

(1969) 04 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 504 of 1965 and Civil Miscellaneous No. 3881 of 1968

Bishamber Dutt Roshan Lal and Others

APPELLANT

Vs

Gian Chand Charan Das

RESPONDENT

Date of Decision : 15-04-1969

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13
Transfer of Property Act, 1882 — Section 108(J)

Citation : AIR 1970 P&H 60 : (1969) 2 ILR (P&H) 543 : (1969) RCR(Rent) 422

Hon'ble Judges : R.S. Sarkaria, J; Harbans Singh, J; H.R. Sodhi, J

Bench : Full Bench

Advocate : H.L. Sarin, A.L. Bahl and H.S. Awasthy, for the Appellant; J.N. Kaushal, Ashok Bhan and R.S. Mongia, for the Respondent

Judgement

Harbans Singh, J.—This Full Bench has been constituted to consider the following question formulated by Mr. Justice Gurdev Singh by his order dated 9th of February, 1967:--

"Whether eviction of a tenant can be ordered on the ground that he had sublet or parted with the possession of the premises during the period the premises formed a part of the compensation pool or vested in the evacuee property and were exempt from the operation of the East Punjab Urban Rent Restriction Act 3 of 1949, on the application u/s 13 of that Act of a person who purchases the property from the Central Government after such subletting or parting with possession had occurred?"

2. The facts as have been taken by the learned Single Judge for the purpose of the decision of the above-mentioned law point may briefly be stated as under:

3. The shop in dispute, which belonged to some Muslims, was on rent with Messrs. Bishambar Putt Roshan Lal (hereinafter referred to as the tenants) immediately before the partition of the country in 1947. As Muslims had become

evacuees, the shop vested in the Custodian, to whom the rent was paid by the tenants. Later, as a result of the notification issued u/s 10 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, the shop amongst other evacuee property was acquired by the Central Government for the rehabilitation of displaced persons and thus formed part of the compensation pool. Later still, it was put to auction when Gian Chand purchased it and a sale certificate was issued in his favour on 20th of March, 1958, and the title to the property vested in him with effect from 10th of February, 1958.

On 28th of June, 1960, Gian Chand (hereinafter referred to as the landlord) filed an application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as the Act) seeking ejectment of the tenants on the ground of subletting of the shop and non-payment of the rent. Arrears of rent having been paid, we are no longer concerned with that matter. The subletting was denied, but the Appellate Authority came to the conclusion that there was subletting of the premises. The Appellate Authority also found that the tender of the arrears of rent was not in order, but that finding has been set aside by the learned Single Judge and the same need not be considered. The Appellate Authority ordered the eviction of the tenant? and against that order the revision petition, out of which the present reference has arisen, was filed on behalf of the tenants.

4. Before the learned Single Judge, it was conceded that the subletting took place sometime in the year 1955 when the property vested in the Central Government as an acquired property and formed part of the compensation pool and it was subsequently that the landlord purchased the same from the Union of India.

5. I may now refer to some of the provisions of the Act which require consideration. The Act was first published in the East Punjab Government Gazette (Extraordinary) on March 25, 1949, and by virtue of Sub-section (3) of Section 1, it came into force at once; in other words with effect from March 25, 1949. Section 3 of the Act provides as follows:--

"The State Government may direct that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands."

The relevant portion of Section 13 of the Act is as follows:--

"(1) A tenant in possession of a building shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise except in accordance with the provisions of this section.

(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 applicant, is satisfied -

(i) x x x

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or

(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or

(v) that where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession"

A Notification No. 46 30-C-4 8/764, dated 5th of January, 1949, was issued by the Punjab Government in exercise of the powers conferred u/s 3 of the East Punjab Urban Rent Restriction Act, 1947, which was in fact repealed and replaced by the Act of 1949, Section 3 of the Act of 1947 being in pari materia with Section 3 of the Act of 1949. By the above-mentioned notification, all properties belonging to the Central Government Were declared exempt from the provisions of the Act of 1947. It was not disputed that that notification made under the 1947 Act was still in force. See in this respect *Sadhu Singh S. Mulla Singh Vs. District Board, Gurdaspur and Another*, and *Siri Ram Jolly v. Sub-Divisional Officer, Mahasu, Himachal Pra-desh*, Civil Revn. No. 178 of 1957, decided on 1st of August, 1958 (Punj), by Bhan-dari, C.J. The result, therefore, is that in the year 1955 when the subletting took place, the building in question was exempt from the operation of the Act of 1949. The contention of the tenants was that the landlord, who became the owner subsequently on transfer from the Union of India, cannot seek eviction on the basis of the subletting, which took place when the Act was not applicable qua that building.

6. Four decided cases of this Court have accepted this view. These are *Gopi Nath Aggarwal v. Shri Siri Krishan Chopra*, Civil Revn. No. 675 of 1963, decided on 13-11-1964 (Punj), *Smt. Mahadevi v. Darshan Singh*, Civil Revn. No. 222 of 1964, decided on 21-5-1965 (Punj), and *Badri Das v. Prem Chand Puri*, Civil Revn. No. 295 of 1965, decided on 21-5-1965 (Punj), all by Falshaw C.J.. and *Kharaiti Lal v. Charanji Lal*, Civil Revn. No. 231 of 1965, decided on 17th of December, 1965 (Punj), by Mr. Justice Mehar Singh (as he then was). A contrary view, however, had been taken by a Bench of this Court in *Gobind Ram v. Takht Mal Kanungo*, 1962 Punj. L.R, 969. In this case it was found that subletting had taken place sometime in the year 1953 when the property formed part of the compensation pool. This was transferred by the District Rent and Managing

Officer to Jai Singh, landlord, in April, 1958, who in turn transferred it to Gobind Ram in July, 1958. Gobind Ram then brought the application for the ejectment of the tenants on the ground of subletting, which had taken place in the year 1953. The Appellate Authority dismissed the application on the ground that as the subletting took place at a time when the East Punjab Urban Rent Restriction Act was not applicable, no ejectment could be claimed by the landlord on the basis of such a subletting. The other point raised was whether in view of the provisions of Section 29 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter referred to as the Rehabilitation Act), the Rent Controller had no jurisdiction to entertain an application for ejectment within the period of two years prescribed by the above-mentioned section. The matter was ultimately referred to a larger Bench and it came up for consideration before a Division Bench consisting of Dulat, Acting C. J. and Mahajan J.

7. Broadly speaking, Section 29 of the Rehabilitation Act provides that for two years after the transfer of the property in compensation pool, the tenant, who is in lawful possession of the premises, shall be deemed to be a tenant of the transferee on the same terms and conditions as to the payment of rent etc. and no such person shall be liable to be ejected for a period not exceeding two years as may be prescribed in respect of any class of property except that he can be ejected earlier on various grounds including that of subletting as are mentioned under the proviso to Sub-section (1) of Section 29 of the Rehabilitation Act. The Bench came to the conclusion that an application made by the transferee within this period of two years on any one of the grounds mentioned in the proviso would be entertainable by the Rent Controller. As regards the other point, Acting Chief Justice Dulat, speaking for the Bench, observed as follows:--

"..... the tenant had transferred his tenancy rights to another person with out the written consent of the landlord. This had happened in 1953 while the East Punjab Urban Rent Restriction Act had come into force in 1949, so that the transfer occurred after and not before the Act. It is, in my opinion, immaterial that for some time during the interval the premises in dispute were exempted from the operation of the East Punjab Urban Rent Restriction Act, for such exemption cannot alter the date of the coming into force of the Act and the tenant's liability to eviction arises if he parts with his rights after the coming into force of the Act. The conclusion, therefore, must be that in this particular case the tenant had incurred that liability. I would, therefore, allow the landlord's petition and set aside the order made by the Appellate Authority and restore the order of eviction made by the Rent Controller." (See pages 974 and 975 of the report).

Although the three Revisions, decided by Falshaw C.J., mentioned above, which took the contrary view, were decided after the Bench decision in Gobind Ram's case, 1962-64 Pun LR 969, had been reported in the year 1962, yet it appears that this case was not cited before the learned Judge and was therefore not noticed or distinguished. Similarly, in Kharaiti Lal's case, Civil Revn. No. 231 of 1965, D/- 17-12-1965 (Punj) also, this case was not cited till sometime after the

learned Judge had dictated the judgment in the case agreeing with the view expressed by Falshaw C.J. in the earlier three cases. Mr. Justice Mehar Singh added a note, in which this Bench decision was distinguished, by making the following observations:--

"The reference to exemption in that part of the judgment does not show that there was exemption to the premises from that Act at the time when the subtenancy was created it is obvious that in this case (Bench case) it is not clear from the record that at the time the sub-tenancy was created at that time the exemption from East Punjab Act 3 of 1949 was operative."

As was mentioned by Mr. Justice Gurdev Singh in the referring order and as noticed above, the printed report of the case leaves no manner of doubt that the subletting was in the year 1953 when the property formed part of the compensation pool and consequently the Bench case cannot be distinguished on this score.

8. Mr, Sarin, learned counsel for the tenants, vehemently urged that the view taken by Falshaw C.J. and Mehar Singh J. was the correct view. He urged that although the Act came into force in the year 1949 and as such generally speaking the Act must be taken to have commenced from that date, yet the words used viz. "after the commencement of the Act" in sub-clause (ii) of Sub-section (1) of Section 13 of the Act must be read in conjunction with Section 3 of the Act. Qua a particular building, which was exempt from the operation of the Act by virtue of a notification published u/s 3. the Act should be taken to have commenced only after the expiry of the period of exemption.

9. In respect of the property, which is exempt from the operation of the Act, in view of the fact that the same formed part of the compensation pool and which later on, is transferred by the Union of India to a private person, there are three stages:

- (i) the period during which the property remained exempt;
- (ii) two years after the transfer to a private person; and
- (iii) after the expiry of the aforesaid period of two years.

During the period the property is exempt from the operation of the Act, the Act is altogether inapplicable and the relations between the tenant and the landlord, who in this case is the Union of India, are governed by the terms on which the tenancy is held; the provisions of the Transfer of Property Act or any special law or provision governing the relations between the parties. After the transfer of the property to a third person, these relations would have been governed by the provisions of the Rent Restriction Act because immediately after the transfer the exemption goes. However, in view of Section 29 of the Rehabilitation Act, the landlord cannot eject his tenant notwithstanding any terms of contract between the parties. Proviso to Section 29(1) of the Rehabilitation Act is in the following terms:--

"Provided that notwithstanding anything contained in any such terms and conditions, no such person shall be liable to be ejected from the property during such period not exceeding two years as may be prescribed in respect of that class of property, except on any of the following grounds, namely;

(a) that he has neither paid nor tendered the whole amount of arrears of rent due after the date of the transfer within one month of the date on which a notice of demand has been served on him by the transferee;

(b) that he has, without obtaining the consent of the transferee in writing-

(i) sublet or otherwise parted with the possession of the whole or any part of the property, or

(ii) used the property for a purpose other than the purpose for which he was using it Immediately before the transfer,

(c) that he has committed any act which is destructive of, or permanently Injurious to, the, property."

This section, therefore, provides a complete code covering the relations between the tenant and the transferee during this period of two years. The learned counsel for the petitioners rightly argued that in view of the wordings of Clause (b) of the proviso to Section 29(1) of the Rehabilitation Act making it obligatory for the tenant to obtain the consent of the transferee in writing with regard to any subletting, the subletting, which would give a cause of action to the landlord to seek ejectment of the tenant, must necessarily take place after the date of transfer and consequently the landlord cannot take advantage of any subletting, which has taken place prior to the date of transfer. After the expiry of the period of two years, of course, the relations between the parties are governed by the provisions of the Act.

The argument of the learned counsel is that if during the period of two years after the transfer, the landlord could not take advantage of subletting, which took place during the earlier period, it would be most unjust if the landlord can seek the ejectment of the tenant after the expiry of the period of two years on the basis of the same subletting which took place during the period when the property was altogether exempt from the operation of the Act. The main contention was that if subletting was not a ground for ejectment when the same was effected, then the same should not be a ground for ejectment at a subsequent date, because it would be against the rules of jurisprudence that an act which was legal when it was performed should be treated as penal subsequently.

10. It was conceded that under the general law of the land, there is no prohibition against subletting and it is only if it is expressly provided in the terms of the lease that subletting involves forfeiture of the lease and entitles a landlord to seek ejectment of his tenant. In Kharaiti Lal's case, Civil Revn. No. 231 of 1965, D/- 17-12-1965 (Punj) (supra) while dealing with the case of Gobind Ram

1962 64 PLR 969 Mr. Justice Mehar Singh observed as follows:--

"It seems rather difficult to accept that a property should be exempt from the provisions of East Punjab Act 3 of 1949 and yet during the period that Act has no application, the tenant is still required to obtain written permission of the landlord to sub-let, and it is not clear on what this requirement is based. East Punjab Act 3 of 1949 does not come into the picture. There is no other law under which any such requirement can be imposed upon the tenant. The only other situation in which such requirement can be imposed upon a tenant is a term of the contract of tenancy but no such argument and basis of the term of tenancy has been urged in the present case nor do I understand was there any such argument in Gobind Ram's case 1962 64 PLR 969."

It was apparently assumed by the learned Judge and the learned counsel before us to begin with, also proceed on the basis that the subletting, which took place in 1955, was not prohibited either by the terms of the lease or by any other law. It is, however, not correct that during the period that the property formed part of the compensation pool, there was no prohibition against subletting. Under Sub-section (1) of Section 19 of the Rehabilitation Act, subject to any rules made under the Act, the Managing Officer Is authorised to cancel any allotment or terminate any lease. The material part of Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, is in the following terms:--

"The managing officer may in respect of the property in the compensation pool cancel an allotment or terminate a lease if the allottee -

(a) has sublet or parted with the possession of the whole or any part of the Property allotted or leased to him without the permission of a competent authority; or

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx"

The result, therefore, is that so long as the property forms part of the compensation pool, there is a prohibition against subletting without the permission of the competent authority. Thereafter, during two years after the transfer, Clause (a) of the proviso to Sub-section (1) of Section 29 of the Rehabilitation Act places such a restriction. After the expiry of the period of two years, the provisions of the Rent Restriction Act apply. Thus at no relevant time subletting is permissible. Faced with this situation, the argument of the learned counsel for the petitioner was that although subletting during the time when the property was exempt from the operation of the Act is prohibited, yet action can be taken only by the Managing Officer and the transferee cannot take advantage of any subletting that was made during that period.

11. On the other hand, it was contended for the respondent-landlord that the

wordings of Section 13 (1) (ii) of the Act are absolutely clear. According to it, if any subletting takes place "after the commencement of the Act" then irrespective of the fact, whether at the time such subletting takes place, the property was temporarily exempt from the operation of the Act, the landlord can subsequently, when the Act becomes applicable, proceed to seek ejectment of the tenant on the basis of such a subletting unless it is made with the permission of the person who was the landlord at the time of subletting. He urged that this would be the result irrespective of the fact whether at the time of subletting, subletting was prohibited or not. The exemption, apart from being on the grounds that the property belongs to the compensation pool or the State or any local authority, is also granted under the Act in respect of new buildings constructed and this exemption extends over a specified number of years after the completion of the building. During this period, the relations between the landlord and the tenant are governed solely by the terms of the lease and if there is no specific prohibition against subletting, it is obvious that no penal consequences can arise if the premises are sublet during this period when the Act was not applicable.

The question can arise whether the landlord can seek ejectment of his tenant on the basis of such a subletting after the expiry of the specified period? The reply of the learned counsel for the respondent was that in the first place, we are not concerned with such a situation as the question of law referred to the Full Bench relates only to a property which is exempt from the operation of the Act because it formed part of the compensation pool. In the second place, he urged that even in such a case the landlord would be fully entitled to seek ejectment of the tenant because the subletting had taken place "after the commencement of the Act", even though the subletting by the tenant may be perfectly legal at the time when the same was effected.

In support of this contention, reliance was placed by him on a recent judgment of the Supreme Court reported as *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, . This was a case from Rajasthan. The Jaipur Rent Control Order, 1947, came into force in the year 1947 and was subsequently replaced by the Rajasthan Premises (Control of Rent & Eviction) Act, 1950. Under paragraph 8 (1) (b) (ii) of that Order, a tenant was liable to eviction on the ground of subletting and the same ground continued in the Rajasthan Act, 1950, vide Section 13(1). The High Court came to the conclusion that the subletting of the two shops had taken place in the end of 1947 after the Control Order had been enforced and consequently the liability of the tenant to be evicted on the ground of subletting continued under the Act of 1950. The Supreme Court, however, held that the subletting took place some time before the Control Order came into force and, therefore, proceeded on the basis that the subletting took place at a time when no rent legislation was applicable. The question for decision was whether u/s 13(1) of the Rajasthan Act, the tenant was liable to be evicted on the ground of subletting which took place before the Act came into force? Amongst the grounds set out in Sub-section (1) of Section 13, on which the landlord can seek ejectment, was the following ground as given in Clause (e):--

"That the tenant has assigned, sublet or otherwise parted with the possession of, the whole or any part of the premises without the permission of the landlord."

The Supreme Court came to the conclusion that the landlord can seek ejectment in view of the wording of Sub- Clause (e) and observed as follows:--

"The argument that Section 13(1)(e) takes away vested rights and should not be given a retrospective effect is based on fallacious assumptions. Apart from the Rent Act the landlord is entitled to eject the tenant on the expiry of the period mentioned in the notice to quit. Section 13(1) protects the tenant from eviction except in certain specified cases. If one of the grounds of ejectment is made out the tenant does not qualify for protection from eviction. We find no reason for presuming that Section 13(1)(e) is not intended to apply to subletting before the Act came into force. If the "tenant" has sub-let the premises without the permission of the landlord either before or after the coming into force of the Act, he is not protected from eviction u/s 13(1)(c) and it matters not that he had the right to sublet the premises u/s 108(j) of the Transfer of Property Act."

Thus according to the observations of the Supreme Court a subletting, which is authorised or in other words which is not prohibited at the time when the same is effected, can be made a ground for eviction. The reason given is that under the ordinary law of the land, a landlord can get rid of his tenant at any time he likes, unless prohibited by the terms of the contract, by giving the requisite notice. By the Act, the tenant is given protection from such an ejectment and the landlord can seek ejectment only on the grounds mentioned in the Act and if once such a ground is established, according to the provisions of the Act, it does not make any difference if the act, which is made the basis for ejectment, was permissible at the time when it was performed. Present case is slightly stronger because as detailed above, subletting was not permissible without the permission of the authorities concerned even at the time when the same was effected in 1955 when the property was otherwise exempt from the operation of the Act.

12. Learned counsel for the petitioner urged that the provisions of Section 13(1) (ii) of the Act are different from Clause (e) of Sub-section (1) of Section 13 of the Rajasthan Act, in as much as, according to the Punjab Act, it is only a subletting which takes place after the commencement of the Act, which can afford a ground for ejectment. He contended that the decision of the Supreme Court would have been quite different if the provisions in the Rajasthan Act have been similar to the one in the Punjab Act. The addition of the words "after the commencement of the Act" in the Punjab Act only protects the tenants from being ejected for any subletting effected by them prior to the enforcement of the Act, but in no way protects them from any subletting by them effected "after the commencement of the Act", but during the period when temporarily the building is exempt from the operation of the Act. If, as in the Rajasthan case, due to the absence of the words "after the commencement of the Act" in Clause (e) of Section 13(1) of the Act the landlord could seek ejectment of the tenant even qua subletting which took place before the enforcement of the Act when such an

act was within the competence of the tenant u/s 108(j) of the Transfer of Property Act, for the same reasoning, the landlord can certainly seek ejectment of his tenant for any subletting done by him after the commencement of the Act as is provided in the Punjab Act. More so, when such a subletting was not justified even at a time when the same was effected, the only result of the exemption would be that the landlord could not seek ejectment by having a recourse to the provisions of the Act, but the landlord concerned, who at that time was the Union Government, could seek ejectment of the tenant on the ground of subletting in view of the rules.

13. In a way, the transferee steps into the shoes of the Union Government and it is now settled law that if a tenant sublets the demised premises without the consent of the landlord then the transferee from that landlord can take advantage of the subletting which took place earlier to the transfer of the property in his favour. See in this respect, *Dhanpat Ram v. Tara Singh*, 1966-68 Pun L.R. 288. Regarding the question as to whose written consent is to be obtained, it has been held that the landlord, for this purpose, would be the landlord at the time of subletting. See in this respect, *Pritam Singh v. Raja Ram* 1964 66 PLR. 289 : AIR 1964 (PH) 363. These cases no doubt relate to subletting which took place when the Act was applicable to the building concerned, yet if the pre-decessor-in-interest could seek ejectment on the ground of subletting because of the terms of the contract or any special law or rules that are applicable, it can well be argued that the transferee should be entitled to take advantage of such a subletting if the same is a ground under the Act. Prima facie, this line of argument seems quite plausible.

14. In view of the above and the clear observations of their Lordships of the Supreme Court in *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, the question referred to the Full Bench must, therefore, be answered in the affirmative.

15. The case will now go back to the learned Single Judge for disposal in the light of the answer returned above. There is a miscellaneous application also on the record, which will be placed before the learned Single Judge.

K.S. Sarkaria, J.

16. I agree.

H.R. Sodhi, J.

17. I agree.