

PUNJAB AND HARYANA HIGH COURT

Surjit Singh

Vs

Tattan Lal

Civil Revision No. 337 of 1978 and 1366 of 1977

(R.N. Mittal and J.V. Gupta, JJ.)

15.05.1979

JUDGMENT

R.N. Mittal, J.

1. This Judgment will dispose of Civil Revision Nos. 337 of 1978 and 1366 of 1977. The short question that arises for determination in these cases is whether a tenant, who validly sublets the building before coming into force of the East Punjab Urban Rent Restriction Act (hereinafter to be referred to as the Rent Act) within the area of Chandigarh is liable to ejection after its enforcement on the ground mentioned in Section 13(2)(ii)(a).

2. The facts which gave rise to Civil Revision No. 337 of 1978 are as follows :-

"Surjit Singh is the owner of House No. 3255 situated in Sector 23-D, Chandigarh. He let it out to Rattan Lal Aggarwal, respondent No. 1 at the rate of Rs. 175 per month. Subsequently, by the consent of the parties, the rent was increased to Rs. 470 per month with effect from March 19, 1975. The respondent before enforcement of the Rent Act sublet a part of the building to respondent Nos. 2, 3 and 4. The petitioner filed a petition under Section 13 of the Rent Act for ejection of the respondents *inter alia* on the ground that respondent No. 1 sublet a portion of the building to respondent Nos. 2, 3 and 4 without his consent. Respondent Nos. 2 and 3 contested the eviction petition and pleaded that they were in possession before the enforcement of the Rent Act and consequently were not liable to ejection. However, respondent No. 4 did not contest the petition. The learned Rent Controller gave a finding to the effect that respondent No. 1 had sublet a part of the building to respondent Nos. 2 to 4. He, however, held that the respondents could not be ordered to be ejected on the ground of subletting as respondent No. 1 sublet the premises before enforcement of the Rent Act in the town of Chandigarh. Consequently, he dismissed the petition. The petitioner went up in appeal before the Appellate Authority, Chandigarh, who confirmed the judgment of the Rent Controller and dismissed the same. He has come up in revision to this Court."

3. It is contended by the learned counsel for the petitioner that if a tenant whether having a right to sublets or not, sublets a building prior to coming in to force of the Rent Act, the landlord has a right to eject the tenant after its enforcement on the ground mentioned in Section 13(2)(ii)(a). In support of his contention he placed reliance mainly on *Goppulal v. Thakurji Shriji Dwarkadheeshji, and another*¹, (??) (1) *Des Raj v. Shri P.N. Kaul*², (2), *Shri Nand Kishore v. Shri Krishan Lal and others*³, (3) and *Kishori Lal v. Basant Singh*. (4)

4. In order to decide the question it would be proper to determine in the first instance whether respondent No. 1 could sublet the building to other respondents when it was sublet to them. It is not disputed that the building was sublet by respondent No. 1 before coming into force of the Rent Act. No lease deed executed between the petitioner and respondent No. 1 has been produced. In order to determine whether respondent No. 1 had a right to sublet the building or not we shall have to take into consideration the general law. It is a settled proposition of law that the general principles of the Transfer of Property Act relating to leases are applicable in the State of Punjab. Clause (j) of Section 108 authorises the lessee to sub-lease whole or part of his interest in the property. This is subject to the condition that there is no contract to the contrary between the landlord and the tenant. In case there is an express prohibition to the effect that the tenant cannot sub-lease the property ; in that eventuality he has no right to do so. In the aforesaid view we get force from the observations of the Full Bench in *Bishamber Dutt Roshan Lal and others v. Gian Chand Charan Das*,⁴ (5) wherein it was held that there is no prohibition against subletting and it is only if it is expressly provided in terms of the lease that subletting involves forfeiture of the lease and entitles a landlord to seek ejectment of his tenant. In the present case there is no contract between the petitioner and respondent No. 1, by which he (respondent No. 1) was debarred from subletting the property. Consequently, the subletting by respondent No. 1 in favour of respondent Nos. 2 to 4 was a valid one.

5. Now we advert to the main question. In order to determine it, it will be appropriate to notice the relevant provisions of Section 13 of the Rent Act. Sub-section (1) says that a tenant in possession of a building shall not be evicted therefrom in execution of a decree passed before or after the commencement of the Rent Act or otherwise and whether before or after the termination of the tenancy except in accordance with the provisions of this Section. Sub-section (2) prescribes the procedure for making a petition for ejectment and also contains the grounds on which the tenant can be ejected. Clause (ii) of Sub-section (2) is relevant and is reproduced below:-

S. 13(2)(ii) "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 application, is satisfied :-

(i).....

(ii) that the tenant has *after the commencement of the 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.

.....

6. It is well established that a law affects future transactions and not past ones. No statute is given a retrospective operation so as to impair existing rights and obligations, unless it is specifically provided in it. This is, however, not true in the case of statutes dealing with procedures, which the are retrospective in nature. From a plain reading of the section, it is evident, the landlord could apply for ejectment of the tenant if he (tenant) after the commencement of the Rent Act without his written consent sublet the building. The words "after the commencement of this Act" (underlined by us to lay emphasis) are significant. These show that the legislature conferred right on the landlord to eject a tenant on the ground of subletting without his written consent in case the building was sublet after the commencement of the Rent Act. If it wished otherwise it could have specifically provided so.

7. A similar matter came up before Madras High Court in *Mohammed Haji Gaini v. A. Mohsin Baja (6)*. The language of Section (7)(2)(ii)(a) of the Madras Building (Lease and Rent Control) Act, 1946, is *Pari materia* with that of Section 13(2)(ii)(a). The learned Judge while interpreting that section held that a tenant cannot be evicted merely because he has let a sub-tenant into possession before the commencement of the Act. We respectfully agree with the observations.

8. Gappulal's case (supra) was from Rajasthan. The Jaipur Rent Control Order, 1947, came into force in 1947 and was subsequently replaced by the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The Supreme Court held on facts that the subletting of two shops took place before the Rent Control Order came into force. The question for decision was as to whether the tenant was liable to ejectment under Section 13(1)(e) of the Rajasthan Premises Act. Clause (e) reads as follows :-

"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 petitioner's contention was that subletting before the coming into force of the Act was not within the purview of clause (a). The Supreme Court held as follows :-

"The question whether a subletting before the coming into force of the Act is within the purview of clause (e) of Section 13(1) depends upon the construction of that clause. The relevant words are "has sublet". The present perfect tense contemplate as completed event connected in some way with the present time. The words take within their sweep any subletting which was made in the past and has continued up to the present time. It does not matter that the subletting was either before or after the Act came into force. All such sublettings are within the purview of clause (e)".

It is contended by the learned counsel for the petitioner that the above observations are applicable to the present case. He further submits that the Supreme Court also held that if the tenant had sublet the premises without the permission of the landlord either before or after the coming into force of the Rent Act, he was not protected from eviction under Section 13(1)(e) and it mattered not that he had a right to sublet the premises under Section 108(j) of the Transfer of Property Act.

According to the learned counsel it was evident from the observations of the Supreme Court that even if the sub-letting was authorised prior to coming into force of the Rajasthan Act the tenant could still be ejected under Section 13(1)(e). We are unable to accept the contention. Their Lordships of the Supreme Court interpreting Section 13(1)(e) of Rajasthan Premises Act, the language of which was different than that of the Rent Act. In our view the counsel for the petitioner cannot derive any benefit from the said observations.

9. In *Des Raj's* (supra), Surinder Singh, J. interpreted clause (b) of Sub-section (2) of Section 13, which has been reproduced above. In that case a contention was raised by the counsel for the tenant that the words used in the aforesaid provision were "after the commencement of this Act" and use of these words contemplates a fresh changed user after the enforcement of the Act. The contention was repelled by the learned Judge observing that the crucial words in the provision are used the building, and these words clearly included a user even though the same may have commenced before the enforcement of the Act. In our view the ratio in the said case is not helpful to the petitioner as the language of clause (b) is different than that of clause (a). In clause (b) the word "use" is significant. It means 'to make use of'. The act in the case of user is a continuous one and does not come to an end on a particular date. The stress in the clause is on the user of the building & not the date of the commencement of the user. In clause (a) the word used is 'transferred'. The act of transfer is not a continuous one but completed as soon as the transfer is made. Thus the act of transfer if had been done prior to the enforcement of the Act then the clause will not be applicable as it requires that the act should have been done after the commencement of the Act. There is this material difference between clause (b) and clause (a). It will be relevant to point out at this stage that in Civil Revision No. 980 of 1965, the learned Judge also interpreted clause (ii)(b) of Sub-section (2) of Section 13. For similar reason the ratio in that case not be made applicable to the present case. The learned counsel for the petitioner had also made a reference to *Kesavana v. State and another* (7), wherein the learned Judge interpreted Sub-clause (ii)(b) of clause (2) of Section 9 of the Travancore-Cochin Building (Lease and Rent Control) Order, 1950. The clause which was interpreted by the learned Judge was *pari materia* which clause (ii)(b) of Sub-section (2) of Section 13. Therefore the ratio in that case also is not applicable to the facts of the present case.

10. In *Shri Nand Kishore's* (supra) the controversy was the same as in the present case. The learned Judge accepted the contention of the landlord and held that if a tenant was prohibited from doing certain acts after the commencement of the Act, it did not mean that when the Act was not enforced and he had done the acts, he would continue to do them even after the commencement of the Act. In making the observations, the learned Judge relied in *Des Raj's* case (supra). It was not brought to the notice of the learned Judge that more the language employed in clause (ii)(b) was different than that of clause (ii)(a). It appears that the learned Judge was persuaded by the observation in *Des Raj's* case (supra) which were clearly distinguishable. It is not clear from the judgment whether the sub-lease was authorised or not. Consequently, we are assuming that observations were made by the learned Judge considering that the sub-lease, when made, was valid. With great respect to the learned Judge, we are unable to accept the observations.

11. *Kishori Lal's* case (supra) was also under clause (ii)(a) of Sub-section (2) of Section 13. The learned Judge while deciding the case, observed: "It is settled law that there are two principal covenants of tenancy, they are (1) that the tenant shall not deny the title of the landlord, and (2) that he shall not sublet the premises without the express consent of the landlord. In the face of

these two implied covenants even if the subletting had been made prior to the date when the Act was brought in force in the Union Territory of Chandigarh, the act of the petitioner was against the provisions of law. Subletting necessarily implies the continued occupation of the premises by the sub-tenant. In other words subletting is a continuous wrong committed by the tenant against his landlord." The learned Judge, consequently, affirmed the judgment of appellate Court, ordering ejectment of the tenant on the ground of subletting affected prior to coming into force of the Rent Act. It is evident that the learned Judge proceeded on the assumption that the subletting was unauthorised. In the present case we are of the opinion that the subletting was authorised. We do not intend to deal with the situation, where the subletting before the Rent Act was unauthorised. With great respect to the learned Judge, it may, however be stated that it is not possible for us to persuade ourselves to agree with the observations that the general law of the land is that the tenant cannot sublet the premises without the express consent of the landlord. Therefore, the ratio in the said case does not apply to the case in hand.

12. In the end it may be noticed that the counsel for both the sides placed reliance on Bishamber Dutt's case (supra). The learned counsel for the petitioner referred to some observation whereas the counsel for respondents to some others. In that case the property was a part of the compensation pool and was therefore exempted from the operation of the Rent Act. The tenant sublet it during that period. The purchasers of the property filed a petition for ejectment of the tenant under the Rent Act on the ground of subletting. There the main controversy was regarding the interpretation of Section 13 of the Rent Act read in conjunction with Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It will be relevant to point out that subletting was not permissible without the permission of the authorities concerned at the time when the property was sublet. From the above facts it is clear that the Bench was dealing with a different situation. Therefore, the observations in that case will not be of any benefit in deciding the revision petition.

13. The learned counsel for the petitioner has then argued that the rent Act was enforced in the State of erstwhile East Punjab in March, 1949. He has urged that even if Section 13(2)(ii)(a) is interpreted strictly, still the respondents are liable to ejectment as the subletting took place after March, 1949. In our view the argument has no substance. The Rent Act has a limited application. It was extended to all urban areas in the East Punjab. 'Urban Area' has been defined as any area administered by a Municipal Committee, Cantonment Board, Town Committee or a Notified Area Committee or any area declared by the Central Government, by notification, to be urban for the purpose of this Act. The town of Chandigarh came into existence much after March, 1949. The Rent Act was made applicable to Chandigarh with effect from Nov. 4, 1972, by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974. In view of the aforesaid circumstances, the words "after the commencement of this Act" in Section 13(2)(ii) are to be read in context of the date of enforcement of the Rent Act in the area of Chandigarh. We, consequently, reject the contention of the learned counsel.

14. After taking into consideration all the aforesaid reasons we are of the opinion that a tenant, who validly sublets the building before coming into force of the Rent Act within the area of Chandigarh, is not liable to ejectment after its enforcement on the ground mentioned in Section 13(2)(ii)(a). The question that a tenant, who illegally sublets the building before coming into force of the Rent Act, is liable to ejectment or not after the enforcement of the Rent Act, on the ground mentioned in Section 13(2)(ii)(a) has been left open by us.

15. The facts of civil revision 1366 of 1977 are analogous to the present case. In that case the landlord also moved an application on the ground that the tenant sublet the building without his consent before coming into force of the Rent Act. There was no covenant between the parties which prohibited the tenant from subletting the building. The Rent Controller dismissed the petition. In appeal the Appellate Authority came to the conclusion that the ground of subletting provided by Section 13(2)(ii)(a) of the Rent Act was available to the appellant. Consequently, it accepted the appeal and ordered ejectment of the tenant. The tenant namely, M/s Snow White Dry Cleaners, has come up in revision against the order of ejectment to this Court. No additional argument was advanced in this case. After taking into consideration the above said circumstances, we are of the opinion that the order of ejectment is illegal and liable to be set aside.

16. For the reasons recorded above, we dismiss Civil Revision No. 337 of 1978 and accept Civil Revision No. 1366 of 1977 and set aside the judgment of the Appellate Authority in the case.

Order accordingly.

Cases Referred.

11969 RCR 300 : AIR 1969 SC 12 1

21978 (1) RCR 330

31979(1) RCR 411

41969 RCR 422