

(1964) 05 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 704 of 1963

Milkha Singh and Others

APPELLANT

Vs

Maharaj Krishen and Others

RESPONDENT

Date of Decision : 26-05-1964

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(2)(ii)(a)

Citation : (1964) 2 ILR (P&H) 750 : (1964) 66 PLR 800

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Advocate : Bhagirath Das, Hira Lal Sibal and Balwant Singh Gupta, for the Appellant; Ranjit Singh Narula, H.L. Sarin and Rajesh Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Falshaw, C.J.—This is a landlords' revision petition against the order of the Appellate Authority setting aside an order for the ejectment of the tenant passed by the Rent Controller.

2. The premises in dispute comprise a building on land measuring 4 kanals situated alongside the G.T. Road in the town of Jullundur and it was leased by Milkha Singh petitioner on behalf of himself and the other landlords Gurdial Singh and Smt. Swarn Kaur to Maharaj Kishen under an agreement dated the 24th of June, 1954 for a period of three years on a rent of Rs. 1,020 per annum for the purpose of both residence and running the business of a motor workshop It does not appear that at any time were any kind of residential premises built on the land where Maharaj Kishen carried on his business in the name of Messrs. Kesar Motor Garage. On the 25th of May 1961 by which time the name of the business had been changed to Kesar Service Station, Maharaj Kishen entered into an agreement in the standard form with the Standard Vacuum Oil Company, a branch of an American company which has now changed its name to Esso Standard East Inc. with its office at New Delhi, for the installation of a petrol pump on the leased land. The necessary installations were made in part of the

leased land by the company which obtained the necessary licence in the name of the Standard Vacuum Oil Company, New Delhi, Delears-Kesar Service Station, for the installation of the necessary storage tanks with a capacity of 3000 gallons of petrol and 3000 gallons of diesel oil.

3. The ejectment petition was filed by the landlords on the 13th of June 1961 impleading the Standard Vacuum Oil Company and Messrs Esso Standard Eastern Inc. as respondents as well as the tenant Maharaj Kishen Three grounds for ejectment were pleaded (i) that the installation of the petrol pump by the company constituted subletting, (ii) that the premises were bona fide required by the landlords for their own use and (iii) that the instillation of the petrol pump amounted to a change in the user of the premises.

As regards the latter point even the learned Rent Controller who passed an order for the ejectment of the tenant held that where already a business was being carried on for repairing and servicing motor vehicles the addition of facilities for supplying petrol and oil could not be held to be a change of user since this business was allied to and connected with the existing business and I agree with this view. However, the learned Rent Controller found in favour of the landlords on the points of subletting and personal requirement.

4. On the question of subletting great stress was laid on the terms of the agreement R.W. 6/2 entered into between the tenant and the company in which great stress was laid throughout on the fact that the installations including the storage tanks buried in the ground, pumps, other apparatus, signs etc. comprehensively termed "the outfit" in the agreement would continue to be the property of the company, which was to be exclusively responsible for their maintenance and repair and was responsible for the locks on the storage tanks. In fact under the agreement the dealer was to pay an annual rent of Rs. 74/- for the outfit. To be strictly accurate the rent was merely Rs. 24 and the remaining Rs. 50/- were the cost of the annual licence obtained in the name of the company.

5. In support of the argument that the tenant had surrendered the whole or major portion of his rights in the rented land to the company particular reliance was placed on the terms of clause 16 of the agreement which reads-

In consideration of the premises and of the services rendered by the company to dealer in the development of the outlet dealer agrees with the company as follows;-

(a) The company shall have the right at any time during the currency of this agreement or within one month thereafter by notice in writing to require the dealer to sell or to assign according as the site may be held by dealer on freehold or leasehold tenure to the company or its nominee the lite together with all buildings, structures and fixed assets thereon standing and belonging to the dealer (hereinafter collectively referred to as "the immovable assets") and thereupon the dealer shall sell or assign the immovable assets to the company or

its nominee within three months next after receipt of such notice at or for a price which shall be computed as follows :

* * * *

If the site shall be held by the dealer as a tenant or lessee of another then, in the event of the dealer being unable for any valid reason beyond his control to assign the immovable assets to the company, the dealer shall, as soon as possible after receipt of the company's notice requiring assignment, inform the company in writing of such inability and the reason therefor and the company shall be entitled within one month after receipt of such information to require the dealer to sublet the immovable assets to the company or its nominee. In such case the dealer shall sublet the immovable assets to the company or its nominee at the expense of the company for the unexpired residue of the term of the lease or tenancy at a rental which shall be equal to the amount of the rental which the dealer himself is liable to pay for the site with a further sum calculated at 6% per annum on the amount representing the price of the buildings, structures and fixed assets arrived at in manner provided in this clause for the case of sale or assignment * * * * Options granted by this clause to the company for purchase assignment or sub-lease of the immovable assets may be specifically enforced by the company.

6. The question is whether by executing this agreement the tenant has in the words of section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949, transferred his right under the lease or sublet the entire building or rented land or any portion thereof.

7. The learned Rent Controller found that by entering into this agreement the tenant had parted with his rights under the lease and virtually sublet the premises to the company, but the learned Appellant Authority came to the conclusion that the agreement only amounted to a licence in favour of the company and the tenant retained his essential rights as such.

8. The question is obviously not free from difficulty and it does not seem that the position of a tenant who has become a dealer of one of big oil distributing companies under the standard form of agreement, which I think does not differ much from company to company, vis-a-vis his own landlord has previously come before the Courts for decision. The only case I am aware of in which a dealer's agreement has come up for consideration was Messrs Delhi Gate Service Private Ltd., Dethi v. Messes Caltex (India) Ltd., New Delhi (1962) 64 P.L.R. 559, but there the position was different in that the company was the owner of the site, as apparently, judging by the terms of the present agreement, the company prefers to be. In that case the company had terminated the agreement with the dealer and had instituted a suit in an ordinary civil Court for possession of the site which was resisted by the dealer on the ground that he was a tenant entitled to the protection of the Delhi Rent Control Act. I held that where the company owns a site under the terms of the agreement the dealer is only a licensee who

can be dispossessed under the terms of the agreement.

9. The position, however, is not the same when the dealer has taken a site on lease from a third party. The position of the company as evidenced by the terms of the agreement, is obviously that once it has obtained a licence from the authorities and installed a petrol pump and other parts of the outfit, which must certainly be regarded as immovable property since the storage tanks or the pumps have to be installed at a certain depth below ground level the company intends to stay there, and if there is any disagreement between the company and the dealer it is the dealer who will have to go. Under the agreement the company retains possession and strict control of all the parts of the outfit and in the event of any disagreement, though this is not specifically stated, or on the termination of the agreement by either party the dealer, if he is the owner or lease holder of the site will have to transfer his rights to the company or if he is only a tenant he is bound to sublet the site to the company.

10. In these circumstances it is difficult to agree with the finding that the company is a more licensee of the tenant.

11. It may be argued that since the agreement contains a provision agreeing to sublet the site to the company in certain conditions, it cannot be said to amount to a sub-lease in itself, but it is not necessary for there to be a total sub lease in order to give the landlord a right of ejectment. A sub lease of any portion of the property confers this right and there appears to be a clear sub-lease in a case of this kind of that part of the property which actually contains the installations of outfit of the company for which in fact under the terms of the agreement the tenant has to pay rent to the company. A major part of this rent admittedly covers the cost of the licence which is taken out in the name of the company every year, but part of it is definitely rent for the outfit, and it is too difficult to resist the conclusion that the tenant in fact has become the tenant of the company in respect of that part of the property which is covered by the outfit. I am therefore of the opinion that on this part of the case the view taken by the learned Rent Controller was correct.

12. Once this finding is given the landlord is obviously entitled to evict the tenant even if the alleged bona fide requirement by the landlord of the land for his own use, which was found in the landlord's favour by the learned Rent Controller but against him by the learned Appellate Authority, is not found to be established. On this point I am inclined to agree with the finding of the learned Appellate Authority that no such bona fide requirement was established. The landlord alleged that he wanted the site in dispute in order to set up a woodwork or furniture factory with some machinery which he was using at the time of the trial in a factory situated in Kenya, East Africa. He claimed that the position of Indians in Kenya was becoming difficult and he wanted to settle in Jullundur, and while there is no difficulty in accepting his position regarding the prospects of Indians in Kenya, which may have become even worse by now since Kenya attained its independence last year, I do not think it can possibly be said that he needs this

particular site since it is admitted that he has an adjoining site which is almost as large as the property in suit as well as other properties in Jullundur.

13. However, the petition succeeds on the main point and I accordingly accept the petition and restore the order of the Rent Controller for the eviction of the tenant. The parties will be left to bear their own costs. Three months time allowed to the tenant to vacate the premises.