

Rattan Chand
v.
Hans Raj and
others

Harbans Singh,
J.

Hans Raj was definitely dissented from though the learned lower appellate Court had further stated that it could not be held that the property was exclusively held by Hans Raj either. The latter part of the finding, however, in no way showed that the learned lower appellate Court did not set aside the finding of the learned trial Court. No doubt, the learned Single Judge gave reasons for preferring the finding of the trial Judge to that arrived at by the learned lower appellate Court but this he could not do because he did not come to the conclusion that this finding was vitiated in any manner.

In view of my finding with regard to the question of limitation, this appeal must be accepted and the objection petition dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs throughout.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.
K.S.K.

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

SHIV DATT AND OTHERS;—Petitioners

versus

Mst. SARDAR BEGUM AND OTHERS,—Respondents

Civil Revision No. 151-D of 1959:

1962

Dec., 3rd.

Administration of Evacuee Property Act (XXXI of 1950)—Proviso to section 16(3)—Whether overrides the provisions of Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Application for fixation of standard rent—Whether entertainable under the Rent Control Act.

Held, that the proviso to section 16(3) of the Administration of Evacuee Property Act does not in any way override the provisions of the Rent Control Act. All it does is to make the lessee of the Custodian as a lessee of the evacuee or his heir to whom the property is restored, with the rider that the lease will continue till determined by lapse of time or by operation of law. Therefore, the lease would stand on the same footing as a lease granted by the

evacuee or his heir himself. Since the provisions of the Rent Control Act apply to all pending leases, and an application for fixation of standard rent for the evacuee property restored to its owner is entertainable by the Civil Courts or other authorities under the Rent Control Act.

Petition under section 35 of the Delhi and Ajmer Rent Control Act, 1952, for the revision of the order of Shri J. S. Bedi, District Judge, Delhi, dated the 16th February, 1959, confirming that of Shri T. R. Handa, Sub-Judge, 1st Class, Delhi, dated the 15th January, 1958, dismissing the Appeal with costs.

R. K. MAKHLJA, ADVOCATE, for the Petitioner.

SHIVE CHARAN SINGH, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This petition for revision is directed against the order of the District Judge, Delhi, affirming on appeal the order of the Subordinate Judge, 1st Class, Delhi, dated the 15th January, 1958. The property in dispute was declared evacuee property. On the application of the Muslim owner the property was restored to her on the 16th January, 1957, under section 16 of the Administration of Evacuee Property Act, 1950. The Muslim owner, after restoration, applied for fixation of standard rent under section 8 of the Delhi and Ajmer Rent Control Act, 1952. A preliminary objection was raised on the basis of section 16 of the Administration of Evacuee Property Act, 1950, that the Court had no jurisdiction to fix the standard rent. This objection has been negated by both the Courts below. Hence the present revision.

Mahajan, J.

The learned counsel for the petitioners relies on section 16, sub-section (3), of the Administration of Evacuee Property Act, which is in these terms:—

“Upon the restoration of the property to the evacuee or to the heir, as the case may

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Mahajan, J.

be, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:

Provided that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by "lapse of time or by operation of law.

Explanation.—For the purpose of the Proviso to this sub-section, an allotment shall have effect against the person to whom the restoration is made to the same extent and in the same manner as if it were a lease."

Reliance is particularly placed on the proviso which is to the effect that on restoration of property the lease will continue until determined. The contention is that the proviso debars the landlord from enhancing the rent without determination. I am unable to agree with this contention. The proviso does not in any way override the provisions of the Rent Control Act. All it does is to make the lessee of the Custodian as a lessee of the Evacuee or his heir to whom the property is restored, with the rider that the lease will continue till determined by lapse of time or by operation of law. Therefore, the lease would stand on the same footing as a lease granted by the evacuee or his heir himself. It is admitted and rightly so that if in fact the lease was by the evacuee, it

would be subject to the provisions of the Rent Control Act. Same would then be the case under the deeming provision and I can see no ground for differentiation. Wherever the Legislature intended to keep the terms of the lease intact they clearly provided so. See in this connection section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Moreover, the provisions of the Rent Control Act apply to all pending leases and, therefore, it cannot be said that those provisions have no effect in view of section 16(3), particularly in view of section 4(2) of the Administration of Evacuee Property Act, 1950.

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For the reasons rendered above, there seems to be no force in this petition, the same fails, and is dismissed with costs.

B.R.T.

REVISIONAL CRIMINAL

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

HAZARA SINGH AND ANOTHER,—Petitioners

versus

THE STATE,—Respondent.

Criminal Revision No. 436 of 1962

Railways Act (IX of 1890)—S. 120—Whether applies to railway servant while on duty.

1962

Dec., 6th.

Held, that section 120 of the Railways Act is not applicable to the acts of a railway servant while he is on duty and is acting as such.

Case referred by the Hon'ble Mr. Justice Bedi to a larger Bench on 6th November, 1962, for decision of an important question of law involved in the case. The case