of section 6(4)(c) only come into play when no Harijan candidate is duly elected, or in other words when no Harijan candidate comes within the five elected Panches, as in this case. In the present case, Rati Ram was one of the five elected Panches. Therefore, the Returning Officer had no jurisdiction to declare Asa Ram as elected. In this connection I need only quote the relevant part of section 6 which is as under:—

[His Lordship read section 6(1) and (4) of the Act and continued:]

It will be apparent from these provisions that the contention of the learned counsel for the petitioners is well founded. The result, therefore, is that the order of the election tribunal is patently erroneous and without jurisdiction and I, therefore, quash it. The result would be that the election petition of Karori Mal will still be pending before the election tribunal and the same will determine it in accordance with law.

Parties are directed to appear before the election tribunal on the 13th November, 1961.

There will be no order as to costs.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, J.

LEKH RAM,—*Petitioner*

versus

FIRM CHANDER BHAN-RAJINDER PARKASH,—*Respondent*

Civil Revision No. 348 of 1960

1961

Oct., 27th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(ii)(a)—Tenant subletting a portion of the premises—Sub-tenancy terminating some months before

application for ejectment made—Whether can be made a ground for ejectment—Section 4—Fair rent—Whether can be fixed on the agreement of the parties.

Held, that a subletting which is to form the ground for ejectment under section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949, must be one which subsists at the time of the filling of the petition and not one which has terminated before the application is made.

Held, that an admission by a tenant in proceedings for fixation of fair rent cannot prevent the Rent Controller from fixing fair rent on a subsequent application by the tenant and the Controller alone has jurisdiction or power to ascertain or fix the fair rent in the manner laid down in the Act and the landlord and tenant cannot by agreement fix the fair rent for the purposes of the Rent Restriction Act. The reason is that the order of the Rent Controller or the Appellate Authority fixing the fair rent is not merely a judgment *inter partes* but is a judgment *in rem*, and it will apply to the premises even if they are occupied by a succession of tenants following the tenant in whose time the fair rent is fixed.

Petition under section 15(5) of East Punjab Rent Restriction Act III of 1949 as amended by Act 29 of 1956, for revision of the order of Shri B. L. Goswamy, District Judge, Sangrur, dated 3rd May, 1960, affirming that of Shri J. B. Garg, Rent Controller, Jind, dated 11th November, 1959, dismissing the petition with costs.

F. C. MITTAL, ANAND SAWROOP AND R. S. MITTAL, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE, for the Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—These are two revision petitions, one by a tenant Chander Bhan, and the other by a landlord Lekh Ram, which have been put up together for hearing simply because the parties are the same, though the matters concerned are separate, since the tenant's petition refers to the

question of fair rent and the landlord's petition challenges the dismissal of his petition for ejectment upheld by the Appellate Authority.

Although other matters were in dispute before the authorities below, the only question in the landlord's petition against the dismissal of his claim for ejectment is the interpretation of the words in section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act which reads—

> "(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."

The landlord's petition was instituted before the Rent Controller on the 1st of March, 1958 and it has been found as a matter of fact by both the Rent Controller and the Appellate Authority that the tenant had sublet a portion of the premises to a firm called Kirpa Ram-Tara Chand from the 30th of January to the 4th of October, 1957. The sub-tenancy had thus terminated some five months before the landlord's petition was instituted. The question which arises is whether a subletting which has terminated some time before the petition for ejectment is instituted can still be made a ground for ejectment in the petition. Both the Rent Controller and the Appellate Authority have come to the conclusion that although it is not made explicit in the relevant provisions of the section it is nevertheless implied that a subletting which is to form the ground for ejectment must be one which subsists at the time of the filing of the petition.

There do not appear to be any reported decisions of any High Court on the point, but on the whole I am inclined to take the view that this interpretation is correct. If it were not, it might lead to absurd results since the East Punjab

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Urban Rent Restriction Act came into force in 1949, and it would obviously be quite contrary to the spirit of the Act, which is mainly intended for the protection of tenants, if any period of sub-letting, however short, which had taken place after the Act came into force, could be made a ground for the ejectment of the tenant 10 or 12 years later. In the case of urban property where landlord lives in the same town it seems to me that it is difficult for a subletting of the whole or any part of the leased property to escape the notice of the landlord for very long, and if he allows this state of affairs to continue without taking any action until some months after the sub-tenancy had ceased he must be regarded as having waived his right to ejectment on the ground of that particular subletting. I, thus, see no reason to interfere in this case and dismiss the landlord's revision petition with costs. Counsel's fee Rs. 50.

As regards the tenant's petition relating to the fair rent of the premises the Rent Controller on the material produced before him held that the fair rent of the premises amounted to Rs 357 per annum. The landlord who is claiming the contractual rate of Rs. 1,126 per annum to be the fair rent, filed an appeal and the following passage occurs in the brief order of the Appellate Authority:—

> "The counsel for both the parties have agreed that the actual fair rent which will work out on the material on the record would be Rs. 720 per year."

and he fixed the fair rent at this figure.

In the revision petition on behalf of the tenant it is contended that the fair rent cannot be fixed in this manner by agreement between the parties, but must be determined by both the Rent Controller and the Appellate Authority on a consideration of the evidence on the record. On this

point reliance is placed on a decision of Bishan Narain J., in *Ladha Ram and ohetrs* v. *Khushi Ram* (1). This was a case in which in previous proceedings the fair rent had been fixed on the basis of an admission by the tenant who reopened the matter in subsequent proceedings and it was held that an admission by a tenant in proceedings for fixation of fair rent cannot prevent the Rent Controller from fixing fair rent on a subsequent application by the tenant and the Controller alone has jurisdiction or power to ascertain or fix the fair rent in the manner laid down in the Act and the landlord and tenant cannot by agreement fix the fair rent for the purposes of the Rent Restriction Act. There is good reason for accepting this view as correct since the order of the Rent Controller or the Appellate Authority fixing the fair rent is not merely a judgment *inter partes* but is a judgment *in rem*, and it will apply to the premises even if they are occupied by a succession of tenants following the tenant in whose time the fair rent is fixed.

It was contended on behalf of the landlord in this case that the words of the order of the Rent Controller were such as to show that the fair rent agreed upon was on the basis of the material on record, but I do not accept this contention since it was clearly the duty of the Rent Controller to weigh the material independently and not merely to accept the statements of the parties. In the circumstances I consider that the matter will have to be remanded to the Appellant Authority to deal with the matter according to law and I accordingly accept the revision petition and send the case back to the Appellate Authority for this purpose, the parties being directed to appear in the Court of the Appellate Authority on the 13th of November, 1961.

B.R.T.

(1) (1955) 57 P.L.R. 188.