has committed contempt of the High Court. There is no statutory law which says that when a Court takes possession of property which is the subject-matter of litigation before it, through one of its officers, *viz.* the Receiver, nobody is to interfere with its possession, either directly or indirectly, and if he did it, he would be guilty of contempt of Court. But the practice which is of very long duration and which is in consequence as sacro-sanct as any statute law is that nobody shall interfere, directly or indirectly, with the possession of the Court through one of its appointed officers of the property which is the subject-matter of litigation before it and

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if he did it, he would be guilty of contempt of Court. The point now is whether a third party can get no relief even if he has a genuine claim against the property which the Court has taken possession of through its appointed officer, a Receiver. The principle on this point is settled and the principle is that if a third party has a claim against the property taken possession of by the Court through a Receiver and if he wants to prosecute his claims he must apply to the Court for leave to sue the Receiver in respect of the said property and if the Court grants leave he can prosecute his claim in an appropriate Court. If he prosecutes his claim without getting leave of the Court which has taken possession of the property through a Receiver he is liable to be dealt with for contempt, and the Court in which the claimant prosecutes his claim without leave may dismiss the claim or may stop the proceedings and ask the claimant to obtain leave of the Court which has taken possession of the property through a Receiver. Nowhere has it been laid down, as far as we know and, in fact, no authority has been brought to our notice, that a Court has no jurisdiction to entertain the claim of a person against the property taken possession of by another Court through a Receiver because the claimant has not obtained leave of that Court. There is one case decided by a Bench of the Madras High Court, though not officially reported, which, in our opinion, has laid down the law on this point correctly. The case is that of *K. P. Ammukutty and others* v. *K.P.K.P.T. Manavikraman and others* (1) where Sadasiva Aiyar and Spencer JJ. observed, quoting the head note :

"The omission to obtain the previous sanction of the Court appointing a receiver for bringing a suit against the receiver does not affect the jurisdiction of the Court trying the suit but is an

(1) A.I.R. (1920) Mad. 709.

illegality which can be effectively cured by the plaintiff obtaining the requisite sanction during the course of the litigation."

The same principle is applicable to the present case.

Section 19 (*1*) of the Urban Rent Control Act says in no uncertain terms that the Controller of Rents shall on application made to him by any landlord or tenant grant a certificate certifying the standard rent of any premises leased or rented by such landlord or tenant, as the case may be. When an application is therefore made, either by a landlord or by a tenant, the Controller has no option but to fix the rent. In fixing the rent of the rice mill in question the Controller did nothing but exercise the jurisdiction conferred on him by law. In entertaining and deciding the application presented by the 2nd respondent without directing him to obtain the leave of the High Court, it might be improper but impropriety does not mean want of jurisdiction. We are not concerned with the question as to whether the 2nd respondent in presenting the application under section 19 (*1*) of the Urban Rent Control Act has committed a contempt of Court or not. Nor are we concerned with the question as to whether which of the rents, that is the rent agreed upon between the applicant in the present case and the 2nd respondent or the rent fixed by the Controller of Rents, is payable.

There now remains only one point submitted by the learned Counsel for the applicant and the point is that section 32 of the Urban Rent Control Act bars the jurisdiction of the Controller of Rents. We do not propose to say much on this question. The section is plain in its terms. It does not, in our opinion, cover property which is in the possession of a Court of Law through its officers, a Receiver.

For all these reasons this application fails and is dismissed with costs ten gold mohurs.