

Raghubir Singh
v.
Smt. Gian Devi
and another
Shamsher
Bahadur, J.

plaintiff, however, in my opinion, is entitled to no more than the principal amount, that it to say, Rs. 1,400 and a decree for this amount should be passed in his favour. The plaintiff would be entitled to interest at the rate of 4 per cent per annum from the date of the suit till realisation. The parties would bear their own costs.

MEHAR SINGH, J.—I agree.

REVISIONAL CIVIL

Before S. S. Dulat, A.C.J., and D. K. Mahajan, J.

GOBIND RAM,—Petitioner.

versus

TAKHAT MAL AND ANOTHER,—Respondents.

Civil Revision No. 395 of 1961.

1962
July, 31st.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Rent Controller—Whether can evict tenants of transferred properties provided in S. 29 of Displaced Persons (Compensation and Rehabilitation) Act, XLIV of 1954.

Held, that the tenants occupying urban property can be evicted only by the Rent Controller acting under section 13 of the East Punjab Urban Rent Restriction Act. The grounds of eviction are mentioned in that Act. Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act confers the legal status of a tenant on certain persons like the allottees in the present cases, but it further provides that for a limited period of time the grounds of eviction would be only those mentioned in that section. It follows that after the expiry of that period the grounds of eviction would remain what section 13 of the East Punjab Urban Rent Restriction Act mentions. The jurisdiction is throughout that of the Rent Controller.

Case referred by Hon'ble Mr. Justice Dulat, on 25th January, 1962 to a larger Bench for decision of common question of jurisdiction involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice D. K. Mahajan, on 31st July, 1962.

Petition under section 15(5) of Rent Restriction Act for revision of the order of Shri Sant Ram Garg, (District Judge), Appellate Authority, under the East Punjab Rent Restriction Act, Ambala, dated the 6th May, 1961, reversing that of Shri Harbans Singh, Rent Controller, Rupar, dated the 17th February, 1961 and dismissing the eviction petition with costs throughout.

Y. P. GANDHI, ADVOCATE, for the Petitioner.

ROOP CHAND AND RAM RANG, ADVOCATES, for the Respondents.

JUDGMENT

DULAT, J.—Both these revision petitions (Civil Revision 395 of 1961 and Civil Revision 737 of 1961) arise out of proceedings begun by the landlord in each case under the East Punjab Urban Rent Restriction Act for the eviction of the tenant, and, although the facts in the two cases are different, one common question of jurisdiction has been raised and for that reason the petitions have been referred to us for decision.

Dulat, J.

The premises in each of these cases are admittedly residential and urban. Each of these premises was previously evacuee property and had been allotted to displaced person by the Custodian. Subsequently, the premises in each case were transferred to a displaced person in satisfaction of his claim, and the occupant, being the allottee, was in each case informed about the transfer and required to attorn to the transferee.

In Civil Revision 395 of 1961, the transferee was Jai Singh. The transfer was made on the 18th of April, 1958, although it was said that it would take effect from the 1st of November, 1954. Jai Singh, later on, transferred his rights to Gobind Ram in July, 1958, and it was Gobind Ram who made the application with which the present proceedings

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started. The application was, of course, made to the Rent Controller and it was for the eviction of the tenant named Takhat Mal. The ground for eviction stated in the petition was that Takhat Mal had transferred his rights and his possession to his brother Kundan Lal and this transfer had been made without the written consent of the landlord, and the tenant was, therefore, liable to be evicted. The Rent Controller found, and so did the Appellate Authority, that the tenancy rights along with possession had been transferred by the tenant to another person. The Rent Controller held that that rendered the tenant liable to eviction. The Appellate Authority, however, found that the transfer of the tenancy rights took place in 1953 and at that time the East Punjab Urban Rent Restriction Act was not applicable to the property and it could not, therefore, be said that the transfer of tenancy rights took place after the East Punjab Urban Rent Restriction Act, had come into force, the view taken being that the transfer complained of took place before the East Punjab Urban Rent Restriction Act and section 13 of that Act, which contains the grounds for a tenant's eviction, was not, therefore, applicable. On this view, the Appellate Authority set aside the order of eviction, and the present revision petition is brought on behalf of the landlord.

In the second petition (Civil Revision 737 of 1961) the transferee from the Custodian of Evacuee Property is Ghela Ram, the allottee of the property being Daulat Ram. The transfer was made in February, 1960, but with effect from the 1st of October, 1955. Again the allottee was informed that he had to attorn to the transferee. The landlord applied to the Rent Controller for the tenant's eviction on the ground of non-payment of rent, the claim being that the tenant had

not paid any rent at all subsequent to the 1st October, 1955 and Rs. 82-8-0 were due from him. The first date of hearing was the 29th of July, 1960, but on that day the proceedings were adjourned to the 8th August, 1960, and then to the 10th August, 1960, and a copy of the petition was handed over to the tenant who on the 10th August, 1960, tendered Rs. 101, being the arrears of rent and the costs and interest. The Rent Controller found that the arrears had been properly tendered and the tenant was not liable to eviction. The Appellate Authority, however, held that the tender had not been made on the first date of hearing and the tenant was not protected, and he, therefore, ordered the tenant's eviction. The present petition is thus brought on behalf of the tenant.

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The common question of jurisdiction which has now been raised is that neither of these two proceedings could have been taken before the Rent Controller and neither that officer nor the Appellate Authority under the East Punjab Urban Rent Restriction Act had had any jurisdiction to decide the dispute.

As I have said, the premises are undoubtedly urban property and *prima facie* covered by the provisions of the East Punjab Urban Rent Restriction Act. Section 13 of that expressly provides that a tenant cannot be evicted except in accordance with the provisions of that section, and sub-section (2) of section 13, then lays down this—

“13. (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.”

and it then says that the Controller may make an order of eviction if he is satisfied about certain matters, being the various grounds of eviction.

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These provisions leave no doubt that the East Punjab Urban Rent Restriction Act, creates a special jurisdiction for dealing with landlords and tenants in respect of premises within the urban area of the Punjab and the ordinary Courts are no longer competent to take cognizance of any prayer for eviction of a tenant in occupation of such premises for no decree made by the ordinary Courts can be effective and the eviction of a tenant can only take place by order of the Rent Controller.

Regarding displaced persons occupying evacuee property, a special provision was made in section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and section 29 said—

“29. (1) Where any person, to whom the provisions of this section apply, is in lawful possession of any immovable property of the class notified under subsection (2), which is transferred to another person under the provisions of this Act, then, notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer:

Provided that notwithstanding anything contained in any such terms and conditions, no such person shall be liable to be ejected from the property during such period not exceeding two years as may be prescribed in respect of that class of property, except on any of the following grounds?”

and then follow certain grounds. It is admitted, of course, that the premises in dispute are of the kind mentioned in section 29 quoted above.

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The argument regarding jurisdiction is that section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, creates a new class of tenants which are only 'deemed to be tenants' but which are otherwise not the same kind of tenants as are mentioned in the East Punjab Urban Rent Restriction Act, and that such tenants are tenants under the ordinary law, and who if they have to be evicted, can be evicted only by the ordinary Courts and the Rent Controller has nothing to do with them. For this submission support is sought from a decision of this Court in *Sardha Ram v. Paras Ram* (1), Dua, J., sitting alone, expressed the view in that case that section 29 of the Displaced Persons (Compensation and Rehabilitation) Act gives special protection to the persons in occupation of transferred property, and it is only for the limited purpose of that particular provision that the person in occupation is 'deemed to be a tenant', and he went on to conclude that the provisions of the East Punjab Urban Rent Restriction Act were not intended to apply to such persons 'deemed to be tenant'. The correctness of of this view was later doubted by Falshaw, J., again sitting alone, and several decisions of this Court by learned Judges sitting alone have been brought to our notice where orders of eviction in similar cases were sustained apparently on the view that the Rent Controller had jurisdiction to decide such disputes. It is, however, unnecessary to refer to those cases because in none of them was the question of jurisdiction considered at great length. The argument accepted by Dua, J., seems to imply that section 29 of the Displaced Persons

(1) 1961 P.L.R. 716.

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(Compensation and Rehabilitation) Act, was meant to create a special jurisdiction, for then alone would the jurisdiction of the Rent Controller be taken as ousted. Actually, however, there is no indication either in section 29 or any other provision of the Displaced Persons (Compensation and Rehabilitation) Act that any special jurisdiction was being created. It is reasonable to think that the Union Parliament, when enacting the Displaced Persons (Compensation and Rehabilitation) Act, was aware of the rent restriction legislation then in force in the various States and also aware of the various provisions of such legislation. It seems to follow that if the intention were to set up a separate and special jurisdiction for persons deemed to be tenants by section 29 of that Act, Parliament would have taken care to make its intention manifest. The mere fact that some special protection against eviction was provided in respect of certain tenants by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, does not in any sense imply that such tenants were not to be within the jurisdiction of the already existing tribunals. It appears to me, on the other hand, that, when Parliament said emphatically that such persons in lawful occupation of transferred property were to be 'deemed tenants', the intention was that they would be subject to the same jurisdiction as other tenants occupying premises in Urban Areas. It is obvious, and this has not been denied before us, that should the appropriate Legislature decide to make any alteration in the grounds of eviction mentioned in section 13^A of the East Punjab Urban Rent Restriction Act, that would be no ground for suggesting that such tenants would cease to be covered by the jurisdiction of the Rent Controller, so that the change made in the grounds of eviction in respect of certain tenants by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act cannot

lead to the inference that such persons were to be no longer within the jurisdiction of the Rent Controller.

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Mr. Roop Chand, appearing for the tenant in one of these petitions, sought to suggest that the expression "deemed to be a tenant" used in section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, is merely intended to indicate that such persons are not trespassers, but is not meant to convey that for all purposes such persons are in law to be considered as tenants. I find it impossible to accept this suggestion or to agree that the use of the words "deemed to be a tenant" was not meant to carry with it the full import of legal fiction, and Dua, J.'s decision was not based on that view. As I look at this matter, the position seems simple enough. Tenants occupying urban property can be evicted only by the Rent Controller acting under section 13 of the East Punjab Urban Rent Restriction Act. The grounds of eviction are mentioned in that Act. Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act confers the legal status of a tenant on certain persons like the allottees in the present cases, but it further provides that for a limited period of time the grounds of eviction would be only those mentioned in that section. It follows that after the expiry of that period the grounds of eviction would remain what section 13 of the East Punjab Urban Rent Restriction Act mentions. The jurisdiction is throughout that of the Rent Controller. On this view of the matter I have, with great respect, to differ from the opinion expressed by Dua J. in *Sardha Ram v. Paras Ram* (1), which has not found favour with other learned Judges of this Court either. I would, therefore, hold that in both the present cases the Rent Controller was competent to decide the dispute.

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Taking up the individual cases, it is clear that in Civil Revision 395 of 1961 the tenant had transferred his tenancy rights to another person without the written consent of the landlord. This had happened in 1953 while the East Punjab Urban Rent Restriction Act had come into force in 1949, so that the transfer occurred after and not before the Act. It is, in my opinion, immaterial that for some time during the interval the premises in dispute were exempted from the operation of the East Punjab Urban Rent Restriction Act, for such exemption cannot alter the date of the coming into force of the Act and the tenant's liability to eviction arises if he parts with his rights after the coming into force of the Act. The conclusion, therefore, must be that in this particular case the tenant had incurred that liability. I would, therefore, allow the landlord's petition and set aside the order made by the Appellate Authority and restore the order of eviction made by the Rent Controller.

In the second case (Civil Revision 737 of 1961) eviction has been ordered by the Appellate Authority on the view that the arrears of rent were not paid or tendered at the proper time. There has been some argument before us whether the first date of hearing was the 29th July, 1960, or the 10th August, 1960. Actually, however, this particular question is not so important in the present case. That is so because the tenant had repled himself liable to eviction even within the terms of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act and the special protection for the period of two years could be of no avail to him. One of the grounds of eviction mentioned in section 29 of that Act is that the tenant neither pays nor tenders the whole amount of arrears of rent within one month of the date on which notice of demand has been served on him by the transferee. In the present case, notice of demand was served on the

tenant and the fact was proved during the trial. The arrears of rent, however, were not tendered or paid within one month of the service of the notice, the notice having been sent on the 22nd May, 1960. The tenant had thus made himself liable to be evicted. The order of eviction, therefore, made by the Appellate Authority, although on another ground, does not need interference.

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The result is that Civil Revision 395 of 1961 is allowed and the tenant directed to be evicted from the premises in question, while Civil Revision 737 of 1961, is dismissed and the order of eviction is affirmed. In view of all the circumstances, however, the parties are left to their own costs throughout.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

JOGINDER SINGH,—Petitioner.

versus

FINANCIAL COMMISSIONER, PUNJAB AND

OTHERS,—Respondents.

Civil Writ No. 501 of 1962.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Ss. 7 and 7A—Applicability of—Whether apply to tenancies terminated before the commencement of the Act.

1962
July, 31st.

Held, that the scheme of both the sections 7 and 7A of the Pepsu Tenancy and Agricultural Lands Act, 1955 appears to be that after the commencement of the Act no tenancy is to be terminated except in accordance with the provisions of the Act or on the grounds given in section 7 and the additional grounds given in section 7A. Sub-section (1) of section 7A specifies the additional grounds for termination of tenancy and sub-section (2) contains an exception