

REVISIONAL CIVIL

Before Khosla and Kapur, JJ.

SHRI HEM CHAND,—Defendant-Petitioner

1954

March 11th

versus

SHRIMATI SHAM DEVI,—Plaintiff-Respondent

Civil Revision No. 184-D of 1953

The Delhi and Ajmer Merwara Rent Control Act (XXXVIII of 1952)—Section 9—Notice of ejectment under section 106, Transfer of Property Act before the making of an application for ejectment,—Whether necessary.

Held, that the Rent Control Act lays down not only the rights *inter se* of the landlord and tenant, but also provides the procedure for obtaining the relief of ejectment, and that being so, the provisions of section 106 of the Transfer of Property Act requiring the serving of a notice upon the tenant have no relevance when considering an application for ejectment made under the Rent Control Act. Therefore, no notice was necessary.

Bawa Singh and another v. Kundan Lal (1) Rai Brij Raj Krishna and another v. S. R. Shaw and Brothers (2), relied on; Gurunada Haldar Jiban Krishna Das v Arjoondas Goenka (3) not followed.

(This case was referred by the Hon'ble the Chief Justice to the Division Bench.—*vide* His Lordship's order dated 13th November 1953.)

Petition under Act XIX of 1947, for revision of the decree of the Court of Sardar Mehar Singh Chaddah, Senior Sub-Judge, with Special Appellate powers, Delhi, dated the 12th day of May 1953, affirming that of Shree Bahal Singh, Subordinate Judge, 1st Class, Delhi, dated the 24th March 1952 granting the plaintiff a decree for Rs 196-13-9 and for ejectment against the defendant.

BISHAN NARAIN, for Petitioner.

BHAGWAT DAYAL, for Respondent.

(1) 54 P.L.R. 358.
 (2) 1951 S.C.R. 145.
 (3) A.I.R. 1949 Cal. 61.

Referring Order

This petition raises a question of general importance, namely, whether it is necessary for a landlord to give a notice to the tenant to quit before the Court can pass a decree under the provisions of the Delhi and Ajmer Merwara Rent Control Act. As the matter is of some importance it would be desirable to have an authoritative pronouncement from a larger Bench. I direct that this case be placed before a D. B. for consideration. Bhandari, C. J.

JUDGMENT.

KHOSLA, J. This petition arising out of a matter under the Delhi and Ajmer-Merwara Rent Control Act has been referred to us by my Lord the Chief Justice as he considered that the matter was of some importance and it was desirable to have an authoritative pronouncement from a larger Bench. Khosla, J.

The matter arose out of a petition by the landlord of premises situated in Delhi for the ejection of a tenant. There was also a prayer for the recovery of arrears of rent but this matter is no longer before us. He sought ejection on the ground that the tenant had constructed his own house and had moved into it and he was therefore entitled to claim ejection under the provisions of section 9(1)(f) of the Act. The defence of the tenant was that he was using the premises in the original instance for residential purposes and also for his business. He had built a residence for himself and had moved into it, but his business was still being carried on in the premises in dispute and he was therefore not liable for ejection. Another line of defence taken by him was that no notice of ejection had been served upon him by the landlord and in the absence of such notice he could not be ejected under law.

It is the second point which is of greater importance and this point has been argued at some length by Mr. Bishan Narain. He has drawn our attention to the provisions of section 9 of the Act and has pointed out that the Act is intended to control the right of the landlord to eject his tenant. He can

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only claim ejectment on certain restricted grounds which are set out in section 9. The Act does not control, affect or alter the procedure for ejectment in any way, and since under the Transfer of Property Act a landlord is bound to serve his tenant with a notice under section 106 before he can claim ejectment that notice is necessary even when the landlord seeks relief under section 9 of the Act. Mr. Bishan Narain has sought to distinguish some cases which have dealt with similar matters arising out of other suits, and he has contended that a Division Bench decision of this Court in *Bawa Singh and another v. Kundan Lal* (1), is, if not erroneous, at any rate distinguishable. There are certain observations in the judgment of my brother Kapur, J., in that judgment which, however, apply with equal force to the case before us. It was observed that the Act which in that instance was the East Punjab Act was a complete Code in itself "and its provisions supersede the provisions of the Transfer of Property Act. Hence liability to ejectment is governed by the provisions of this Act and not by the provisions of the Transfer of Property Act. Therefore, no notice terminating the tenancy under section 106, Transfer of Property Act, is necessary."

In that case, therefore, the view taken by this Court was that the East Punjab Rent Restriction Act was a complete code in itself and governed the rights of the landlords and tenants and also laid down the procedure which must be adopted for obtaining the relief of ejectment. The provisions of the Transfer of Property Act could not, therefore, apply to an application for ejectment. The same view was taken by the Supreme Court in a case from Bihar, *Rai Brij Raj Krishna and another v. S. R. Shaw and Brothers* (2). Mr. Bishan Narain contends that the wordings of the Punjab Act and of the Bihar Act are somewhat different. In the Bihar Act the relevant section provided that "Notwithstanding anything contained in any agreement or

(1) 54 P.L.R. 358

(2) 1951 S.C.R. 145

law to the contrary* * * * * ” and the Punjab Act provides under section 13(1) that “A tenant in possession of a building shall not be evicted therefrom except in accordance with the provisions of this section.” On a first reading of section 9 of the Delhi and Ajmer-Merwara Rent Control Act it appears that the provisions of this Act are negative and not enabling, but a careful reading of the judgment of the Supreme Court shows that this kind of Act is really a complete code in itself. Fazal Ali J. observed in the Bihar case—

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“Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one of the conditions laid down for the eviction of a month to month tenant is non-payment of rent.”

And again—

“The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly makes his order final and subject only to the decision of the Commissioner. The Act empowers the Controller alone to decide whether or not there is non-payment of rent, and his decision on that question is essential before an order can be passed by him under section 11. Such being the provisions of the Act, we have to see whether it is at all possible to question the decision of the Controller on a matter which the Act clearly empowers him to decide.”

These remarks apply with equal force *mutatis mutandis* to the present case, if for section 11 we

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read section 9 and if for non-payment of rent, we read the ground in section 9(1)(f).

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It seems to me therefore that the Rent Control Act lays down not only the rights *inter se* of the landlord and tenant but also provides the procedure for obtaining the relief of ejection, and that being so, the provisions of section 106 of the Transfer of Property Act requiring the serving of a notice upon the tenant have no relevance when considering an application for ejection made under the Rent Control Act. I am therefore of the opinion that no notice was necessary in this case.

With regard to the ground upon which ejection was sought not much can be said in favour of the tenant. The premises were leased to him apparently for the purpose of residence although, it is now contended by him that he also intended to carry on his business there. He has admittedly built other premises for residential purposes and has moved into them. Therefore the premises in dispute are no longer required by him for his residence. His case is therefore covered by clause (f) and the contention that he intends to use the premises for business purposes has not been entertained favourably by the Courts below.

I am therefore of the opinion that the landlord was entitled to the relief of ejection claimed by him and this petition therefore must fail and is dismissed with costs.

Kapur, J.

KAPUR, J. I agree and I would like to add that Mr. Bishan Narain referred to a judgment of the Calcutta High Court in *Gurupada Haldar Jiban Krishna Das v. Arjoondas Goenka* (1), where it was held that the provisions of section 108 of the Transfer of Property Act are applicable in spite of the fact that the Act of West Bengal provides that the Calcutta Rent Ordinance would be applicable notwithstanding anything contained in the Transfer of Property Act of 1882. With due deference to the

(1) A.I.R. 1949 Cal. 61.

opinion of the learned Judge I am unable to agree that if the provisions of the Ccutta Ordinance were applicable in spite of the Transfer of Property Act the provisions with regard to notice would also be applicable.

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It is not necessary for me to add anything more because I have already given my opinion in the judgment which my learned brother has referred to above.

Kapur, J.