Before M. R. Sharma, J.

KISHORI LAL,—*Petitioner*

versus

BEANT SINGH—*Respondent.*

Civil Revision No. 2137 *of* 1978.

November 9, 1978.

East Punjab Urban Rent Restriction Act (III of 1949)—*Section* 13(2)(*ii*) (*a*)—*Premises sublet by a tenant prior to enforcement of the Act and without permission of the landlord—Such tenant—Whether liable to be ejected after enforcement of the Act on the ground of sub-letting.*

Held, that there are two principal covenants of contract of tenancy and they are (1) that the tenant shall not deny the title of the landlord and (2) that he shall not sublet the premises without the express consent of the landlord. In the face of these two covenants even if the subletting had been made prior to the date when the East Punjab Rent Restriction Act, 1949 was brought in force, subletting by the tenant was against the provisions of law. Subletting necessarily implies the continued occupation of the premises by the sub-tenant. In other words, subletting is a continuous wrong committed by the tenant against the landlord. Consequently, the tenant would be deemed to have committed this wrong on the date when the Act came into force. As such a sub-tenancy created by the tenant before the coming into force of the Act would fall within the mischief of section 13(2)(ii)(a) of the Act and entail the consequence of an order of eviction being passed against him. (Para 3).

Petition under Section 15(5) *of the Act for revision of the order of the Court of Shri S. S. Kalha, Appellate Authority under the East Punjab Urban Rent Restriction Act,* 1949, *Chandigarh, dated the* 23*rd August,* 1978 *reversing that of Shri J. P. Gupta, Rent Controller, Chandigarh, dated the* 12*th September,* 1977 *setting aside the impugned order and accepting the application of the appellant under S.* 13 *of the Act directing the respondent to put the appellant in possession of the premises on or before* 22*nd November,* 1978 *and leaving the parties to bear their own costs.*

Baldev Kapoor, Advocate, *for the Petitioner.*

Nemo *for the Respondent.*

JUDGMENT

M. R. Sharma, J.—

(1) The respondent-landlord filed a petition under section 13 of the East Punjab Urban Rent Restriction Act, as applicable to Chandigarh against the petitioner claiming his eviction on grounds *inter-alia* of personal necessity, subletting and change of user of the premises. These pleas did not prevail with the learned Rent Controller. The respondent-landlord went in appeal before the learned Appellate Authority who held that the petitioner had, in fact, sublet the premises in question within the meaning of section 13(2) (ii) (a) of the Act and that the landlord did need the premises in dispute for his personal necessity.

(2) Mr. Kapoor, learned counsel for the petitioner, has submitted that some part of the premises had been sublet in favour of one Chander Parkash much earlier than the date on which the Act was enforced in Chandigarh and for that reason the ejectment order against the petitioner should not have been passed. Section 13(2) (ii) of the East Punjab Urban Rent Restriction Act reads as under:—

> 13(2)(ii) "that the tenant has after the commencement of this Act without the written consent of the landlord—
>
> (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof, or
>
> (b) used the building or rented land for a purpose other than that for which it was leased."

(3) The language of the section does to some extent advance the contention raised by the learned counsel but the learned Appellate Authority, after considering the evidence of Mrs. Joginder Kaur AW 2, the earlier landowner, and the other evidence produced by the respondent, has come to the conclusion that the subletting was without the permission of the respondent-landlord. It is settled law that there are two principal covenants of contract of tenancy, they are (1) that the tenant shall not deny the title of the landlord, and (2) that he shall not sublet the premises without the express consent of the landlord. In the face of these two implied covenants even if the subletting had been made prior to the date when the Act was brought in force in the Union Territory of Chandigarh, the act of

the petitioner was against the provisions of law. Subletting necessarily implies the continued occupation of the premises by the sub-tenant. In other words subletting is a continuous wrong committed by the tenant against his landlord. Consequently, the day on which the Act came into force in this territory, the tenant-petitioner would be deemed to have committed this wrong on that date also. It is not the case of the petitioner that he at any time uptill today obtained the written consent of the respondent-landlord. In the circumstances, the learned Appellate Authority was rightly advised in holding that the wrong of subletting committed by the petitioner fell within the mischief of section 13(2)(ii)(a) of the Act which entailed the consequence of an order of eviction being passed against him.

(4) Mr. Kapoor has placed reliance upon a Single Bench judgment in case *J. N. Aggarwal* v. *Chaman Lal,* (1) for the proposition that change of user and subletting in order to be held as wrong falling within the meaning of section 13(2)(ii) of the East Punjab Urban Rent Restriction Act should have been indulged in by the tenant after coming into force of the Act. That case is distinguishable because the question relating to the implied covenants of a tenancy discussed above was not brought to the notice of the learned Judge.

(5) On the second point, Mr. Kapoor, learned counsel for the petitioner, has urged that the learned Appellate Authority has not decided the question of personal necessity of the respondent on the basis of well known principles. It is argued by him that in support of his contention the respondent-landlord had filed a notice Exhibit A. 1 alleged to have been served upon him by his landlord in August, 1974 and since he himself applied for the eviction of the petitioner in July, 1974, the learned Appellate Authority should have held that the notice, dated August 22, 1974, was a self invited notice, in order to bolster the plea of the respondent-landlord regarding his personal necessity. I am not impressed with this submission. If a landlord really wants the premises to be vacated by the tenant, he, in normal course, approaches him with an oral request and takes the trouble of serving a written notice only when the oral request goes unheeded. It might be that when the respondent was verbally asked by his landlord to vacate the premises, he was

(1) 1970 Rent Control Reporter (Vol. II) Para 4.

impelled to file the present application for ejectment. In this situation, the notice, dated August, 22, 1974 cannot necessarily be termed as one which was self-invited. The other ground urged by Mr. Kapoor is that the landlord of the respondent, after serving the notice on him, did not take any proceedings for getting him ejected. From this circumstance, the learned counsel wants me to infer that the notice, dated August 22, 1974 was, in substance, a sham notice. I cannot accept this argument either. Once the landlord of the respondent came to know that the latter had filed ejectment application for getting his own house vacated, he could have formed an opinion that as soon as the respondent succeeded in his case, he would vacate the house taken on rent by him. Consequently, the mere inaction on the part of the landlord of the respondent does not necessarily prove that he entered into a conspiracy with the respondent with the sole object of seeing that the petitioner should be evicted from the house of the respondent.

(6) It was then argued by the learned counsel for the petitioner that for bolstering up his claim the respondent-landlord stated before the learned Appellate Authority that he had in all six relations, even though two of such relations mentioned by him were the son and daughter respectively of his sister. There is no bar against a person to allow a part of his house to his nephew and niece. In any event, if the premises vacated by the petitioner are not occupied by the landlord himself the law makes a provision for the tenant to apply for re-entry into the premises.

(7) No other point was raised before me. This petition is, therefore, dismissed *in limini*.

N.K.S.

Before M. R. Sharma, J.

BRIJ LAL PURI and another,—*Petitioners*

versus

MUNI TANDON,—*Respondent*.

Civil Revision No. 1720 *of* 1978.

November 10, 1978.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(3) (a) (i) and (iv) Second proviso and 15(3)—Ejectment application by a landlord—Preliminary objections of the tenant allowed and