APPELLATE CIVIL

Before Mehar Singh and Prem Chand Pandit, JJ.

RAM PARKASH,—*Appellant.*

versus

SUNDER DASS,—*Respondents.*

E.S.A. No. 158-D of 1964.

1964

November, 26th

Delhi Rent Control Act (LIX of 1958) as amended by Delhi Rent Control (Amendment) Act (III of 1963)—Ss. 3, 14 and 50—Proviso added to S. 3—Effect of, on decrees obtained prior to its enactment—Auction Purchase of acquired evacuee property letting out premises to a tenant and obtaining decree for his ejectment before the amending Act came into force—Whether can execute decree thereafter.

Held, that the auction-purchaser of an evacuee property, who has not obtained the sale certificate, does not become the owner of that property which remains the property of the Government. But if possession is given to him, he has the right to let it out to tenants on the basis of his possessory title. After the coming into force of the Delhi Rent Control Act, 1958 and before the enactment of the Delhi Rent Control (Amendment) Act, 1963, such property was exempt from the provisions of the Rent Control Act by virtue of section 3 thereof. The auction-purchaser could eject his tenant by a suit in the civil Courts and not by recourse to the provisions of the Rent Control Act. But the proviso to section 3 added by the Delhi Rent Control (Amendment) Act, 1963, has made the Delhi Rent

Control Act, 1958, applicable to tenancies created by the persons in possession of the Government properties by virtue of an agreement with the Government or otherwise and has made the proviso retrospective from the date of the commencement of the Delhi Rent Control Act, 1958, i.e., February 9, 1959. The effect of the proviso is that every decree for ejectment of the tenant obtained after February 9, 1959, in respect of Government premises to which the provisions of the Delhi Rent Control Act, 1958, have been made applicable by the said proviso, has become without jurisdiction and cannot be executed after March 8, 1963, the date of the commencement of the Delhi Rent Control (Amendment) Act, 1963. The auction purchaser landlord thereafter can only obtain the eviction of his tenant from the shop in accordance with the provisions of the Delhi Rent Control Act, 1958, and not under the decree which he obtained on July 31, 1960, in the suit for ejectment filed by him on September 15, 1959, for, even in the presance of such a decree, the proviso to section 3 expressly provides that the said Act applies.

Execution Second Appeal under Sections 47/100, Civil Procedure Code from the order of Shri Udham Singh, Additional District Judge, Delhi, dated 3rd August, 1964 affirming that of Shri A. N. Aggarwal, Sub-Judge, 1st Class, Delhi, dated 11th March, 1964, dismissing the appeal with costs.

R. S. Narula and S. S. Chadha, Advocates, for the Appellant.

S. N. Chopra, Advocate, for the Respondent.

JUDGMENT

Mehar Singh, J. Mehar Singh, J.—In this second appeal the question for consideration is the executability of decree obtained by Sunder Dass respondent on July 31, 1960, for eviction of Ram Parkash appellant from the property in question.

The property was acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act 44 of 1954), and was in the compensation pool for purposes of payment of compensation and rehabilitation grants to displaced persons. It was put to auction and the highest bidder was the respondent on September 5, 1955. His bid was accepted on September 23, 1955. He paid the price. The sale was confirmed in his favour. The sale certificate has not been issued under the provisions of the last mentioned Act and the Rules thereunder. A letter of September 3 and 4,

Ram Parkash
v.
Sunder Dass

Mehar Singh, J.

1956, informed the appellant that provisional possession of the property was given to the auction-purchaser, the respondent, and directed him to pay rent to the respondent and otherwise deal with him direct with effect from August 30, 1956. The respondent alleged that he had leased the property to the appellant on September 1, 1956. On August 10, 1959, he served a notice under section 106 of the Transfer of Property Act, 1882 (Act 4 of 1882), upon the appellant terminating the tenancy. In this notice the respondent pointed out that he had created the tenancy in favour of the appellant on September 1, 1956. The appellant replied to that notice on August 31, 1959, saying that the respondent had leased the property to him long before September 1, 1956, and disputing the quantum of the rent. On September 15, 1959, the respondent instituted the suit for the eviction of the appellant and all that is material for the present purpose is that he stated in the plaint that he had leased the property to the appellant on September 1, 1956. The appellant in his written statement said that the lease of the property had been given to him in December, 1954, and, apart from questioning the quantum of rent, he challenged the right of the respondent to lease the property on the ground that he had no title to or in it. He also contested the jurisdiction of the civil Court to entertain the suit on the ground that the matter was to be disposed of by the proper authorities under the provisions of Act 44 of 1954 and the Rules thereunder. There was a decision of a preliminary issue on the question of jurisdiction by the trial Court on June 11, 1960, in which the learned Judge found that it being the case of both the parties that the property was leased by the respondent to the appellant, there was relationship of landlord and tenant between the parties, and so the civil Court had jurisdiction to try the suit. Subsequently by his judgment of July 31, 1961, while decreeing the claim of the respondent for eviction of the appellant, the learned Judge found that the appellant was in possession of the property—the shop—before September 1, 1956.

The Delhi Rent Control Act, 1958 (Act 59 of 1958), came into force on February 9, 1959. It was thus in force on September 15, 1959, the date of the institution of the suit by the respondent against the appellant for the latter's

Ram Parkash
v.
Sunder Dass

Mehar Singh, J.

eviction from the shop. At the time section 3 of this Act read—

"Nothing in this Act shall apply—

(a) to any premises belonging to the Government; or

(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government."

This section gave exemption to premises belonging to the Government from the provisions of this Act and with regard to similar provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, their Lordships in *Bhatia Co-operative Housing Society, Limited* v. *D. C. Patel* (1), have held that—

"The first part of section 4(1) provides that the Act shall not apply to any premises belonging to Government or a local authority. The Legislature did not by the first part intend to exempt the relationship of landlord and tenant but intended to confer on the premises itself an immunity from the operation of the Act".

In *Bombay Salt and Chemical Industries* v. *L. J. Johnson* (2), with regard to a sale under the provisions of Act 44 of 1954, the sale certificate not yet having been issued, their Lordships held that—

"Merely because section 20 permits a sale by auction, it cannot be contended that whenever there is an auction, the sale must be deemed to be complete. Whether there is a transfer or not depends on the conditions of the auction and these have to be examined to find out when a transfer of the property auctioned takes places. There may be a sale by auction where the sale is not complete till, for example, a document is executed. The section, furthermore, states that the

(1) A.I.R., 1953, S.C. 16.
(2) A.I.R., 1958, S.C. 289.

transfer under it would be subject to the rules made under the Act.

....

Where in respect of a sale by auction of property of the class notified under section 29(2), it is not shown that the sale certificate was issued to the highest bidder nor that the balance of the purchase-money had been paid, it must be held that there has till then been no transfer of the property sold at the auction and the benefit of section 29 could not be availed of."

In the case of the respondent, the sale certificate not having been issued, there has thus not yet been transfer of the title in the shop from the Government to the respondent. In other words, to the date of the decree it was the Central Government which had the title to this property and not the respondent. So in view of section 3 of Act 59 of 1958, the provisions of that Act were not attracted to the claim of eviction from the shop by the respondent against the appellant. The decree in favour of the respondent was consistent with the subsequent decision of this Court in *Roshan Lal Goswami* v. *Gobind Ram and others* (3), in which the learned Judges of the Division Bench held that in the case of acquired property under section 12 of Act 44 of 1954 if the title of the auction-purchaser is not complete by the issue of the sale certificate, the property remains that of the Government and thus because of section 3 of Act 59 of 1958, the provisions of the last mentioned Act are not attracted, and a suit for eviction lies in an ordinary civil Court. It may be pointed out at this stage that the only difference between that case and the facts of the present case is that in that case the lease had been granted to the tenant by the Managing Officer and under his directions the tenant had attorned to the auction-purchaser, in the present case, however, the lease itself—it has been the common case of both the parties—was granted to the appellant by the respondent himself. Neither in *Roshan Lal Goswami's case* nor in the present case sale certificate came to be issued conferring complete title on the auction-purchaser.

(3) I.L.R., (1963) 2 Punj. 745 = 1963 P.L.R., 852.

Ram Parkash
v.
Sunder Dass.

Mehar Singh, J.

The appellant's first appeal against that decree failed on December, 1, 1962, and the second appeal on December 10, 1962. The decree thus became final between the parties. It was a decree, when granted, made by the Court having jurisdiction to grant it. As stated, it was a decree which is consistent with a Division Bench judgment of this Court in *Roshan Lal Goswami's* case. It was thus a valid and an executable decree.

On March 8, 1963, a proviso was added to section 3 of Act 59 of 1958 by the Delhi Rent Control (Amendment) Act, 1963 (Act 4 of 1963), and that section with the proviso reads—

> "Nothing in this Act shall apply—
>
> (a) to any premises belonging to the Government; or
>
> (b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government;
>
> Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any Court or other authority the provisions of this Act shall apply to such tenancy."

The Amending Act 4 of 1963 provides that the proviso 'shall be deemed always to have been added', thereby meaning that this proviso to section 3 must be deemed to have been in force from the date Act 59 of 1958 came into force, that is to say, from February 9, 1959. It has already been pointed out that that is a date earlier to the date of the institution of the suit by the respondent on September 15, 1959, in which he obtained the decree in question against the appellant. The proviso takes away the immunity given by section 3 to property belonging to the Government if its condition is fulfilled. And the condition is that such premises have been or are (i) lawfully let by any person by virtue of an agreement with the Government, or (ii) lawfully let by any person otherwise. When this state of affairs exists then the provisions

transfer under it would be subject to the rules made under the Act.

....

Where in respect of a sale by auction of property of the class notified under section 29(2), it is not shown that the sale certificate was issued to the highest bidder nor that the balance of the purchase-money had been paid, it must be held that there has till then been no transfer of the property sold at the auction and the benefit of section 29 could not be availed of."

In the case of the respondent, the sale certificate not having been issued, there has thus not yet been transfer of the title in the shop from the Government to the respondent. In other words, to the date of the decree it was the Central Government which had the title to this property and not the respondent. So in view of section 3 of Act 59 of 1958, the provisions of that Act were not attracted to the claim of eviction from the shop by the respondent against the appellant. The decree in favour of the respondent was consistent with the subsequent decision of this Court in *Roshan Lal Goswami* v. *Gobind Ram and others* (3), in which the learned Judges of the Division Bench held that in the case of acquired property under section 12 of Act 44 of 1954 if the title of the auction-purchaser is not complete by the issue of the sale certificate, the property remains that of the Government and thus because of section 3 of Act 59 of 1958, the provisions of the last mentioned Act are not attracted, and a suit for eviction lies in an ordinary civil Court. It may be pointed out at this stage that the only difference between that case and the facts of the present case is that in that case the lease had been granted to the tenant by the Managing Officer and under his directions the tenant had attorned to the auction-purchaser, in the present case, however, the lease itself—it has been the common case of both the parties—was granted to the appellant by the respondent himself. Neither in *Roshan Lal Goswami's case* nor in the present case sale certificate came to be issued conferring complete title on the auction-purchaser.

(3) I.L.R., (1963) 2 Punj. 745 = 1963 P.L.R., 852.

Ram Parkash
v.
Sunder Dass.

Mehar Singh, J.

The appellant's first appeal against that decree failed on December, 1, 1962, and the second appeal on December 10, 1962. The decree thus became final between the parties. It was a decree, when granted, made by the Court having jurisdiction to grant it. As stated, it was a decree which is consistent with a Division Bench judgment of this Court in *Roshan Lal Goswami's* case. It was thus a valid and an executable decree.

On March 8, 1963, a proviso was added to section 3 of Act 59 of 1958 by the Delhi Rent Control (Amendment) Act, 1963 (Act 4 of 1963), and that section with the proviso reads—

> "Nothing in this Act shall apply—
>
> (a) to any premises belonging to the Government; or
>
> (b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government;
>
> Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any Court or other authority the provisions of this Act shall apply to such tenancy."

The Amending Act 4 of 1963 provides that the proviso 'shall be deemed always to have been added', thereby meaning that this proviso to section 3 must be deemed to have been in force from the date Act 59 of 1958 came into force, that is to say, from February 9, 1959. It has already been pointed out that that is a date earlier to the date of the institution of the suit by the respondent on September 15, 1959, in which he obtained the decree in question against the appellant. The proviso takes away the immunity given by section 3 to property belonging to the Government if its condition is fulfilled. And the condition is that such premises have been or are (i) lawfully let by any person by virtue of an agreement with the Government, or (ii) lawfully let by any person otherwise. When this state of affairs exists then the provisions

stand of the respondent that he had every right to let the shop to the appellant, who was not permitted to deny his title as landlord. The learned counsel for the appellant has urged that the respondent cannot possibly be allowed to approbate and reprobate first in his pleadings saying that he had the right to let the shop to the appellant and now urging at this stage that the letting of the shop by him to the appellant was not lawful within the scope of proviso to section 3 of Act 59 of 1958. The learned counsel for the respondent in reply had contended that the only effect of the retrospective operation of the proviso to section 3 is to concern with suits pending on or to be instituted after the date of coming into force of the Amending Act 4 of 1963 and not to affect matters already concluded and having become final as the decree between the parties in the present case, that the words 'notwithstanding any judgment, decree or order of any Court or other authority' almost at the end of the proviso do not refer to a judgment or decree as was obtained by the respondent against the appellant in the present litigation but only to previous precedents that may have binding force on the Courts or the authorities concerned, and that there is no case of lawful letting of the shop in the present litigation by the respondent to the appellant and the case is, in substance, not different than *Attar Lal's* case.

The first matter that has to be considered is the applicability of the proviso to section 3 of Act 59 of 1958 to the facts of this case. It is necessary to state the facts again, even at the cost of repetition, that in the present litigation it has from the beginning been the case of both the parties that the shop in question was let by the respondent to the appellant. It is not a case like *Attar Lal's case* in which the premises had been let by the Managing Officer and the tenant was asked and did attorn to the auction-purchaser. Here there is no question of attornment. It is a straight case of letting the premises by the respondent to the appellant. For the present purpose, it matters not whether the respondent let the shop to the appellant in December, 1954, or September, 1956. The stand of the respondent has been that he had the right to let the shop to the appellant and he maintained that stand in spite of the challenge of the appellant in that respect. It is somewhat strange that now the respondent should turn and have an argument urged on his behalf that the letting of the shop by him to the appellant was

Ram Parkash
v.
Sunder Dass

Mehar Singh, J.

not lawful letting of it. It is not explained how it was not lawful letting of the shop by him. No doubt, he has not become full owner of the shop in consequence of transfer because the sale certificate has not yet been issued to him. But he has been given possession of the property lawfully by the Government and his possession of the shop being lawful, he has right to create a tenancy of the shop within the scope and limitation of his possessory title. There is nothing either in the facts of this case or in law which made the creation of the tenancy in regard to the shop in question not lawful on the part of the respondent. He cannot even otherwise be permitted to take shifting stands and to say one thing at one time and another thing at another time so as to suit an argument to his purpose. So the fact is that the respondent obtained possession of the shop lawfully from the Managing Officer and his creation of the tenancy with regard to it in favour of the appellant was lawful letting of the same. There was no agreement between the respondent and the Government giving power to the respondent to let the shop, but his letting comes under the words—'have been or are lawfully let by any person . . . otherwise.' He was in lawful possession of the shop from the Managing Officer and apparently he had lawful title to let the shop to the appellant. This is not a case of attornment as was *Attar Lal's case* and that is the reason why the ratio of that case has no application to the facts of the present case. In fact this observation of the learned Judges supports the view on the facts of the present case as above—

> "Letting is a positive act and mere acquiescence or acceptance of the existing state of affairs will not, in law, amount to letting. There could be letting only if the tenancy created by the Government had been determined by the plaintiff and thereafter he had leased out the premises to the respondents or had accepted the respondents as tenants by his conduct. In the present case, there was no determination of the tenancy created by the Managing Officer in favour of the respondents. All that has happened is that instead of paying rent to the Managing Officer they were required by the Managing Officer to pay rent to the plaintiff. The position of the plaintiff is that of a nominee

who receives rents from the tenants at the behest of the owner; because till the sale certificate is granted the property in law still belongs to the Government. Merely because the right to receive rent has been transferred by the owner will not lead to the conclusion that the person to whom such a right has been transferred becomes the owner of the premises and thereby becomes entitled to let them out."

The present is not a case in which the respondent has been given a mere right to receive rent or the appellant has been directed to pay rent to the respondent instead of to the Managing Officer. It is a case in which the tenancy itself has been created by the respondent in favour of the appellant, a case specifically envisaged by the learned Judges as falling within the proviso to section 3 when they observed that 'there could be letting only if the tenancy created by the Government had been determined by the plaintiff and threafter he had leased out the premises to the respondents or had accepted the respondents as tenants by his conduct.' It is apparent that on facts *Attar Lal's case* is not parallel to the present case. In that case attornment was not accepted by the learned Judges as amounting to letting of the premises within the meaning and scope of proviso to section 3, but in the present case there is no question of attornment. Here there is direct letting of the premises by the respondent to the appellant. An observation of the learned Judges, as already repeated above, indicates that to the facts of the present case the learned Judges did not intend the decision of *Attar Lal's case* to apply but were of the contrary view as has been explained above. It has already been shown that here is a case of lawful letting of the shop by the respondent to the appellant and obviously the provisions of the proviso to section 3 are directly attracted.

Once the finding as above is reached, the rest becomes a matter of simple consideration. The proviso to section 3 applying to the facts of the present case, the matter is taken back to a date prior to the institution of the suit on September 15, 1959, by the respondent and immediately as the suit was instituted because of proviso to section 3 the Civil Court had no jurisdiction in the suit and the decree made by it must, therefore, be considered as without juris-

Ram Parkash
v.
Sunder Dass,

Mehar Singh, J.

diction. Section 50 of Act 59 of 1958 bars jurisdiction of Civil Courts in the matter of eviction of a tenant when the Act applies and sub-section (1) of section 14 of that very Act says that "notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favour of the landlord against a tenant". Then there is a proviso which gives the grounds upon which eviction of a tenant can be sought by a landlord. So that to premises to which Act 59 of 1958, applies, a Civil Court has no jurisdiction to pass a decree for eviction. In *Kiran Singh* Vs. *Chaman Paswan* (4) their Lordships held that it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. In the circumstances there is substance in the contention of the learned counsel for the appellant that the decree obtained by the respondent against the appellant has become a decree without jurisdiction and its executability could thus be challenged successfully by the appellant even in the executing Court. The Legislature has been careful in the draft of the new proviso to section 3 of that Act and it appears that an argument as advanced by the learned counsel for the respondent seems to have been in view. The learned counsel has said that the retrospective operation of the new proviso to section 3 is not effective against decrees that have already become final before the enactment of the proviso. It is specifically stated in the proviso that where there is a lawful letting of the Government premises by any person either by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any Court or other authority, the provisions of the Act shall apply to the tenancy. So, even assuming that the decree obtained by the respondent against the appellant has not been rendered a decree without jurisdiction because of the retrospective operation of the proviso, in spite of its existance the Act still applies, once the finding is, as has been given above, that the respondent lawfully let the shop to the appellant. There is no basis for the further contention of the learned counsel for the respondent that the reference to 'any judgment, decree or order' in the proviso means

(4) A.I.R., 1954, S.C. 340.

Ram Parkash
v.
Sunder Dass,
Mehar Singh, J.

only reference to any precedent. This is a novel approach that has been urged by the learned counsel for the respondent for which there is no support either in the letter of the proviso or in any authority. Thus, in any event, on the finding that the respondent has lawfully let the shop in question to the appellant, even though the shop still continues to belong to the Government, Act 59 of 1958 applies to the tenancy notwithstanding the decree in favour of the respondent. The respondent cannot be heard to say that he has not lawfully let the shop to the appellant for that has been his stand in the plaint from the very beginning and he cannot be permitted to take a reverse position now.

The consequence then is that as the respondent lawfully let the shop in question to the appellant, so the new proviso to section 3 of Act 59 of 1958, applies to the tenancy, attracting the provisions of that Act to it, with the effect that the respondent can only obtain eviction of the appellant from the shop in accordance with the provisions of that Act and not under the decree of which he is seeking execution, which has become a decree without jurisdiction and, in any case, even in the presence of such a decree the proviso to section 3 expressly provides that the Act applies. This second appeal of the appellant is accepted reversing the orders of the Courts below and in the result the execution application of the respondent is dismissed. In the circumstances of the case, however, the parties are left to their own costs throughout.

Pandit, J.

P. C. PANDIT, J.—The fate of this appeal largely depends on the question as to whether the appellant can take advantage of the proviso added to section 3 of the Delhi Rent Control Act, 1958, on 8th March, 1963. This he can do only if he succeeds in showing that the property in dispute was in his possession by virtue of *lawful letting* by the respondent on the basis of an agreement with the Government or otherwise. It is true that the respondent had given the highest bid for this property and the same had been accepted, but, admittedly, the sale certificate had not been issued in his favour. It is common ground that till the sale certificate was granted, he could not become the owner of this property,—*vide Messrs. Bombay Salt and Chemical Industries* v. *L. J.*

Ram Parkash
v.
Sunder Dass,

Pandit, J.

Johnson and others (2). Now, the question arises whether an auction-purchaser of an evacuee property, who has not yet obtained the sale certificate, can lawfully let the premises to any person. If he cannot do so, then the question of the applicability of the proviso to section 3 will not arise. So far as this matter is concerned, there are two Division Bench decisions of this Court. The first is *Roshan Lal Goswami* v. *Gobind Ram and others* (3), decided by Falshaw, C.J., and Tek Chand, J., on 21st February, 1963. The other is *Attar Lal* v. *Messrs Lakhmi Dass and Co.*, Letters Patent Appeal No. 139-D of 1963, decided by Dua and Mahajan, JJ., on 4th May, 1964. According to the former, a person in possesison can transfer his possession to another by lease and thereby create a relationship of lessor and lessee or landlord and tenant despite the fact that the rights of ownership had not been acquired so far by the transferor. The vesting of ownership rights in a landlord, according to this authority, is not a *sine qua non* of the relationship of the landlord and tenant. The latter authority, however, has taken a contrary view. According to this, the possession of such a person is that of a nominee, who receives rent from the tenants at the behest of the owner (Government), because till the sale certificate is granted, the property in law still belongs to the Government. Merely because the right to receive rent has been transferred by the owner will not lead to the conclusion that the person to whom such a right has been transferred becomes the owner of the premises and thereby becomes entitled to let them out. This authority further goes on to say that whatever rights such a person has are subject to the control of the Managing Officer till the grant of the sale certificate. In the very nature of things, there can be no question of such a person getting any right to let out the premises. It is argued by the learned counsel for the appellant that *Attar Lal's case* was distinguishable, because therein the premises had already been let by the Government and there had been no letting as such by the transferee after he had obtained the provisional possession of the property and the only change that had come about was that the tenants let in by the Government had stayed on and instead of paying rent to the Government, they started paying it to the transferee. It was submitted that during the course of the judgment, the learned Judges had observed that letting was a positive act and mere

acquiescence or acceptance of the existing state of affairs did not in law amount to letting. In the present case, the respondent had, admittedly, let out the premises to the appellant and on that account *Attar Lal's case* had no application. It is true that there was this distinction regarding the facts, but the point still remains that the learned Judges had clearly and unequivocally laid down in that authority the proposition of law which I have already set out above. That, undoubtedly, runs counter to the one mentioned in *Roshan Lal Goswami's case*. It is noteworthy that in *Attar Lal's case* the effect of the proviso to section 3 was also considered. If this decision has to be followed, then under no circumstances could these premises be lawfully let by the respondent to the appellant and, therefore, the proviso to section 3 would not be attracted. If, on the other hand, *Roshan Lal Goswami's case* is followed, then the respondent could create a lawful tenancy in favour of the appellant. In this state of the law, the only proper course, in my opinion, was that this matter should have been settled by a larger Bench. But this does not seem to be possible because my learned brother is of the opinion that *Attar Lal's case* has no application to the facts of the present case. With great respect to my learned brother, I am, however, of the view that the law laid down in this authority cannot be ignored and fully applies to the instant case. It is, therefore, that I was anxious that this matter should have been decided by a Full Bench. That being not possible now, I have to make a choice out of these two Bench decisions. Since, in my opinion, *Roshan Lal Goswami's case* lays down the correct law, I would follow the same. In that view of the matter, I agree with the order proposed by my learned brother.

B.R.T.