

## **Jagan Nath Manchanda And Ors. vs The District Magistrate Of Allahabad ... on 30 April, 1951**

**Equivalent citations: AIR1951ALL710, AIR 1951 ALLAHABAD 710**

### **JUDGMENT**

Agarwala, J.

1. This is an application for issue of a proper writ or other direction directing the opposite parties, namely, the District Magistrate, Allahabad, & the Rent Control & Eviction Officer, Allahabad, to dispose of an application dated 5-4 1950 for fixation of rent made by the applicants. The facts narrated in the affidavit & not disputed by the opposite parties may be shortly stated.

2. The applicants are refugees & occupy certain quarters constructed by the Improvement Trust at Atala, a locality in Allahabad. The quarters were constructed after 1-7-1946. The Improvement Trust had constructed a number of similar quarters which were occupied by refugees. In February 1950, the Improvement Trust filed two suits against two of such refugees for the recovery of rent of the quarters occupied by them alleging that the rent sued for had been agreed upon between the parties. The applicants alleged that these suits were test suits & that no rent had been agreed upon at all between the Improvement Trust & any of the refugees. The applicants, therefore, fearing that Similar suits might be filed against them, made an application to the District Magistrate under Section 3A, Control of Rent and Eviction Act, for determination of a reasonable annual rent. While this application was pending, the civil suits filed by the Improvement Trust were decreed. There were applications in revision against those decrees, which are still pending in this Court.

3. When the applicants reminded the Rent Control & Eviction Officer to deal with their application for fixation of reasonable annual rent, he ordered that it was not necessary for him to fix the rent as the matter was sub judice & would be decided by the civil court in the suits already referred to. The applicants complain that the opposite parties have, by this order, refused to exercise a jurisdiction which clearly vested in them & thus deprived the applicants of a valuable right.

4. We think that the order of the said Officer was not justified for more than one reason. In the first place, the suits filed by the Improvement Trust were of the nature of small causes & were filed in the small cause court at Allahabad. The small cause court is not competent to determine or fix rent, nor was such relief claimed in those suits. In the second place, a reasonable rent has to be determined by the District Magistrate under the provisions of Section 3A & by the civil Court.

5. The Control of Rent & Eviction Act, by Section 3A, divides accommodation to which it applies into two categories -- (a) those constructed before 1-7-1946 & (b) those constructed after 1-7-1946. In the case of accommodation constructed on or after 1-7-1946, the reasonable rent is the rent determined

in accordance with Section 3A. This section empowers a tenant to apply to the District Magistrate (which term includes a person to whom the functions of the District Magistrate had been delegated under the Act) to determine the reasonable annual rent.

6. Under Section 5 a tenant is liable to pay the rent agreed upon between him & the landlord, subject to certain exceptions. Where the rent has been agreed upon & the tenant thinks that the rent agreed upon is excessive, in other words, is in excess of the "reasonable rent", he may institute a suit for fixation of rent in a civil Court. It is obvious that he can do so after the reasonable rent has been fixed by the District Magistrate under the provisions of Section 3A. If, on the other hand, no rent had been agreed upon, then Section 5(2) ) provides that in the case of tenancies which came into existence after 1-10-1946, the landlord may levy rent upto any amount not exceeding the "reasonable annual rent". In both cases, therefore, it is necessary to have the "reasonable annual rent" fixed. This the applicants prayed to be done by means of their application dated 5-4-1950 & this has not yet been done by the opposite parties.

7. The learned standing counsel, appearing for the opposite parties, concedes that this is the correct position & that the reasonable annual rent should be fixed.

8. This is a fit case for the issue of a direction in the nature of a writ of mandamus. We, therefore, direct the opposite parties to determine the reasonable annual rent & dispose of the application of 5-4-1950 in accordance with law.