

Piare Lal v. Banu Mal, etc. (Pandit, J.)

*India v. Hans Raj Gupta and Company* (3), wherein Beg, J., after extensive survey of the Indian and English decisions, ruled that the expression 'taking any other steps in the proceedings' is not limited to the step which tantamounts to either 'filing of the written statement' or to such a request as to adjourn the case to enable the party to file the written statement. With respect, I agree with the construction placed on the expression 'taking any other steps in the proceedings' by Bebb, J.

(7) For the reasons recorded above, this appeal fails and is dismissed, but there is no order as to costs.

B. S. G.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

PIARE LAL,—Petitioner.

versus

BANU MAL, ETC.,—Respondents.

Civil Revision No. 211 of 1970.

November 30, 1970.

*The East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Tenant for a fixed period—Such tenant—Whether can be evicted before the expiry of the period under section 13(2).*

Held, that under section 13(1) of the East Punjab Urban Rent Restriction Act, 1949, a tenant cannot be evicted either before or after the termination of the tenancy except in accordance with the provisions of section 13 of the Act. If a tenant violates any of the conditions mentioned in section 13(2) and thus gives cause to the landlord to evict him, he can be ejected even before the termination of his tenancy. According to the first proviso to sub-section (3) of the Section, where the tenancy is for a fixed period, the landlord is not able to apply for the dispossession of the tenant under this sub-section before the expiry of the tenancy period. He can do so only under one condition, namely, if his case is covered by sub-paragraph (i-a) of Section 13(3). It means that the Legislature intends that in a tenancy for a fixed period, the tenant can be evicted if his case falls under the provisions of section 13(2) of the Act. Hence in the case of a tenancy for a

(3) A.I.R. 1957 All. 91.

fixed period, the tenant can be evicted if his case falls under the provisions of section 13(2) of the Act. If, however, his case comes within the provisions of sub-section (3) of section 13, then the tenant cannot be dispossessed before the expiry of the tenancy period except where the landlord can bring his case within the provisions of section 13(3) (a) (i-a) of the Act.

(Paras 13 and 14)

*Petition under Section 15(5) of Act III of Punjab Urban Rent Restriction Act as amended up-to-date for revision of the decree of the court of Shri S. R. Seth, Appellate Authority, Under Act No. III of 1949, Karnal, dated 20th December, 1969, reversing that of Shri R. D. Aneja, Rent Controller, Panipat, dated 26th March, 1968, dismissing the petition with costs throughout.*

G. C. MITTAL, ADVOCATE, for the petitioner.

R. L. AGGARWAL, ADVOCATE, for respondent No. 1.

#### JUDGMENT

PANDIT, J.—(1) This is a landlord's revision petition against the decision of the Appellate Authority reversing on appeal the order of the Rent Controller granting his application for ejection of the tenant.

(2) Piare Lal made an application under section 13 of the East Punjab Urban Rent Restriction Act, hereinafter called the Act, for the ejection of his tenant Banu Mal from the shop in dispute, which is situate in Gharaunda, District Karnal. The grounds of ejection were non-payment of rent and sub-letting by the tenant of a part of the premises to Nand Sarup. The allegations of the landlord were that Banu Mal had taken the premises on a monthly rent of Rs. 15. The tenant had sublet one room (*Kotha*) towards the back portion of the shop to Nand Sarup without his consent in writing. It was also said that rent from 1st January, 1966 to 30th September, 1966, at the rate of Rs. 15 per month, that is, Rs. 135 together with interest at the rate of 6 per cent per annum, was due from the tenant which he had neither paid nor tendered in spite of repeated demands.

(3) This application was contested by Banu Mal. His case was that he was a tenant of Piare Lal not regarding the entire shop but only with respect to two front rooms including *Chabutra* and *Chhappar*. He was not the tenant of the back room marked 'A' in the plan. That room was already in the occupation of Nand Sarup

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as a tenant under the landlord. As regards rent, it was said that he had occupied the abovementioned portion of the shop under the landlord since 1st October, 1956, at the rate of Rs. 12 per month. The latter however, increased the rent to Rs. 15 per month with effect from 1st October, 1964. He denied having sub-let the room to Nand Sarup, who, according to him, was a tenant directly under the landlord with effect from the period prior to the occupation of the shop by him.

(4) According to the pleadings of the parties, the following issues were framed :—

- (1) Whether respondent is a tenant under the petitioner with respect to the disputed Kotha marked 'A' also ?
- (2) If the above issue is held against the petitioner, whether the Kotha alleged to have been sublet to respondent No. 2 was already in possession of respondent No. 2 at the time respondent No. 1 took the premises on rent from the petitioner and if so, to what effect ?
- (3) Whether the respondent No. 1 has sublet Kotha 'A' to respondent No. 2 and if so, since when and to what effect ?"

(5) The Rent Controller found that Banu Mal was a tenant under Piara Lal with respect to the disputed room (*kotha*) marked 'A'. He further found that the said room had been sublet by Banu Mal to Nand Sarup after the rent note dated 5th November, 1965, marked 'A-1', had been executed by the former in favour of the landlord. Banu Mal is, therefore, liable to be ejected from the shop on the ground of subletting. Under issue No. 2, the finding of the Rent Controller was that there was no cogent evidence on the record to prove that Nand Sarup was already in possession of the disputed room when the premises were taken on rent by Banu Mal. As a result of these findings, the application for ejection was granted by the Rent Controller. The tenant was given a period of two months to vacate the premises.

(6) Aggrieved by that decision, Banu Mal went in appeal before the Appellate Authority. The learned Judge affirmed the finding of the Rent Controller on issue No. 1 and held that Banu Mal was a tenant under the landlord with respect to the disputed

room marked 'A'. On issue No. 2, he reversed the finding of the Rent Controller and held that Nand Sarup was already in possession of the room marked 'A' at the time when Banu Mal took the premises on rent from the landlord. The finding of the Rent Controller on issue No. 3 was also set aside and it was held that the landlord had failed to establish that Banu Mal had sublet the room marked 'A' to Nand Sarup. Consequently, the Appellate Authority accepted the appeal and dismissed the ejectment application filed by the landlord. Against that decision, the present revision petition has been filed by the landlord Piare Lal.

(7) The entire shop consists of three rooms, which are built one after the other. There is a *Chabutra* with a *Chhappar* thereon in front of the shop. It is on the record that Banu Mal was a tenant of the landlord earlier than the rent note dated 5th November, 1965, Exhibit A-1, which is the only rent-deed produced on the file. The case of the landlord was that the entire shop had been let out to Banu Mal on a monthly rent of Rs. 15. The position taken up by Banu Mal, on the other hand, was that he had taken only two rooms together with *Chabutra* and *Chhappar* on rent and the last room on the back side marked 'A' was in the tenancy of Nand Sarup. In his evidence, Banu Mal had further added that when he executed the rent note, Exhibit A-1, the landlord had said that he would get the room marked 'A', vacated from Nand Sarup and then hand over its possession also to Banu Mal. Nand Sarup had appeared in the witness-box and stated that he was a tenant of Banu Mal. On the pleadings of the parties, the main point of dispute was about the room marked 'A', that is to say, whether Banu Mal or Nand Sarup was its tenant under the landlord. If it was in the tenancy of Banu Mal, then the landlord must succeed, because, admittedly, that room was in the possession of Nand Sarup but not Banu Mal and the plea of subletting put forward by the landlord would be acceptable, especially when it was the case of Nand Sarup himself that he was the tenant of Banu Mal and not of the landlord. The concurrent finding given by the Rent Controller and the learned Appellate Authority was that Banu Mal was a tenant of the room marked 'A' under the landlord. This finding has not been shown to be in any way vitiated by the learned counsel for Banu Mal. In view of this clear finding, the plea taken by the landlord regarding subletting has been proved and Banu Mal is liable to be evicted on that ground.

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(8) In the rent note, Exhibit A-1, which had been executed by Banu Mal, it had been clearly stated that the entire shop, including the room marked 'A', had been taken by him on rent from Piare Lal for one year from 1st January, 1966 to 31st December, 1966, on a yearly rent of Rs. 180. It is difficult to believe that Banu Mal would include the room marked 'A' in the premises, which he was taking on rent by the said rent note, when its possession was not with him and was with Nand Sarup since a number of years, according to Banu Mal. He would not accept the word of the landlord that he will hand over the possession of the disputed room also after getting it vacated from Nand Sarup. The Rent Restriction Act was applicable in Gharaunda, where the said shop was situated, and Banu Mal was supposed to know that it was not easy to get tenants evicted. It is also difficult to accept that Banu Mal would be prepared to pay a rent of Rs. 180 for the entire shop including the room in question, the possession of which was not being given to him. He would have told the landlord that he would increase the rent when actual possession of the disputed room would be given to him.

(9) Both these circumstances clearly show that Banu Mal was in possession of all the three rooms and the averments in the rent note depicted the correct state of affairs. It may also be stated that no reason had been shown as to why Nand Sarup should be disbelieved when he stated that with regard to room marked 'A', he was a tenant of Banu Mal and not Piare Lal.

(10) In my opinion, therefore, after the finding on issue No. 1 was given in favour of the landlord by the Appellate Authority, the ejection application should have been granted on the ground of subletting. I would, therefore, reverse the finding of the Appellate Authority on issue No. 3 and hold that Banu Mal had sublet the room marked 'A' to Nand Sarup and the former was, therefore, liable to eviction on the ground of subletting.

(11) Learned counsel for the respondent then contended that no cause of action had arisen to the landlord for filing this application for eviction against the tenant, because the tenancy by virtue of rent note, Exhibit A-1, had been created for one year and it had to end on 31st December, 1966. The landlord was not entitled to file the ejection application on 19th October, 1966, that is, before the expiry of the tenancy period, unless the said tenancy

had first been determined under the provisions of section 111 of the Transfer of Property Act. The argument raised was that even if subletting on the part of the tenant was proved, since the same was not prohibited by any of the terms of the rent note, the landlord could not file the ejection application before the expiry of the lease, which had been created in favour of the tenant. The eviction application, according to the learned counsel, could be filed only after 31st December, 1966.

(12) This point was not raised by the tenant either in his written statement or before the Rent Controller or even before the Appellate Authority. The objection being purely one of law was permitted by me to be argued here for the first time. Section 13(1) of the Act says—

“A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.”

(13) A bare reading of this provision will show that a tenant cannot be evicted either before or after the termination of the tenancy except in accordance with the provisions of section 13 of the Act, that is to say, if a tenant violates any of the conditions mentioned in section 13 and thus gives cause to the landlord to evict him, he can be ejected even before the termination of his tenancy. This interpretation is further clear from sub-section (3) of this very section. Sub-section (3) gives the grounds on which a landlord can apply to the Rent Controller for directing his tenant to put him in possession of a residential building or rented land. The first proviso added to section 13(3) is in the following words :—

“Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not, except under sub-paragraph (i-a), be entitled to apply under this sub-section before the expiry of such period.”

According to this proviso, the intention of the Legislature is quite clear that where the tenancy is for a fixed period, the landlord would not be able to apply for the eviction of the tenant under this sub-section before the expiry of the tenancy period, but he can do so only under one condition, i.e. if his case is covered by sub-paragraph (i-a), which reads thus :—

“In the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act.”

(14) It means that the Legislature intends that in a tenancy for a fixed period, the tenant can be evicted if his case falls under the provisions of section 13(2) of the Act. If, however, his case comes within the provisions of sub-section (3) of section 13, then the tenant cannot be evicted before the expiry of the tenancy period, except under one condition, that is, if the landlord can bring his case within section 13(3)(a)(i-a). In the instant case, the landlord has been able to prove the ground of subletting, which comes under section 13(2) and, therefore, the tenant can be evicted even before the termination of the tenancy. This contention of the counsel also fails.

(15) The result is that this petition succeeds the order of the Appellate Authority is reversed and that of the Rent Controller restored. In the circumstances of this case, I leave the parties to bear their own costs throughout. The tenant is, however, given two months' time to vacate the premises in question.

B. S. G.

INCOME TAX SIDE

Before D. K. Mahajan and Bal Raj Tuli, JJ.

SILVER SCREEN ENTERPRISES,—Appellant

versus

THE COMMISSIONER OF INCOME TAX, PATIALA,—Respondents.

Income Tax Reference No. 10 of 1968.

December 9, 1970.

Income Tax Act (XLIII of 1961)—Sections 10(2) (ii), 10(2) (v) and 10(2) (xv)—Capital and revenue expenditure—Distinction between—Test