REVISIONAL CIVIL.

Before Khosla and Dulat, JJ.

NEW DELHI MUNICIPAL COMMITTEE,—*Petitioner*

versus

H. S. RIKHY,—*Respondent.*

Civil Revision Applications Nos. 180, 187, 202 and 203 of 1954.

1956.

April, 25th.

Delhi and Ajmer Rent Control Act (XXXVII of 1952)—Section 8—Requisites of, before an application for fixation of standard rent can be entertained—Existence of relationship of landlord and tenant, whether necessary.

Punjab Municipal Act (III of 1911) as extended to Delhi State, Section 47—Provisions of, whether mandatory—Provisions of section 47, not complied with—Admission, whether could operate as an estoppel and override the mandatory provisions of section 47—Doctrine of part-performance—Scope of—Whether applicable to the facts of this case.

Transfer of Property Act, (IV of 1882)—Section 53A.

N. D. M. C. built shops in Lodhi Colony. In April, 1948, N. D. M. C. invited tenders from the public for these shops. The highest bidders in the tenders were allotted the shops at rents varying from Rs. 135-8-0 to Rs. 520 per mensem. In 1952, thirty of the occupants filed applications under section 8 of the Rent Control Act of 1952 for fixation of the standard rent. N. D. M. C. raised the preliminary objection that the applications were not competent as the relationship of landlord and tenant did not exist. The trial Court held that the relationship of landlord and tenant existed and the applications were competent. N. D. M. C. moved the High Court in revision against this order.

Held, (1) that an application under section 8 of the Rent Control Act can only be made by a tenant or a landlord. There being no such relationship in this case and in view of section 47 of the Punjab Municipal Act, as extended to the State of Delhi, there having been no proper lease deed executed by the Municipal Committee, no valid lease came into existence. The occupation of premises and

the payment of a sum of money are both consistent with the respondents not being tenants but having some other status such as the status of licensees. A lease which has not been executed in the manner provided in section 47 is not binding on the Municipal Committee, and conveys no right to the person who claims to be the lessee.

(2) that the Municipal Committee having categorically denied the existence of a valid lease, the provisions of section 47 of the Municipal Act were pleaded in order to show that no relationship of landlord and tenant existed between the parties. The admission that a licence was granted does not modify the denial of a lease. There can be no question of a party being estopped by its admissions when the same has not in any way altered the position of the other party, and there can be no estoppel against a statute.

(3) that the respondents could not avail of the provisions of section 53A of the Transfer of Property Act, or of the doctrine of part performance. Section 53A merely protects a defendant and does not confer any legal right. Therefore, before the provisions of section 53A of the Transfer of Property Act can be invoked, it must be shown that there was a writing in existence signed by the transferor or on his behalf. In the present case no such writing exists and the Municipal Committee did not execute any kind of document in favour of the respondents. The doctrine of part performance applied only where there has been a transfer by means of a written document but certain forms required by law such as registration have not been complied with. It must be remembered that the relief given under section 53A of the Transfer of Property Act, or under the principle embodied in it is an equitable relief and not a legal right which can be enforced by a plaintiff.

Petition under Section 35 of Act 38 of 1952 (Delhi-Ajmer Merwara Rent Control Act 1952), and Section 115, C. P. Code, for revision of the order of the Court of Shri Basant Lal Aggarwal, Sub-Judge, 1st Class, Delhi, dated 15th March, 1954, holding that this Court has jurisdiction to fix the standard rent.

Case referred by the Hon'ble Mr. Justice Bhandari, Chief Justice,—vide *his Lordship's orders, dated the 6th December, 1955, to a Division Bench.*

JUDGMENT

BHANDARI, C. J. These several petitions (Civil Revisions Nos. 186, 187, 202 and 203 of 1954), raise questions of general importance which should, I think, be decided by a Division Bench. Let these petitions be placed before a Division Bench for orders. Bhandari, C.J.

C. K. DAPHTARY and JINDRA LAL, for Petitioner.

A. R. WHIG and MAHLIYA RAM, for Respondent.

JUDGMENT

KHOSLA, J. This order will dispose of the four revision petitions listed above. The petitions have arisen out of a single order passed by Mr. Basant Lal Aggarwal, Subordinate Judge, Delhi, by which he dealt with a preliminary law point raised in a number of applications filed under section 8 of the Delhi Ajmer Rent Control Act, 1952. Khosla, J.

The facts briefly are that the New Delhi Municipal Committee built what is known as Central Municipal Market Lodi Colony. This Colony consists of 32 shops with residential flats on 28 of the shops. In April, 1945, the Municipal Committee in pursuance of a resolution passed by it invited tenders from the pubic for these shops. On receipt of tenders the highest bidders were allotted the various shops at rents varying from Rs. 135-8-0 to Rs. 520 per mensem. Towards the end of 1952 thirty of the occupants filed applications under section 8 of the Rent Control Act of 1952, praying for the fixation of the standard rent in respect of the premises, respectively, occupied by them. The New Delhi Municipal Committee took a preliminary objection that the applications were not competent because no relationship of landlord and tenant existed between the parties and the various applicants were not tenants within the meaning of the

New Delhi Municipal Committee
v.
H. S. Rikhy.

Khosla, J.

Act. Upon this the trial Court framed the following preliminary issue :—

> Whether the relationship of tenant and landlord exists between the parties, therefore, these applications are competent and the Court has jurisdiction to fix the standard rent ?

The learned Subordinate Judge found that the applications were competent because the various applicants were tenants within the meaning of the Act. The New Delhi Municipal Committee moved this Court on the revision side and when the matter came up in the first instance before my Lord the Chief Justice sitting singly he referred it to a Division Bench owing to the importance of the question involved. We have heard the learned counsel for both sides at considerable length and have also considered the various rulings cited before us.

An application under section 8 of the Rent Control Act can only be made by a tenant or a landlord because section 8 provides the machinery for resolving disputes between a landlord and a tenant. The definition of " tenant " is given in section 2(j).—

> " 'tenant' means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under a tenant under the provisions of any law before the commencement of this Act."

'Landlord' is defined under clause (c) :—

> " 'landlord' means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his

own account or on account of, or on behalf of, or for the benefit of, any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."

If these two definitions were to be considered by themselves an impression might be conveyed that the expressions 'landlord' and 'tenant' are used in a much wider sense than the expressions 'lessor' and 'lessee' as used in section 105 of the Transfer of Property Act. This is no doubt true in a certain sense but in a certain sense only. It is essential that there should be a letting before there can be a landlord and a tenant even within the meaning of the Rent Control Act. In both the definitions the word 'premises' has been used and 'premises' are defined in clause (g) of section 2 —

"'premises' means any building or part of a building which is, or is intended to be, let separately for use as a residence * * *."

Therefore no one can be a tenant in respect of premises which have not been let to him, nor can anyone be a landlord unless some premises have been let by someone. Therefore, we are driven back to the question of whether the premises were leased out or not. Mr. Anant Ram frankly conceded that letting out as used in the Rent Control Act means the same thing as leasing out under the Transfer of Property Act, and therefore there must be a lessor and a lessee as contemplated by section 105 of the Transfer of Property Act before there can be a landlord and a tenant as defined in the Rent Control Act. Therefore what we have to consider in the present case is whether these premises in the Lodi Colony were leased out by the New Delhi Municipal Committee and whether there is a valid lease in law in respect of them.

New Delhi Municipal Committee
v.
H. S. Rikhy

Khosla, J.

Before I come to consider this question it is necessary to state that the parties to the proceedings under section 8 of the Rent Control Act must possess the status of landlord and tenant. Therefore unless the respondents enjoy the legal status of tenants they cannot ask the Court to fix the standard rent under the Rent Control Act. If the person in occupation of a house or a shop is something other than a tenant, then he will not be entitled to come to Court under section 8 even if he is paying a sum of money to the owner of the building which he occupies. A simple case which immediately comes to mind is the case of a licensee. A licensee occupies the premises and enjoys the use of these premises, and for his enjoyment he may have agreed to pay a certain sum of money to the owner of the premises but he thereby does not become a tenant because there is no lease in his favour and there is no transfer of any interest in the property to him. That being so, he cannot call himself a tenant and he cannot ask the Court to fix the standard rent under section 8 of the Rent Control Act. The occupier may enjoy some other status or he may merely be a trespasser who is holding over after the period of lawful possession has expired. In neither of these cases can he claim the status of a tenant and therefore he cannot ask the Court to adjudicate upon his dispute with the owner of the property.

The right which is conferred by the Rent Control Act is a legal right. It is not a right in equity, and a legal right can only be enforced if the person who seeks to enforce it enjoys a legal status entitling him to enforce the right. A right in equity is merely a right which entitles a person to the protection of the Court. It has often been compared to a shield as opposed to a legal right which is compared to a sword. Normally speaking, a plaintiff seeks to enforce a

legal right whereas a defendant sets up a plea in defence which entitles him to the equitable protection of the Court. There are of course cases in which a plaintiff may base his claim on equity, but those will be cases in which the defendant has made an assault on his enjoyment of a right which may not, strictly speaking, be a legal right.

We may now consider the provisions of section 47 of the Punjab Municipal Act as extended to the State of Delhi. Sub-sections (2) and (3) of this Act are in the following terms :—

> "(2) Every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the president or vice-president, and by at least two other members of the committee whose execution whereof shall be attested by the Secretary."
>
> "(3) No contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the committee."

It is therefore clear that unless the Municipal Committee executes a lease deed according to the terms of section 47 no legal lease will be deemed to have come into existence. In the present case the occupiers fall into four different classes. There are in the first place a number of persons who executed documents in favour of the Municipal Committee in which they described themselves as tenants. In the second place there are individuals who executed documents in which they described themselves as licensees. The third and fourth classes are of persons who did not execute any document at all but

New Delhi Municipal Committee
v.
H. S. Rikhy

Khosla, J.

who have either been paying rents on the basis of old agreements or who have disp'aced original occupiers. In not a single instance was any lease deed executed by the Municipal Committee as required by the provisions of section 47. The consequence is that no interest in the property passed to the occupiers and they cannot be said to occupy the status of lessees or tenants. It may be that if the Municipal Committee sought to eject them they would be able to plead successfully the equitable right to remain in possession of these premises as long as they paid the agreed sum of money to the Municipa! Committee, but it is quite clear that they cannot claim the status of tenants and thereby seek to enforce the rights which are given to tenants as such by law. The right to come to Court under section 8 and ask for the fixation of rent is a positive and legal right which has been conferred upon every tenant provided he possesses the status of a tenant. It is not a defensive or a protective right which can be given to a person in possession of property.

The learned trial Judge has based his decision on three considerations —

(1) The relationship of landlord and tenant is established by the exclusive possession of occupiers and the acceptance of rent from them by the Municipa! Committee;

(2) the Municipal Committee was estopped from denying the status of the occupiers; and

(3) the doctrine of part-performance applies to the case and even though no proper lease was executed in favour of the occupiers as required by the provisions of section 47 of the Municipal Act the occupiers

by their long occupation and by payment of rent have acquired the rights of tenancy.

New Delhi Municipal Committee
v.
H. S. Rikhy

Khosla, J.

With regard to the first point the statute makes it quite clear that no proper lease deed having been executed by the Municipal Committee no valid lease came into existence. The occupation of premises and the payment of a sum of money are both consistent with the respondents not being tenants but having some other status such as the status of licensees. Indeed in some of the documents executed by them they themselves described them as licensees. The fact, however, that the word 'licensee' was used is not conclusive and the Court would have to look at the terms of the document in each case to find out whether the document is a lease or a mere licence. In the present case we cannot, however, look at the document because there is no document as required by law. When the law requires that a certain transaction must be performed in a certain way then that transaction can be performed only in that way and in no other. A lease which has not been executed in the manner provided in section 47 is not binding on the Municipal Committee and conveys no right to the person who claims to be the lessee. In *Ariff* v. *Jadunath Majumdar* (1), the facts were that the owner of premises agreed verbally to grant a permanent lease of a plot of land. The prospective lessee entered into possession and built a structure upon it at considerable cost. The owner subsequently refused to grant the agreed lease and sued to eject the lessee. He was granted a decree on the ground that there was no lease and the occupier had not availed of the remedy for specific performance which was available to him. What he should have done was to file a suit for the

(1) 58 I.A. 91

New Delhi Municipal Committee v. H. S. Rikhy

Khosla, J.

specific performance of the lease within the prescribed time. In *Akshay Kumar Chand* v. *Commissioners of Bogra Municipality* (1), a lease executed by the Chairman was held to be void. The Municipal Committee's suit to eject the occupier was decreed in that case. *Mt. Shankari and others* v. *Milkha Singh* (2), was a case in which the effect of non-registration of a document was considered. It was held that no equitable law can override the specific provisions of section 49 and operate so as to make an unregistered document create title if it requires registration.

It seems to me that a clear distinction exists between a person who enjoys the status of a tenant and all the rights and liabilities appertaining thereto and a person who may have some of the attributes and privileges of a tenant but in law is not a tenant. The respondents in my view have certain privileges and rights which are similar to those of a tenant but they are not tenants in law. Before a person can come to Court and invoke the provisions of the Rent Control Act he must show that he is a tenant and enjoys the status of a tenant. It is not sufficient for him to show that he is in possession of certain premises and is paying rent for them because these facts are consistent with his being a licensee and a licensee clearly cannot ask the Court to fix standard rent.

It was contended that since the licence is based on a contract and no valid contract as required by section 47 of the Municipal Act was in this case executed the respondents are not even licensees, but this is a matter into which we need not enquire. Whatever the status of the respondents, it is certainly not that of tenants and our present enquiry is limited to determining whether the respondents are tenants or not, whatever other status in law they may have and whatever rights they may enjoy.

(1) A.I.R. 1923 Cal. 675
(2) A.I.R. 1941 Lah. 407

It was argued that the Municipal Committee is estopped from denying the status of the occupiers because even in the written statement filed by the Committee certain admissions were made which are binding on the Committee. Our attention was drawn to the following portions of the written statement. In paragraph 3 of the written objections filed in the case of Bishan Das Aggarwal the Committee stated—

> "The public was invited to offer monthly license fee for each shop. It was given out that the allottee of a particular shop would be permitted to carry on a certain specified business. It is incorrect that after the tender of the party was accepted he became a tenant."

In paragraph 4 it was stated—

> "The fact is that the charges are licence fees for permission granted to the applicants for use and occupation of the shop."

It was argued that this was tantamount to an admission that a valid contract between the parties had been made, and that being so the Court was at liberty to enquire into the nature of that contract. If the Committee admitted that a licence had been granted to one of the respondents and on examining the terms of that licence it transpired that the licence was in fact a lease, then the Court must perforce decide that a valid lease between the parties existed. This, however, is not the proper way of looking at the matter. The Municipal Committee has categorically denied the existence of a valid lease and the provisions of section 47 of the Municipal Act were pleaded in order to show that no relationship of landlord and tenant existed between the parties. The admission

New Delhi Municipal Committee v. H. S. Rikhy

Khosla, J.

that a licence was granted does not modify the denial of a lease. Where a party is competent to enter into a contract and has entered into some contract the Court can examine the terms of the contract in order to find out what the nature of the contract is, but where the party has not executed any valid contract at all because the form prescribed by statute was not observed, then the Court is not at liberty to look at the terms of the contract in order to determine its true nature. In the present case it may well be that even if the respondents sued on the basis of a licence they would be nonsuited on the ground that no valid contract of licence as required by section 47 of the Municipal Act had been executed. The objection in this case is a fundamental one namely that when a contract is not drawn up and executed in the manner provided by section 47 of the Municipal Act the contract shall not be binding on the Committee. There can be no question of a party being estopped by its admissions. There can be no estoppel against a statute and the statements contained in the written statement of the Municipal Committee have in no way altered the position of the respondents.

The position of the respondents and the payment of rent by them do not give them the status of tenants, and the Municipal Committee in accepting rent did not estop itself from denying the status of the respondents.

I now come to the last point argued, namely the application of the doctrine of part-performance. The doctrine of part-performance is contained in section 53-A of the Transfer of Property Act. This section presupposes the execution of a document. The first paragraph of this section reads—

> "Where any person contracts to transfer for, consideration any immovable property by

writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty."

Therefore before the provisions of section 53-A of the Transfer of Property Act can be invoked it must be shown that there was a writing in existence signed by the transferor or on his behalf. In the present case no such writing exists and the Municipal Committee did not execute any kind of document in favour of the respondents.

The doctrine of part-performance applied only where there has been a transfer by means of a written document but certain forms required by law such as registration have not been complied with. This is clearly not the case here. It was, however, contended that since the Transfer of Property Act does not in terms apply to Delhi State but only the principles underlying it, the respondents could take advantage of the fact that even if a transfer was a parole one they were entitled to enjoy the full rights of a transferee after part-performance. The principle of part-performance, however, only applied where there has been a transfer made and not where the statute bars a transfer. It must be remembered that the relief given under section 53-A of the Transfer of Property Act or under the principle embodied in it is an equitable relief and not a legal right which can be enforced by a plaintiff. In the present case what has been urged on behalf of the respondents is that a transaction took place between them and the Municipal Committee and in pursuance of that transaction they entered into possession of certain premises and had been paying regularly sums of money by way of rent to the Committee. The transaction was in substance a lease and the respondents had acquired rights by performing their part of the contract under the lease. This argument, however, cannot be used in a case

New Delhi Municipal Committee v. H. S. Rikhy

Khosla, J.

where the respondents claiming the status of tenants seek to enforce legal rights which are possessed by tenants only. In other words section 53-A merely protects a defendant and does not confer any legal right. It was held by their Lordships of the Privy Council in *Probodh Kumar Das and others* v. *Dantmara Tea Company, Limited* (1), that section 53-A of the Transfer of Property Act conferred no right of action on a transferee in possession.—

> "In their Lordship's opinion, the amendment of the law effected by the enactment of section 53-A conferred no right of action on a transferee in possession under an unregistered contract of sale. Their Lordships agree with the view expressed by Mitter, J., in the High Court that 'the right conferred by section 53-A is a right available only to the defendant to protect his possession."

What is true of an unregistered document is equally true of a non-existent lease deed when the law requires the lease deed to be executed according to the provisions of section 47 of the Municipal Act only. Similar observations were made by the Allahabad High Court in *Pandit Ram Chander* v. *Pandit Maharaj Kunwar and others* (2). That was a case in which the plaintiff sought to invoke the provisions of section 53-A of the Transfer of Property Act. It was held that he was entitled to the aid of this section because "it was the defendants who were seeking to enforce "their rights under the contract of lease" and the plaintiff was only seeking to debar them from doing so, and was thus merely protecting his rights.

The respondents therefore cannot avail of the provisions of section 53-A of the Transfer of Property Act or of the doctrine of part-performance.

(1) 66 I.A. 293
(2) A.I.R. 1939 All. 611

For the reasons given above, I would hold that no legal relationship of landlord and tenant subsists between the parties. The respondents do not enjoy the status of tenants and they cannot therefore enforce any rights which can be enforced by tenants only under the Rent Control Act. It is not necessary to determine what the exact status of the respondents is and it is sufficient for the purposes of these revision petitions to say that they are not tenants and are not entitled to maintain petitions for the fixation of rent under the Rent Control Act. In this view of the matter the petitions of the Municipal Committee must be allowed and the order of the lower Court set aside. I would therefore allow these petitions and dismiss all the applications for fixation of rent, but in the circumstances of the case I would make no orders as to costs.

DULAT, J. I agree, but I do so with considerable reluctance. I feel that we are now undoing what the parties to these transactions fully intended to do, but since I can find no escape from the legal consequences of the express provisions contained in section 47 of the Punjab Municipal Act as applied to Delhi, I have to accept the conclusion that in Law no relationship of landlord and tenant ever came into being between the parties, and that being so the petitions under section 8 of the Rent Control Act are not maintainable and have to be dismissed. I agree of course that there should be no orders as to costs.