

Banarsi Dass v. Faquir Chand etc. (R. S. Narula, C.J.)

implication as a result of the order of the prescribed authority by which it set aside the entire election to the Gram Panchayat held on 29th June, 1971, it was not at all necessary to challenge her co-option as lady member through a formal application before the prescribed authority.

(10) Since the election of the Sarpanch could be held only after the co-option of lady member as envisaged by sub-section (6) of section 5 of the Panchayat Act, the notice, Annexure P. 4, to the Panches to assemble in a meeting on 15th March, 1975 at 10.00 A.M., to elect the Sarpanch was clearly in contravention of the aforesaid provisions of the Panchayat Act.

(11) For the reasons stated, I allow this writ petition and direct the Deputy Commissioner, Sonapat, to fix a date for the co-option of a woman Panch by the Panches and only thereafter require the Panches to assemble in a meeting to elect the Sarpanch. The Deputy Commissioner is further directed that the entire process culminating in the election of the Sarpanch be completed within two months from today. The parties are, however, left to bear their own costs.

H. S. B.

REVISIONAL CIVIL

Before R. S. Narula, Chief Justice.

BANARSI DASS,—*Tenant-Petitioner.*

versus

FAQUIR CHAND, ETC.,—*Respondents.*

Civil Revision No. 1417 of 1971

July 9, 1975

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(c) and 13(2) (ii)—Payment of rent to one of the heirs of original landlord—Tenant—Whether absolved from liability to pay rent—'Written consent'—Whether has to be prior to the actual act of sub-letting.

Held, that one of the heirs of the original landlord falls within the statutory definition of the expression "landlord" contained in

section 2(c) of the East Punjab Urban Rent Restriction Act, 1949 and as such is entitled to receive rent in respect of the premises in dispute. That being so, payment of rent to one of the heirs of the original land-owner normally absolves the tenant of his liability to pay rent. (Para 4).

Held, that there is no warrant for qualifying the expression "written consent" used in clause (ii) of sub-section (2) of section 13 of the Act with the word "prior". So long as written consent for subletting is given by a landlord before the filing of the petition for eviction whether before or after the actual subletting, the case cannot fall within the mischief of section 13(2)(ii)(a) of the Act. Thus, written consent need not be prior to the actual act of subletting.

(Paras 6 and 8).

Petition under section 15(V) of Act II of 1949 amended by Act 29 of 1956, for revision of the order of Shri Raghbir Singh, Appellate Authority, Sangrur, dated 10th December, 1971, reversing that of Shri G. D. Hans, Rent Controller, Sunam, dated 26th November, 1968, and accepting the ejection application of the landlords with costs and further ordering that Banarsi Dass tenant and his sub-tenants shall vacate the demised premises and put the landlords in possession of the same within one month from 10th December, 1971.

Harbans Lal, Advocate, for the Petitioner.

K. S. Raipuri, Advocate, Amarjit Markan, Advocate, for the respondents.

JUDGMENT

Narula, C.J.—(1) An open site of land forming part of a bigger plot known as *braham sarai* belonged to one Kishore Chand who let it out to Banarsi Dass, petitioner on July 17, 1950, for a period of 15 years ending July 16, 1965, by means of a written lease-deed Exhibit A-2. Kishore Chand died in 1964 leaving behind him two daughters, two sons namely Faqir Chand and Parkash Chand, and a grandson namely Prem Chand, son of Telu Ram. After the expiry of the period of the original lease-deed, a fresh lease-deed was executed by Parkash Chand, son of Kishore Chand in favour of the petitioner for a period of one year on July 27, 1965. This is Exhibit R. 1. The tenancy was, however, continued even after the expiry of the period covered by the lease-deed Exhibit R. 1 as the rent for two subsequent years was received by Parkash Chand against two separate receipts. He received rent for another year in advance on July 16, 1966,—*vide* receipt Exhibit R. 2, and for the third year in advance by the receipt,

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dated July 23, 1967 Exhibit R. 3. Before the expiry of the period covered by the receipt Exhibit R. 3. Faquir Chand and his two sisters filed an application for the ejection of the petitioner from the land in question on October 28, 1967. Later on, Parkash Chand and Prem Chand the only other heirs of Kishore Chand were also joined as parties to the petition for ejection. Eviction of the petitioner was sought on three grounds, namely that of (i) sub-letting without the written consent of the landlord; (ii) using the rented land for a purpose other than that for which it was leased; and (iii) on account of non-payment of rent with effect from July 17, 1965, i.e. for the entire period subsequent to the expiry of the period of the lease-deed Exhibit A. 2.

(2) By his judgment, dated November 26, 1968, the Rent Controller recorded findings against the landlord-respondents on all the three grounds, and dismissed the application for eviction of the petitioner. The appeal of the landlord-respondents, was, however, allowed by the judgment, dated December 10, 1971, of Shri Raghbir Singh, the Appellate Authority. He allowed the eviction of the petitioner on all the three grounds. He held that all the five heirs of Kishore Chand were the landlords of the present petitioner in respect of the demised premises and payment of rent to one of them was not enough, and, therefore, the petitioner was guilty of non-payment of rent. It is the common case of the parties that the petitioner did not make any factory building on the rented land, but made five shops which were let out by him to different persons who have been impleaded as respondents in the present proceedings. It was held by the Appellate Authority that since no written consent for letting out the shops to those persons had been obtained, he was liable to ejection on the ground of subletting. The eviction was also allowed for using the rented land for a purpose other than that mentioned in the lease-deed on the finding that in accordance with the terms of the original lease-deed Exhibit A-2, the petitioner took the land for constructing a factory building and one shop either *kutchha* or *pukka*, and that inasmuch as no factory building had been constructed and five shops had been made, the rented land had been misused.

(3) Aggrieved by the order of the Appellate Authority, the petitioner filed the present revision petition in this Court. When this case came up for hearing before P. C. Pandit, J. (as he then was) on September 1, 1972, the learned Judge found that though

eviction had been allowed on the ground of perversion of user of the rented land, no issue had been framed on that point, and, therefore, the petitioner had been prejudiced in the trial of this case on that point. The learned Judge, therefore, ordered that the issue of perversion of user may be tried by the Rent Controller after giving the parties a reasonable opportunity, and that his report should be submitted to this Court through the Appellate Authority who may also record his finding thereon. In pursuance of the above-said order of this Court, the Rent Controller, Sunam, went into the question covered by the order of remand and submitted his report, dated November 24, 1972, to the Appellate Authority. As per direction given by this Court, the learned Rent Controller framed the following additional issue:—

“Whether Banarsi Das, respondent used the demised premises for a purpose other than that for which (those were) let out?”.

The Rent Controller held that the stipulation in the lease-deed Exhibit A-2 to the effect that the plot in question was being given on lease for being used for the “construction of a factory and *kutchha* or *pukka* shop” shows that the premises were let out for their use as factory and *kutchha* or *pukka* shop, and inasmuch as admittedly there was no factory in the premises in dispute, but shops have been built thereon, the tenant had fallen within the mischief of section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act (3 of 1949) (hereinafter called the 1949 Act). In the words of the Rent Controller, the finding recorded by him was that:—

“Since the premises in dispute have not been used for the purposes of factory and instead of construction of one shop *Kachi* or *pucci* more than one shop and rooms have been constructed and the same have been let out. Therefore, it cannot be stated that the premises are being used for the purpose for which these were let out.”

(4) In his report dated January 1, 1973, the Appellate Authority agreed with the finding of the Rent Controller. At the hearing of the revision petition before me, Mr. Harbans Lal, learned counsel for the tenant-petitioner, has made out mainly three grounds. Firstly, he has submitted that the order of eviction could not be passed on account of non-payment of rent as rent for the entire period in dispute had admittedly been paid by the petitioner to Parkash Chand

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who was undisputably one of the heirs of the original landlord, and falls within the statutory definition of the expression "landlord" contained in the following words of section 2(c) of the 1949 Act:—

“ ‘landlord’ means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person from time to time deriving title under a landlord.”

I find great force in this submission of the learned counsel. Even if the fresh lease-deed Exhibit R-1 had not been executed by Parkash Chand in favour of the petitioner, Parkash Chand would have been entitled to receive rent in respect of the premises in dispute as one of the heirs of the original land-owner. That being so, payment of rent to one of the heirs of the original land-owner would normally absolve the tenant of his liability to pay rent. In this particular case it is significant to note that on the death of Kishore Chand in 1964, and on the expiry of the period of the original lease-deed Exhibit A-2, Parkash Chand alone executed the fresh lease-deed Exhibit R. 1, for one year on July 27, 1965, and that none of the other heirs of Kishore Chand either objected to the same or served on the petitioner any notice to pay rent to them or not to pay rent to Parkash Chand. In fact it appears that later on when rents in the locality must have risen with the general inflation in the market, all the heirs of Kishore Chand joined hands to try to evict the petitioner on every conceivable ground. The petitioner having paid the stipulated rent in full for the period in question to Parkash Chand landlord, his eviction cannot be ordered on the ground of non-payment of rent. The finding of the lower appellate Court on that ground is, therefore, reversed.

(5) The second finding on which eviction of the petitioner has been ordered, namely of misuser of the land, has been attacked by Mr. Harbans Lal, from different angles. His first stipulation is that the lease-deed which was operative at the time when the application for eviction was filed was Exhibit R. 1. He submits that though the period of that lease (one year) had expired, the tenancy of the petitioner continued thereafter on the same terms and conditions particularly when rent for the subsequent period of two years had

been accepted by the landlord against his written receipts. He emphasises that no mention of any factory has been made in Exhibit R. 1, and on the contrary expression "shops" has been used therein. His second argument on this point is that even under the lease-deed Exhibit A. 2, he was not bound to construct a factory on the site, nor was his authority to build *kutchha* or *pukka* shop thereon confined to a single shop. I am inclined to agree with Mr. Harbans Lal, that the lower appellate court as well as the Rent Controller in his subsequent report have misunderstood the import of the relevant words in the lease-deed Exhibit A.2. The purport of the document is that the open plot of land was given on lease to the petitioner and he was permitted to make the constructions referred to therein. Though it is mentioned that the premises are being leased out for making construction on the demised premises, the object of making that mention is to make a foundation for the subsequent stipulation contained in the lease-deed about the right of the petitioner to remove the steel portion of the construction which he may put up after the expiry of the period of the tenancy. I wonder if the landlord could have claimed the eviction of the petitioner if he had not put up any building at all on the rented land, and if he had used it for running his own business thereon. Be that as it may, it is clear to me that making shops and not the factory would not amount to misuser of the rented land which had been taken for making a factory or a *kutchha* or *pukka* shop. In the absence of some clear indication to the contrary, the expression "shop" in singular would include the plural. From the reading of the entire document I have not been able to spell out any definite restriction on the number of shops which the petitioner could construct on the plot. For the foregoing reasons I hold that while making five shops, etc., and not making the factory on the rented land, the petitioner did not transgress the limits of the written consent granted to him in the lease-deed Exhibit A.2 in respect of the manner of the user of the premises. Even, otherwise the intention of the parties in that respect is apparent from the tenor of the subsequent lease-deed Exhibit R. 1, which recognises the accomplished fact of the shops having been built and no factory having been constructed on the premises. The findings of the Rent Controller in the post-remand proceedings and of the lower appellate Court on this issue are also, therefore, reversed.

(6) The last ground on which eviction has been ordered is of subletting. Here again it appears to me that the lower appellate

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Court has misunderstood the correct position. What is prohibited to be sublet without the written consent of the landlord is the premises which have been let out to the tenant. What had been let out to the tenant was the open plot of land on a part of which some shops were constructed. What the petitioner has let out to the other respondents are the shops constructed by him and not the plot of land which he had taken on rent originally from Kishore Chand and subsequently from Parkash Chand. Even independent of this consideration I have no hesitation in holding that the expression "written consent" given in the lease-deed Exhibit R. 1, dated July 27, 1965, works both backwards and forwards, and there is no warrant for qualifying the expression "written consent" used in clause (ii) of sub-section (2) of section 13 of the 1949 Act with the word "prior". So long as written consent for subletting is given by a landlord before the filing of the petition for eviction whether before or after actually subletting, the case cannot fall within the mischief of section 13(2)(ii)(a) of the 1949 Act.

(7) Mr. Kartar Singh Raipuri, the learned counsel for the landlord-respondents, has submitted that the documents Exhibits R. 2 and R. 3 are not lease-deeds, but are mere receipts for rent. Learned counsel is no doubt correct in his submission in this respect. That does not, however, go against the petitioner. The terms and conditions of the lease-deed executed by Parkash Chand are contained in the lease-deed Exhibit R. 1, dated July 27, 1965. Subsequent acceptance of annual rent in advance by means of receipts Exhibit R. 2 and R. 3 establishes in the absence of definite evidence to the contrary that the lease was being continued on the same terms and conditions as contained in Exhibit R. 1.

(8) Counsel has then referred to section 108(q) of the Transfer of Property Act which enjoins on the tenant a duty to hand over possession of the leased premises to the landlord on the expiry of the period of the lease. The provisions of the Transfer of Property Act are subject to the rent control imposed by the 1949 Act. The liability to hand over vacant possession of the premises on the expiry of the stipulated period of lease in respect of the premises covered by the 1949 Act stands abrogated by the Act so long as it remains in force. Mr. Rajpuri submitted that the consent given by Parkash Chand, for subletting in Exhibit R. 1 is not valid as it is not by all the heirs of Kishore Chand, and also because it was given after the shops had in fact been already sublet. I have already held

that Parkash Chand is a landlord of the petitioner for purposes of the 1949 Act after the death of Kishore Chand, and that written consent need not be prior to the actual act of subletting. Though I have held that on the facts of this case there has in fact been no subletting of the leased plot within the meaning of section 13(2) (ii)(a), I have no hesitation in further holding that the written consent contained in Exhibit R. 1 would have saved the petitioner from liability to ejection on the ground of subletting any of the shops constructed by him even if my interpretation of the above-mentioned provision is not found to be correct.

(9) In the view I have taken on the merits of the controversy between the parties it is unnecessary to travel into the other arguments addressed by Mr. Harbans Lal based on ancillary proceedings relating to partition between the different heirs of Kishore Chand of which documentary evidence is available on the record, and about the decision of the rent control authorities on certain applications which had been made by the tenant before the Appellate Authority.

(10) In the circumstances referred to above I allow this petition and set aside the order of the Appellate Authority allowing the application of the respondent for the eviction of the petitioner without any order as to costs throughout.

N. K. S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

PALA SINGH and others,—Petitioners

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ No. 2044 of 1974.

July 10, 1975.

The Punjab Co-operative Societies Act (XXV of 1961)—Section 26(1A)—Clauses 1(e) and 6(1) of the Appendix—The Punjab Co-operative Societies Rules, 1963—Rule 25(f)—No enquiry held at the time of scrutiny of nomination papers—Proceedings held by the returning officer—Whether vitiated—Proposer in default and an inactive member—Nomination paper—Whether liable to be rejected—‘Clearance certificate’—Whether to be filed along with the nomination paper.