

Gurcharan Singh v. Devki Nandan, etc. (Mahajan, J.)

but in the peculiar circumstances of the case, there will be no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

K. S. K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

GURCHARAN SINGH,—Petitioner

versus

DEVKI NANDAN AND ANOTHER,—Respondents

**Civil Revision No. 266 of 1969**

October 10, 1969

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(i)—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—'Rent'—Meaning of—Sum payable by an allottee of evacuee property to the Custodian—Whether amounts to rent—Transfer of evacuee property in possession of an allottee—Relationship of landlord and tenant between the allottee and the transferee—Whether created—Allottee in arrears of rent on the date of transfer—Arrears not cleared within sixty days of the transfer—Section 29—Whether applicable to such allottee.*

*Held*, that the expression 'rent' as used in the East Punjab Urban Rent Restriction Act, 1949, means the payment by a tenant to a landlord. In other words, 'rent' has a technical meaning and although this expression has been loosely used some time in the case of a licensee, yet it does not connote compensation for use and occupation paid by a licensee to his licensor. (Para 4)

*Held*, that amount payable by an allottee of evacuee property to the Custodian cannot be termed as rent because the allottee is not the tenant of the Custodian, but is merely a licensee. The crux of the matter is that only that person is a tenant who is liable to pay 'rent' to the landlord and not a sum of money for use and occupation. (Para 4)

Held that when evacuee property in possession of an allottee is transferred under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the relationship between such allottee and the transferee is not that of landlord and tenant because the allottee is not liable to the payment of rent to the transferee. His liability merely is to pay compensation to the transferee for use and occupation and not rent. Allottee becomes tenant only if he falls within section 29 of the Act whereby such allottees become tenants of the transferee on the same terms and conditions as to payment of rent and otherwise on which they held the property immediately before the transfer. The protection granted under this section is, however, not absolute and is limited for a period of two years. (Para 4)

Held, that if an allottee of the evacuee property is in arrears of rent at the date of the transfer of such property and has not discharged that liability within the period of sixty days from the date of transfer, the provisions of section 29 will not apply to him and his position is not altered from that of an allottee to that of a tenant. (Para 4)

*Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of Shri Salag Ram Seth, Appellate Authority under Act No. III of 1949, Karnal dated the 26th February, 1969, affirming that of Shri S. N. Parkash, Rent Controller, Karnal dated 6th October, 1967 allowing the application with costs and ordering the ejection of Gurcharan Singh tenant respondent from the suit property.*

RAJINDER SACHAR, ADVOCATE, for the petitioner.

RAJINDER NATH MITTAL, ADVOCATE, for the respondents.

#### JUDGMENT.

This is a petition under the East Punjab Urban Rent Restriction Act and is directed against the order of the appellate authority affirming on appeal the decision of the Rent Controller ordering the eviction of Gurcharan Singh. On facts there is practically no dispute. The premises in dispute were evacuee property and were allotted to Gurcharan Singh. These premises were purchased in auction by the respondent Devki Nandan, and the sale certificate was granted to him. The auction took place on 28th June, 1961. The sale was confirmed on 9th October, 1961 but sale certificate was issued on the 25th May, 1965. It confirmed title on Devki Nandan with effect from 1st August, 1964. The present application under section 13 of the East Punjab Urban Rent Restriction Act was filed on 28th June, 1966, against Gurcharan Singh. Ejection was claimed on two grounds, namely :

- (1) that the tenant was in arrears of rent, and

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- (2) that the landlord needed the premises for his personal use.

The tenant pleaded that the application was not maintainable in view of the provisions of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, as the period of two years had not expired with effect from 1st August, 1964. He also pleaded that no relationship of landlord and tenant existed between him and Devki Nandan. On the pleadings of the parties, the Rent Controller framed the following issues :—

- (1) Whether the relationship of landlord and tenant exists between the parties ?
- (2) Whether any notice under section 29 of the Act No. XII of 1954 was given ? If not, with what effect ?
- (3) What was the rate of rent ?
- (4) Whether both the tenants are joint tenants ? If not, with what effect ?
- (5) Whether respondent is liable to ejection on the grounds alleged in the petition.

(2) The Rent Controller found that there was relationship of landlord and tenant between the parties, that no notice was required as contemplated by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, that the rate of rent was Rs. 10 p.m., that Gurcharan Singh and Phoola Singh were joint tenants and that the tenants were liable to eviction on both the grounds taken in the petition. It was found as a fact that the tenant was in arrears of rent and that the landlord required the premises for his personal use. The appeal against this decision to the appellate authority met with no success. The tenant who is dissatisfied with the order of the appellate authority, has come up in revision to this Court.

(3) The foremost contention of the learned counsel for the tenant is that the provisions of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act do not apply and that the

position of the so-called tenant was that of an allottee and according to the definition of 'allottee' in the administration of Evacuee Property Act, under which allotment was made, he is not a lessee. It is maintained that the position of the petitioner is merely that of a licensee and as such, the Rent Court has no jurisdiction to pass an order of eviction under section 13 of the East Punjab Urban Rent Restriction Act. The matter must be taken to the civil Court. This contention is controverted by the learned counsel for the respondent landlord. It is urged that even though the provisions of section 29 do not apply to the petitioner, still the petitioner is a tenant within the meaning of section 2(i) of the East Punjab Urban Rent Restriction Act. There is no dispute now that the so-called tenant is in arrears of rent and the rent has not been paid and that the landlord requires the premises for his personal use. The controversy is narrowed down to the question whether the position of the petitioner is that of a tenant or not, because if the position is that of a tenant, undoubtedly, the order of the Rent Controller and the appellate authority will prevail. So far as the position of the petitioner is concerned it appears to me that the contention of Mr. Sachar is sound and must prevail.

(4) An allottee of the custodian is not a tenant of the custodian. This is clear from the definition of the word 'allotment' in section 2(a) of the Administration of Evacuee Property Act of 1950. This definition is in the following terms :—

“2(a) “allotment” means the grant by a person duly authorised in this behalf of a right of use or occupation of any immovable evacuee property to any other person, but does not include a grant by way of lease;”

It is clear from this definition that allottee is not lessee but he is merely a licensee. Therefore, when the premises are disposed of under the Displaced Persons (Compensation and Rehabilitation) Act by auction or otherwise, the allottee of the custodian would not become the tenant of the transferee. In order to give some protection to such allottees section 29 of the Displaced Persons (Compensation and Rehabilitation) Act was enacted, the reason being that mostly these allottees were evacuees. Therefore, under section 29 a deeming provision was introduced whereby such allottees became tenants of the transferees on the same terms and conditions as to payment of rent and otherwise on which they held

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the property immediately before the transfer. But the protection that was granted was not absolute and was limited for a period of two years. Even during that period of two years such a person could be evicted if the grounds mentioned in clauses (a), (b) and (c) to section 29(1) came into operation. These clauses are reproduced below for facility of reference :—

- “(a) that he has neither paid nor tendered the whole amount of arrears of rent due after the date of the transfer within one month of the date on which a notice of demand has been served on him by the transferee in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882);
- (b) that he has, without obtaining the consent of the transferee in writing—
- (i) sublet or otherwise parted with the possession of the whole or any part of the property, or
- (ii) used the property for a purpose other than the purpose for which he was using it immediately before the transfer;
- (c) that he has committed any act which is destructive of, or permanently injurious to, the property.”

Therefore, the position of the allottee which on transfer, is converted into that of a tenant, would make him a tenant for all purposes including those of the East Punjab Urban Rent Restriction Act. Thus, the question whether Gurcharan Singh was a tenant or not, will depend on the question whether he falls within the purview of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act. However, sub-section (2) of section 29 provides that it was for the Central Government from time to time by notification, to specify the class of persons and the class of immovable property in the compensation pool in respect of which the provisions of this section (section 29) shall apply. In pursuance of this sub-section, notification S.R.O. 2219 was issued. It made section 29 applicable,

- (a) to the class of persons specified in Schedule I other than those who have obtained by fraud or misrepresentation

multiple allotments or who, in the case of residential premises already own a residential property of their own;

In Schedule I, clause 2 is material and it reads thus :—

2. Every person, against whom any arrears of rent in respect of the property in his lawful possession are outstanding at the date of the transfer of the property, but who has paid up such arrears within sixty days of such date."

It is, therefore, clear that Gurcharan Singh would have fallen within the ambit of section 29 if he was not in arrears of rent at the date of the transfer and had discharged the same within the period of sixty days from the date of transfer. It is common ground that Gurcharan Singh was in arrears of rent and had not discharged the same within the period of sixty days provided in clause 2 of Schedule I already referred to. Therefore, it is obvious that the provisions of section 29 will not apply to Gurcharan Singh and his position is not altered from that of an allottee to that of a tenant. There is no dispute that the position of an allottee is merely that of a licensee and he does not enjoy any rights over and above those that are enjoyed by a mere licensee. The next question that arises, is, whether Gurcharan Singh is a tenant of Devki Nandan within the meaning of that expression as defined in the East Punjab Urban Rent Restriction Act. It is no doubt true that section 2(i) defines tenant in very broad terms, namely, "any person liable to pay rent". Similarly, landlord is defined under section 2(c) "as a person entitled to receive rent". Therefore, the crux of the matter is that only that person is a tenant who is liable to pay rent to the landlord. In other words, what is to be paid is rent and not a sum of money for use and occupation. The question is whether any amount payable by a licensee for the use of the premises can be termed as rent. It appears to me that the expression 'rent' as used in the East Punjab Urban Rent Restriction Act, means the payment by a tenant to a landlord. In other words, 'rent' has a technical meaning and that this expression has been loosely used some time in the case of a licensee, but it will not connote compensation for use and occupation paid by a licensee to his licensor. Therefore, the amount payable by Gurcharan Singh to the custodian cannot be termed as rent. It clearly follows that the relationship between Gurcharan Singh

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and Devki Nandan is not that of a landlord and tenant because Gurcharan Singh is not liable to pay rent to Devki Nandan. His liability merely was to pay compensation to Devki Nandan for use and occupation and not rent. Therefore, it must be held that there is no relationship of landlord and tenant between Devki Nandan and Gurcharan Singh. In this view of the matter, the Rent Controller, as well as the appellate authority have no jurisdiction to entertain the petition of Devki Nandan under section 13 of the East Punjab Urban Rent Restriction Act. The remedy of Devki Nandan, in fact, was in the ordinary civil Courts for ejection of the licensee.

(5) For the reasons recorded above, I allow this petition and set aside the order of the appellate authority as well as Rent Controller ordering eviction of Gurcharan Singh, petitioner. I, however, leave the parties to bear their own costs throughout.

R. N. M.

APPELLATE CIVIL

Before D. K. Mahajan, J.

BATTO AND OTHERS,—Appellants

versus

SMT. PUNIAN,—Respondent

**Regular Second Appeal No. 1043 of 1968**

October 13, 1969

*Custom (Gurgaon District)—Unchaste Brahmin widow in Gurgaon District—Whether loses her husband's estate—Custom of Brahmins—Whether identical with that of Jats and Rajputs.*

*Held*, that under the Custom of Gurgaon District, an unchaste Brahmin widow does not lose her husband's estate. The author of *Riwaj-i-am* of the District has doubted the general statement to the contrary made by the persons who were consulted at its preparation. The custom of Jats is identical to the custom of Rajputs as well as Brahmins. The custom is that a widow who does not leave her husband's house, even if she becomes unchaste retains her husband's estate. (Para 7 and 8)

*Second Appeal from the decree of the Court of Shri Banwari Lal Singal, Additional District Judge, Gurgaon, dated the 22nd day of June, 1968,*