

REVISIONAL CIVIL

Before D. Falshaw, C.J., and Harbans Singh, J.

PRITAM SINGH AND OTHERS,—Petitioners.

versus

RAJA RAM AND ANOTHER,—Respondents.

Civil Revision No: 588 of 1962.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(ii)—Sub-lease granted by tenant after commencement of the Act without the written consent of the landlord—Whether can be made a ground of ejection of the tenant by the successor of the landlord.

1963
Nov, 19th.

Held, that a landlord can claim ejection on the ground of a subsisting sub-lease which was entered into during the time of his predecessor-in-interest as long as the sub-lease took place after the commencement of the Act and without the written consent of the landlord. It is not necessary that the transfer or sub-letting must have been made not merely after the commencement of the Act, but also after the date on which the petitioning landlord became a landlord. The words "without the written consent of the landlord" mean "without the written consent of the then landlord" even where there has been a subsequent transfer of the landlord's rights to the person who brings the petition for ejection, and the word 'landlord' in this context is not necessarily confined to the landlord who files the petition.

Case referred by Hon'ble the Chief Justice Mr. D. Falshaw to a Division Bench on 14th August, 1963, for an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble the Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice Harbans Singh, on 19th November, 1963.

Petition under Section 15(5) of Act III of 1949 for revision of the order of Shri Sant Ram Garg, Appellate Authority, under the East Punjab Urban Rent Restriction Act (District and Sessions Judge), Ambala, dated the 7th June, 1962, affirming that of Shri M. L. Jain, Rent Controller, Ambala City, dated the 30th November, 1961, dismissing the application for eviction.

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

G. P. JAIN, B. S. GUPTA AND S. S. MAHAJAN, ADVOCATES;
for the Respondents.

JUDGMENT :

Falshaw, C.J.

FALSHAW, C.J.—This revision petition filed by landlords against the dismissal of their petition for the ejection of the tenants by the Rent Controller upheld by the Appellate Authority was referred by me to a larger Bench because I doubted the correctness of the view of Tek Chand J., in *Gugan Mal and others v. M/s. Moti Lal-Chand Mal and others* (1), on which the dismissal of the landlords' petition was based.

The relevant facts are that in 1917, a plot of land in the municipal area of Ambala City was leased by the then, owner to the respondents Kalu Ram and Mangal Singh for installing a flour mill with an oil engine and other machinery. The lease was for five years in the first instance, but it was to be treated as a permanent lease if the landlord allowed it to continue after that period, there being a specific clause in the lease deed prohibiting subletting. The original landlord died and his ultimate successors sold the property to the present landlords by a sale-deed dated the 15th of October, 1958. They based their application for ejection on several grounds, the only one of which now concerns us, is that of subletting. When the ejection petition was filed the premises were occupied by one Babu Ram under an agreement dated the 14th of August, 1949, which has been found to be a sub-lease.

The East Punjab Urban Rent Restriction Act of 1949 came into force on the 25th of March, 1949, i.e., before the agreement to sub-lease the premises to Babu Ram, was entered into, and no consent of the landlord

(1) I.L.R. (1962) Punj. 98—1962 P.L.R., 372.

was obtained for it. Section 13(2)(ii) of the Act gives the landlord right to claim ejectment on the ground that the tenant has after the commencement of the Act without the written consent of the landlord transferred his right under the lease or sublet the entire building or rented land or any portion thereof. The view taken by the authorities below was that the present landlords could not sue for the ejectment of the tenants on the ground of a sub-lease which had taken place in the time of their predecessor in spite of the fact that the sub-lease took place after the commencement of the Act and without the consent of the landlord. In the case to which I have referred above Tek Chand J., has held that a purchaser of the premises cannot take advantage of section 13(1)(b)(i) of the Delhi and Ajmer Rent Control Act for a breach committed nearly three years before he purchased the property from a former landlord, and the sub-section excludes past breaches committed while the landlord was the predecessor of the present transferee. The provisions of the relevant portion of the Delhi Act are similar to those of the Punjab Act, though not identically worded, and the learned Judge has held that the words "the landlord", clearly refer to the plaintiff who desires to obtain a decree or order for the recovery of possession. He dissented from the views expressed by Beaman, J., in *Vishveshwar Vighneshwar Shastri v. Mahableshwar Subba Bhatta and another* (2), a case in which Beaman, J., along with Heaton J. dismissed a letters patent appeal and held that the plaintiff in that case was entitled to recover possession of the property. The facts were that a *Mulgeni* lease provided that the lessee was not to alienate the property leased, but the lessee committed a breach of the condition by sale of his rights under the lease to one of the defendants in 1908. In 1911, the plaintiff purchased the landlord's rights from the lessor and the

Pritam Singh
and others
v.
Raja Ram
and another

Falshaw, C.J.

(2) I.L.R. 43 Bom. 28.

Pritam Singh
and others
v.
Raja Ram
and another

Falshaw, C.J.

defence in his suit for possession of the property on account of breach of the condition of the lease was that the plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour. It may, well be that Tek Chand J., is right in his objections to the grounds on which Beaman J. upheld the decision of the learned Single Judge, which was in a second appeal, but it is to be noted that Heaton J., also delivered a separate judgment in which he upheld the decision on completely different grounds holding that the case was clearly covered by section 109 of the Transfer of Property Act.

It may first of all be pointed out that there is one very considerable distinction of fact between the case decided by Tek Chand J. and the present case, namely that not only the sub-lease in that case had taken place in the time of the predecessor-in-interest of the landlord who sued for ejectment, but also the sub-lease had terminated before the transfer of the landlord's rights took place, and there are decisions of this Court, including the one by myself, to the effect that a petition for ejectment on the ground of subletting cannot be maintained where the sub-lease had ceased to exist before the petition was filed. It is difficult to estimate how much this fact influenced the decision of Tek Chand, J.

Apart from this, there is a decision of Rajamannar, C.J., and Somasundaram, J., in *V. Somasundra Mudaliar and another v. The Madras Provincial Co-operative Marketing Society Ltd., and another* (3), which is directly in point, interpreting similar provisions in the Madras Buildings (Lease and Rent Control) Act, to the effect that a landlord can claim ejectment on the ground of a subsisting sub-lease which was entered into during the time of his pre-

decessor-in-interest as long as the sub-lease took place after the commencement of the Act and without the written consent of the landlord. The learned Chief Justice observed that there was nothing from which it could be urged with any force that the transfer or subletting must have been made not merely after the commencement of the Act but also after the date on which the petitioning landlord became a landlord.

Pritam Singh
and others
v.
Raja Ram
and another

Falshaw, C.J.

With this view I am in respectful agreement. It seems to me that the opposite view would lead to an unfortunate result from the point of view of tenants in general, for whose protection this legislation mainly exists. If the view is correct that only a landlord during whose term as such a sub-lease has taken place, can bring a petition for ejectment under the Act, although a sub-lease has taken place during the time of his predecessor after the commencement of the Act, the converse will also apply. Such being the case a landlord who has given his written consent to a sub-lease after the commencement of the Act may transfer the property to somebody else who can then bring a petition for the ejectment of the tenant on the ground that his consent has not been obtained. Such a result would undoubtedly be contrary to the spirit and intention of the Act, and in my opinion there can be no doubt that the words "without the written consent of the landlord", must mean without the written consent of the then landlord even where there has been a subsequent transfer of the landlord's rights to the person who brings the petition for ejectment, and the word "landlord" in this context is not necessarily confined to the landlord who files the petition.

On this view of the matter the revision petition must succeed and I would accordingly accept it and

Pritam Singh
and others
v.
Raja Ram
and another

grant the landlords an order for the ejection of the tenants who, however, may in the circumstances be allowed three months to vacate the premises. The parties will bear their own costs.

Falshaw, C.J.
Harbans Singh, J

HARBANS SINGH, J.—I agree with the order proposed. In the present case, the sub-letting continued up to the date the application was brought and the question as to what will be the effect on the maintainability of application by the landlord if the sub-lessee had vacated the premises before the date of the application, does not arise in the present case and I should not be taken to have expressed any opinion with regard to this matter, in fact, I have, in another case coming before me sitting in Single Bench, referred this point for decision to a larger Bench.

B. R. T.

APPELLATE CIVIL

Before Inder Dev Dua and Jindra Lal, JJ.

HARNAM SINGH,—Appellant.

versus

TIRATH SINGH,—Respondent.

First Appeal From Order No: 10-E of 1963.

1963
Nov., 19th.

Representation of the People Act (XLIII of 1951)—S. 90—Code of Civil Procedure (V of 1908)—Order 6 Rule 17—Election petition—Amendment of written statement—Whether at par with an amendment of a written statement in a suit—Delay in disposal of the election petition—Whether of importance in considering amendments to pleadings—Exercise of discretion by the Election Tribunal—When to be interfered with by the Appellate Court—S. 33(2)—Omission to specify caste or tribe in a nomination paper—Whether fatal—Improper rejection of a nomination paper—Whether invalidates an election—Ss. 90(6) and 116-A(5)—Expeditious disposal of election petitions by the Tribunal and Appellate Courts—Importance of.