SUPREME COURT OF INDIA

Kapil Bhargava

Vs.

Subhash Chand Aggarwal

C.A.No.5593 of 2001

(Ajay Prakash Misra and U. C. Banerjee JJ.)

21.08.2001

JUDGEMENT

A.P.Misra, J.

1. Leave granted.

2. This appeal by the sub-tenant seeking quashing of the judgment and order dated 28th Feb., 2000 by the High Court in second appeal from order by which the landlord's appeal was allowed for a decree of eviction.

3. The question in issue is:

> "Whether an eviction order passed under clause (d) to proviso to sub-section (1) of Section 14 of the *Delhi Rent Control Act, 1958* on the face of the finding recorded that the appellant is a lawful sub-tenant in respect of the premises since before 9th June, 1952 would be valid."

4. This entails interpretation of Sections 16, 17 and 18 of the Act.

5. In 1974 Rama Rani and her son Sher Bahadur the original landlord filed an eviction petition in respect of the premises in question under Section 14(1)(b), (d) and (e) of the said Act against Murli Manohar Lal the tenant and M.L. Bhargava, the sub-tenant, the appellants are the legal representatives of the said sub-tenant. The said M.L. Bhargava was the brother in law of the said tenant. The appellant case is, the sub-tenant was residing in the premises in question with his family since June, 1945 and with the consent of the landlord continued to reside therein even after the transfer of the said tenant Murli Manohar Lal from Delhi. On the other hand landlord case is that the tenant had sub-let and parted with the possession in favour of the said M. L. Bhargava without written permission of the landlord. No notice as contemplated under Section 17 of the said Act was served by the sub-tenant on the landlord. Neither tenant nor any member of his family is residing therein for a period of more than six

months before filing this eviction petition and the premises is required bona fide for personal need.

6. The Court Rent Controller dismissed his eviction petition holding, since the landlady Smt. Rama Rani died during the pendency of eviction petition hence question of bona fide need under Section 14(1) (e) dose not survive. Further the said sub-tenant was in possession of the premises in question since before 9th June 1952, he would be deemed sub-tenant under Section 16(1) of the Act, hence the case would not fall under Section 14(1)(b). For this reason, even ground under Section 14(1)(d), does not survive as the said sub-tenant was a lawful sub-tenant under Section 16(1) of the said Act.

7. The landlord aggrieved by this filed an appeal before the Rent Control Tribunal which was dismissed by upholding the findings recorded by the Rent Controller. Thereafter an appeal was preferred under Section 39 of the said Act before the High Court. The High Court by means of the impugned judgment allowed the appeal but confined the eviction decree against the tenant under Section 14(1)(d), on the ground that the tenant was not residing in the premises for a period of six months immediately before the date of filing of the eviction petition.

8. This finding is challenged before us by the legal representatives of the original sub-tenant.

9. Learned senior counsel Mr. M.L. Verma for the appellant submits. High Court erred in decreeing the eviction suit under Section 14(1)(d) in view of concurrent finding recorded by both the courts below that the appellant was a legally constituted sub-tenant by virtue of Section 16(1) of the said (Act). The First submission is, how can a lawful sub-tenant be evicted under Section 14(1)(d) in view of the definition of 'tenant' under Section 2(1) and provision of Section 16(1) of the said Act. Next it is submitted, once a tenant inducts a sub-tenant over the whole of the premises legally then consequently the tenant vacates the premises in question, thus eviction of sub-tenant under Section 14(1) (d) on the ground that tenant is not residing for a period more than six months preceding the application for eviction would not arise. A sub-tenant on these facts is not required to prove this as admittedly a lawful sub-tenant is already in possession of the whole of the premises in question. If an interpretation contrary to this is done' it will lead to absurdity which is impermissible under the principles of interpretation of statute. So far as the first submission, reliance is placed on the definition of 'tenant' as defined under Section 2(1). Relevant portion is quoted hereunder.

> "Section 2(1) : "Tenant" means any person by whom or on whose account or behalf the rent of any premises, is, or, but for a special contract, would be payable and includes - (1) a sub-tenant .....

10. Submission is, tenant includes a sub-tenant, hence even if sub-tenant, is in possession it would mean a tenant to be in possession, hence it cannot be said under Section 14(1)(d) that tenant has vacated the premises. Thus question of tenant not residing in the premises in question for the last six months preceding making of an eviction petition would not arise. We have no hesitation to reject this submission. It is true a sub-tenant is included within the

definition of tenant but it is for a purpose, for the conferment of rights and obligations on such sub-tenant wherever statute requires under various provisions of an Act, of that which is conferred on a tenant. But this would have no application where statute itself treats both as two separate entities as in incorporated both in Section 14(1) (b) and Sections 16, 17 and 18 of the Act. When a tenant inducts a sub-tenant without written consent of a landlord, he makes himself liable for eviction under Section 14(1) (b). Can it be said, since such sub-tenant under the Act could be a tenant, no question of sub-tenancy arises ? If he is equated as one with the tenant then they would never be evicted under the Act. Similarly, if this is true the question of deemed tenancy under Section 16(1) would never arise. Similar consequence would follow both under Sections 17 and 18 of the Act, unless both are treated as separate entity. No protection to a sub-tenant would arise for his eviction in case of a decree against a tenant. In other words, these provisions would be rendered meaningless. This submission is misconceived. These sections refer specifically inter se relationship between a tenant and a sub-tenant, which cannot be termed as one and the same.

11. Next it is submitted, since the sub-tenancy was created before 9th June,1952 the appellant became a deemed tenant, i.e. a lawful sub-tenant which has been held both by the Rent Controller and the Rent Control Tribunal, thus question of his eviction under Section 14(1) (d) would not arise.

12. For appreciating this submission, reference to Sections 16, 17 and 18 are necessary which are quoted hereunder:

> "16. Restriction on sub-letting –
>
> (1) Where at any time before the 9th day of June, 1952, a tenant has sub-let the whole or any part of the premises and the sub-tenant is at the commencement of this Act, in occupation of such premises, then notwithstanding that the consent of the landlord was not obtained for such sub-letting, the premises shall be deemed to have been lawfully sub-let.
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> (2) No premises which have been sub-let either in whole or in part on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord, shall be deemed to have been lawfully sub-let.
>
> (3) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord -
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> (a) sub-let the whole or any part of the premises held by him as a tenant; or
>
> (b) transfer, or assign his rights in the tenancy or in any part thereof.
>
> (4) No landlord shall claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub letting of the whole or any part of the premises held by the tanant.

17. Notice of creation and termination of sub tenancy –

(1) Where, after the commen-cement of this Act, any premises are sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub-tenant to whom the premises, are sub-let may, in the prescribed manner, give notive to the landlord of the creation of the sub-tenancy within one month of the date of such sub-letting and notify the termination of such sub-tenancy within one month of such termination.

(2) Where, before the commencement of this Act, any premises have been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the premises have been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2), the landlord contests that the premises were not lawfully sub-let and an application is made to the Controller in this behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Controller shall decide the dispute.

18. Sub-tenant to be tenant in certain cases :

(1) Where an order for eviction in respect of any premises is made under Section 14 against a tenant but not against a sub-tenant referred to in Section 17 and a notice of the sub-tenancy has been given to the landlord, the sub-tenant shall, with effect from the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the premises in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.

(2) Where, before the commencement of this Act, the interest of a tenant in respect of any premises has been determined without determining the interest of any sub-tenant to whom the premises either in whole or in part had been lawfully sub-let, the sub-tenant shall, with effect from the date of the commencement of this Act, be deemed to have become a tenant holding directly under the landlord on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued."

13. The submission is, once the appellants are lawful sub-tenants being deemed sub-tenants by virtue of Section 16(1), question of his giving any notice under Section 17 would not arise, so also Section 18 would have no application.

14. On the other hand learned Senior Counsel for the respondent Mr. G. L. Sanghi submits, if no notice is served by such a sub-tenant as contemplated under Section 17(2), which has not been served, as finally recorded in this case, the appellant could not resist a decree of eviction even if passed against a tenant. Unless such a notice is served, a decree against a tenant would bind even a sub-tenant.

15. We have given our due consideration of these submissions on behalf of both the parties. We find Section 16 refers to the restrictions of sub-letting. It classifies the cases of sub-letting into three categories. Sub-section (1) of Section 16 refers to cases where a sub-tenant is inducted by a tenant before 9th June, 1952 without the consent of the landlord but is deemed to be a lawful sub-tenant, if he is in occupation of such premises at the commencement of the Act. Sub-section (2) deals with cases where a sub-tenant is inducted on or after the aforesaid date, and if it is without a written consent of the landlord he is not treated to be a lawful sub-tenant and sub-section (3) mandates a tenant after the commencement of the Act, not to sub-let any premises without written consent of the landlord. The present case admittedly falls under sub-clause (1) of Section 16, under which the appellant could claim to be a deemed sub-tenant. On one hand it confers on a sub-tenant a statutory right, on the other hand section 17(2) casts an obligation on such sub-tenant to serve a notice on a landlord.

16. Thus the question which arises for our consideration is, whether by mere declaration of a sub-tenant as deemed sub-tenant, could be resist his eviction, if it is against a tenant under Section 14 without performing the obligation cast on him under Section 17(2). Sub-section (2) of Section 17 spells out, before the commencement of this Act if any premises have been lawfully sub-let by the tenant in the prescribed manner, a sub-tenant is obliged to give notice to the landlord of the creation of sub-tenancy within six months of the commencement of this Act. Though an attempt was made on behalf of the appellant before the Courts below that such a notice was served on landlord but this has been disbelieved on facts by the Courts below. So, it cannot be disputed that no notice was served by the appellant on the landlord in terms of sub-section (2) of Section 17.

17. Submission for the appellant is once a sub-tenant is a lawful sub-tenant by virtue of Section 16(1), the notice under sub-section (2) of Section 17 would be a mere formality which is procedural. Thus its non-compliance cannot take away his substantive right created under Section 16(1). This submission misses the purpose for which this sub-section (2) of Section 17 is enacted. On performance of this obligation a right is conferred on a sub-tenant to become a tenant under Section 18. This service of notice saves a sub-tenant from eviction even if a decree of eviction is passed against a tenant under Section 14 and further confers on such sub-tenant an independent right as that of a tenant. Thus notice under Section 17(2) cannot be construted as a mere procedural, in fact it confers substantive right on such a sub-tenant. So, a conjoint reading of Sections 16, 17 and 18 makes it clear that a sub-tenant falling under Section 16(1) is deemed to be a lawful sub-tenant even without written consent of the landlord. But Section 17(2) casts an obligation on such sub-tenant to give notice to the landlord under sub-clause (2), within the six months of the commencement of the Act. The legislature has used in sub-section (2) the words "lawfully sub-let." So even if the appellant

is a lawful sub-tenant by virtue of Section 16(1), still an obligation is cast on such lawful sub-tenant to serve a notice on the landlord for gaining a right under Section 18. This as we have said is as a protective measure in favour of a subtenant. So the submission that by mere declaration as lawful tenant under Section 16(1), no decree for eviction is enforceable against the sub-tenant has no merit and is hereby rejected. Hence, we hold, unless notice under sub-section (2) of Section 17 is served by the sub-tenant, he cannot take the benefit of Section 18 and any decree passed under Section 14 against a tenant is executable against a sub-tenant.

18. The next and the last submission is that the landlord was not only aware of the fact that it is not the tenant but the sub-tenant is residing exclusively in whole of the premises, since before 9th June, 1952 and landlord was accepting the rent from this sub-tenant, hence compliance of Section 17(2) could at best be said to be a mere formality. This submission has also no merit. Neither, there is any such finding by any Courts nor any evidence pointed out that after the tenant left, the rent was paid by the sub-tenant on his own behalf and not on behalf of the tenant. A person in possession may continue to live and continue to pay rent which would be payment on behalf of the tenant, unless specific evidence led that the incumbent in possession started paying rent as sub-tenant, receipt issued as sub-tenant or there exists any document of this nature. We have not been shown any such plea, evidence or any finding by any of the Courts below in this regard.

19. For the aforesaid reasons and for the findings recorded by us we find the present appeal has no merit and is accordingly dismissed. Costs on the parties.

Appeal dismissed.

[1]*1998 (7) SCC 507*
[2]*1999 (7) SCC 604*