

Gurcharan Singh and Others

Vs

Shri V. K. Kaushal

Civil Appeal No. 840 of 1978

(R. S. Pathak, A. C. Gupta JJ)

21.08.1980

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against a judgment of the High Court of Punjab & Haryana dismissing a tenant's revision petition under Section 15(5), East Punjab Urban Rent Restriction Act, 1949 arising out of eviction proceedings.
2. The respondent, as landlord, applied under Section 13 (2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949 for the possession of a shop forming part of the premises No. 6283, Nicholson Road, Ambala Cantonment occupied by the appellants. He claimed that the shop had been let out to the first appellant, Gurcharan Singh, but that he had without the written consent of the respondent, sublet the shop to his father, Gurdayal Singh and his brothers, Anoop Singh and Jagjit Singh. The appellants denied that the shop had been sublet and pleaded that they, along with their father constituted a Joint Hindu family, and that the joint Hindu family was the tenant of the shop. The Rent Controller found in favour of the respondent and passed an order of eviction, which was subsequently affirmed by the appellate authority. The appellants applied in revision, and the High Court has, by its judgment and order dated December 14, 1977 dismissed the revision application.
3. The first contention of the appellant is that there is no evidence that the shop was sublet, and the finding is misconceived in point of law.
4. It is sufficient to point out that the Rent Control authorities and the High Court have concurrently found that the shop was let out to Gurcharan Singh and not to the joint Hindu family, and that Gurcharan Singh sublet it in 1967 to a partnership firm consisting of his father and brother. The finding is supported by ample evidence on the record. The material shows that the shop was let out to Gurcharan Singh alone, and the business carried on by him was later taken over by a partnership consisting of his father and brothers. He was no longer proprietor of the business, and merely extended his assistance under a power of attorney enabling him to act for the partnership. The execution of the power of attorney establishes that he was not a partner. It appears that Gurcharan Singh individually carried on some other business, but there is no evidence to show that that business was lodged in the shop under consideration. The material before us demonstrates that the shop was occupied exclusively by the partnership firm and that Gurcharan Singh was left with no right to possession therein. The evidence is incompatible with the case, now set up before us, that the partnership was merely a licensee of Gurcharan Singh. Learned counsel for the appellants relies on *Hira Lal v. Banarsi Dass* ((1979) 1 RCJ 145 (Del HC)). That case, however, was one of a joint tenancy, and it was held that the mere circumstance that one of the co-tenants had ceased living in

the premises for some time could not lead to the inference that he had sublet it to the other co-tenants. The evidence showed that all the co-tenants were carrying on business in partnership, although one of them was not disclosed as a partner.

5. Some reliance was placed on the circumstance that the licence for carrying on the business stood in the name of Gurcharan Singh. As the evidence plainly shows, the licence was issued to him when he was carrying on the business, and subsequently, although it continued to stand in his name, it was used by the partnership firm, and no inquiry was made by the licensing authority, when renewing it, to determine whether the original holder of the licence was still carrying on the business.

6. We are of opinion that the finding of the High Court and the Rent Control authorities that Gurcharan Singh had sublet the shop is unassailable.

7. Learned counsel for the appellants contends next that the ground of subletting taken under the East Punjab Urban Rent Restriction Act, 1949 is not available to the respondent because on the date when the subletting took place that Act was not in force in the Ambala Cantonment. Now, it appears that Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, empowered the Central Government to extend, by notification, to any cantonment with such restrictions and modifications as it thought fit, any enactment relating to the control of rent and regulation of house accommodation which was in force on the date of the notification in the State in which the cantonment was situated. In exercise of that power, the Central Government issued notification No. SRO-7 dated November 21, 1969 extending the East Punjab Urban Rent Restriction Act, 1949 to cantonments in the States of Haryana and Punjab. Consequently, with effect from November 21, 1969 the East Punjab Urban Rent Restriction Act became a law operating in the cantonment. Section 13(2)(ii)(a) of the Act provides for an order of eviction if the Controller is satisfied "that the tenant has, after 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.

It is clear that the tenant falls within the mischief of this sub-clause only if he has effected the transfer or subletting after the commencement of the Act. The Act commenced to operate in the Ambala Cantonment on November 21, 1969. In regard to that territory, it was not law before that date, but only on and from that date. It is clear that the subletting in the present case having been effected in 1967, was not made after the commencement of the Act. Learned counsel for the respondent urges that Section 13(2)(ii)(a) of the Act uses the words "has sublet", and submits that subletting is a continuous process and that even though in the present case it may be said to have commenced before the Act came into force it continued in operation after the Act was brought into force. Now, when Section 13(2)(ii)(a) speaks of a tenant who "has sublet", it refers to a tenant who has entered into a transaction of subletting. And the transaction of subletting is referable to a single point of time. It is the moment when the act effecting the subletting is completed. That transaction is located at a fixed point. What happens then is that a flowing stream of rights and obligations issues from the subletting. Those rights continue as long as the sublease subsists, but they have their source in the definitive transaction of subletting located in a single fixed point of time. We may add that in the context of Section 13(2)(ii)(a) of the Act, the words "has sublet" imply that the subletting must subsist on the date when the Act comes into force. The reason is apparent from the object of the Act, which is to protect the personal occupation of the tenant. The protection is not extended to a tenant who has abandoned occupation of the premises and has passed possession to another, even though by way of a sub-tenancy. The protection against eviction is not available for permitting a

tenant to make a profit out of his tenancy rights by subletting the premises. Therefore the words "has sublet", unqualified by any reference to the commencement of the Act, refer to a transaction of subletting entered into before or after the commencement of the Act, and in the case where subletting has been effected before the commencement of the Act sublease must subsist, and the rights under it continue to flow, on the date of the commencement of the Act. In the present case, however, Section 13(2)(ii)(a) of the Act confines its scope to subleases effected after the commencement of the Act, that is to say, transactions of subletting effected after the date when the act came into force. For that reason, a subletting effected before the commencement of the Act cannot be brought within the mischief of Section 13(2)(ii)(a) even though it continues to subsist on or after the commencement of the Act. In *Goppulal v. Thakurji Shriji Shriji Dwarkadheeshji* ((1969) 3 SCR 989 : (1969) 1 SCC 792) on which learned counsel for the respondent relies, the relevant provisions did not include the words "after the commencement of this Act", and, therefore, took within its scope a subletting transacted before the coming into force of the relevant Act.

8. In our opinion, the respondent cannot avail of Section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act on the basis that it was brought into operation in the Ambala Cantonment by the Notification of 1969.

9. We find, however, that the Cantonments (Extension of Rent Control Laws) Act, 1957 was amended by Act 22 of 1972. Upon amendment, Section 1(2) of the principal Act declared that the principal Act would be deemed to have come into force on January 26, 1950. The words "on the date of notification" were omitted in Section 3(1) of the principal Act, and were deemed always to have been omitted, so that under Section 3 the Central Government must be deemed to have been empowered always to extend to a cantonment any enactment relating to the control of rent and regulation of house accommodation in force in the State even as it stood before the date of the notification. This amendment was made in order to accord with the further amendment made by inserting sub-section (3) in Section 3 of the principal Act, which provided that where an enactment in force in any State relating to the control of rent and regulation of house accommodation was extended to a cantonment from a date earlier than the date on which such extension was made, such enactment, as in force on such earlier date, would apply to such cantonment. Section 3(2) was added in the principal Act, and it provided :

The extension of any enactment under sub-section (1) may be made from such earlier or further date as the Central Government may think fit :

Provided that no such extension shall be made from a date earlier than -

- (a) the commencement of such enactment, or
- (b) the establishment of the cantonment, or
- (c) the commencement of this Act,

whichever is later.

10. Subject to the proviso, the Central Government now enjoyed power to extend an enactment from a date earlier than the date of the notification or from a future date. Subsequently, the Central Government issued notification No. SRO-55, dated January 24, 1974 superseding the earlier notification No. SRO-7, dated November 21, 1969 and extending the East Punjab Urban Rent Restriction Act afresh to cantonments in the States of Haryana and Punjab. Section 1(3) of that Act

was modified to read that, except for Section 19, it would be deemed to have come into force on January 26, 1950. The result is that the East Punjab Urban Rent Restriction Act will be deemed to have come into force in the Ambala Cantonment on January 26, 1950. And if that be so, the subletting effected in 1967 must plainly be regarded as having been made after the commencement of that Act.

11. Two points are raised on behalf of the appellants against the conclusion. The first is that the power under Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 having been exercised once, that is to say, by the notification dated November 21, 1969, the power of extension stood exhausted and could not be availed of again, and therefore the Notification dated January 24, 1974 was without statutory sanction and invalid. We are referred to *Lachmi Narain v. Union of India* ((1976) 2 SCR 785 : (1976) 2 SCC 953 : 1976 SCC (Tax) 213). That was a case where this Court held that a notification under Section 2 Part C States (Laws) Act, 1950 having been issued in 1951 by the Central Government extending the Bengal Finance (Sales Tax) Act, 1941 to the State of Delhi, the power given by Section 2 exhausted itself on the extension of the enactment and could not be exercised again to enable the issue of a fresh notification modifying the terms in which the Bengal Act was extended. The case is clearly distinguishable. The power under which the notification dated January 24, 1974 has been issued is a separate and distinct power from that under which the notification dated November 21, 1969 was made. The power now exercised passed into the Cantonments (Extension of Rent Control Laws) Act, 1957 when it was amended in 1972. In its nature and quality it is not identifiable with the power vested under the unamended Act. A power conferred by statute is distinguished by the character and content of its essential components. If one or more material components characterising the power cannot be identified with the material components of another, they are two different and distinct powers. Although broadly the power envisaged in Section 3 of the amended Cantonments (Extension of Rent Control Laws) Act, 1957 is a power of extension even as it was under the unamended Act, there is a vital qualitative difference between the two. The power under the unamended Act was a limited power. It could operate prospectively only. There was no choice in the matter. After amendment, the Act provided for a power which could be exercised retrospectively. The power extended to giving retrospective effect to an enactment in force in the State in the form in which that enactment was in force on the date on which the extension was made. It was a power whose reach and cover extended far beyond what the power under the unamended Act could achieve.

12. We are of the view that in issuing the notification dated January 24, 1974 and thereby extending the East Punjab Urban Rent Restriction Act to the Ambala Cantonment retrospectively with effect from January 26, 1950, the Central Government exercised a power not available to it when it issued the notification dated November 21, 1969. The contention that the issue of the notification of January 24, 1974 amounted to a further exercise of power conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, under which the earlier notification was issued is without force and must be rejected.

13. The second point raised is that in clause (c) of the proviso to Section 3(2) of the Cantonments (Extension of Rent Control Laws) Act, 1957, which speaks of "the commencement of this Act", the words "this Act", refer to the Cantonments (Extension of Rent Control Laws) Amendment Act, 1972, which commenced to operate from June 2, 1972. The argument is founded in fallacy. The words "this Act" refer to the principal Act in which Section 3 (2) is inserted by virtue of the amendment, and that Act, by virtue of Section 2(2) as amended, must be deemed to have come into force on January 26, 1950.

14. In the result, the appeal fails and is dismissed with costs.

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