Harchand Singh
v.
The Punjab State and another

Sharma, J.

ed in the Act and so we have to accept its dictionary meaning as, "To make property one's own. To gain permanently. It is regularly applied to a permanent acquisition." (Bouvier's Law Dictionary and Concise Encyclopaedia, Eighth Edition, Volume I, page 114). We are, therefore, not in agreement with the learned counsel for the respondents when he says that on the abandonment of the tenancy by a tenant a landlord can be said to have acquired the land forming the tenancy. The learned counsel for the respondents further maintained that section 10-A of the Act bars the change of such tenancies also of the land even if it is not a part of surplus area after the coming into force of the Act. His argument cannot be accepted in view of the plain language of section 10-A which makes no mention of the land owned or held by a landlord or tenant which is not part of surplus area. The learned Collector in his impugned order has gone beyond the provision of law and the error committed by him therein is patent on the record and as such it has to be quashed.

In the result we allow the petition and direct that an appropriate writ or order should be issued restraining the respondents from giving effect to the impugned order. The petitioner shall get costs of these proceedings from the respondents.

R. P. Khosla, J.

R.P. KHOSLA, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

CHIRANJI LAL AND OTHERS,—*Petitioners*

versus

HIRA LAL,—*Respondent*

Civil Revision No. 90 of 1963.

1963

Nov., 22nd.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(i) and 13—Tenant—Whether includes a sub-tenant put in possession with consent of landlord—Tender of arrears of rent by such sub-tenant—Whether valid.

Held, that the word "tenant" as defined in section 2(i) of the East Punjab Urban Rent Restriction Act, 1949, includes a sub-tenant placed in occupation by a tenant with the written consent of the landlord and such a sub-tenant is in the position of tenant for the purposes of the Act. A tender of arrears of rent by such a person to the landlord is a valid tender for the purpose of averting a decree for ejectment on the ground of non-payment of arrears of rent on the landlord's petition and the tenant who originally placed him in possession of the premises cannot claim to eject him when such a tender has been made.

Petition under section 15(5) of the Punjab Urban Rent Restriction Act, for revision of the order of Shri H. D. Loomba, District and Sessions Judge, Ferozepore, as Appellate Authority, dated 4th January, 1963, reversing that of Shri B. R. Guliani, Rent Controller, Muktsar, dated 17th August, 1962.

C. L. AGGARWAL AND S. S. MAHAJAN, ADVOCATES, for the Petitioners.

D. N. AGGARWAL, ADVOCATE, for the Respondent.

JUDGMENT

FALSHAW, C.J.—This revision petition by tenants and second appeal by the landlord (R.S.A. No. 977 of 1963) have arisen in the following circumstances. Falshaw, C.J.

The premises in suit consist of a shop in the town of Muktsar which were leased in 1956 by Dr. Mehanga Ram to Hira Lal at an annual rent of Rs. 900. There seems to be no doubt that Hira Lal did not occupy the shop very long and the rent for the year from the 1st of April, 1956 to the 31st of March, 1957 was accepted by the landlord on the 11th of June, 1956, the landlord's receipt for the payment showing that it was paid to him by Hira Lal who had taken it from Charanji Lal and Panna Lal who are two of the proprietors of the firm Charanji Lal Panna Lal. On the

Chiranji Lal and others
v.
Hira Lal

Falshaw, C.J.

27th of May, 1959 the landlord instituted proceedings against Hira Lal and the partners of the firm Charanji Lal Panna Lal for ejectment on the ground of subletting and non-payment of arrears of rent. On the first date of hearing a sum sufficient to cover the arrears of rent with interest and costs was deposited by Charanji Lal etc. on behalf of the tenant. On the 19th of March, 1960 the landlord's application was dismissed as it was found that the sub-tenant had complied with the requirements of law regarding the deposit of rent, and that the subletting had been with the written consent of the landlord. On the 9th of January, 1961 the Appellate Authority reversed the order of the Rent Controller and decreed ejectment. Charanji Lal etc. challenged this order in a revision petition which was decided by G.D. Khosla, C.J., on the 11th of July, 1961. He held that a sub-tenant who is occupying the premises with the previous permission in writing of the landlord can make a valid tender of the rent due to the landlord in Court, and he held that the written consent of the landlord to the subletting was proved. He accordingly restored the order of the Rent Controller dismissing the landlord's petition.

This was shortly followed by the institution on the 18th of November, 1961 by Shrimati Bhagwanti, the widow of Dr. Mehanga Ram, who had taken his place, of a fresh petition under section 13 of the Act against Hira Lal alone. This seems to have been wholly collusive and within three weeks, on the 8th of December, 1961, an order for ejectment was passed with the consent of Hira Lal. Two further developments took place on the same day, the 6th of February, 1962. The first of these was the institution of a petition under section 13 of the Act by Hira Lal, the tenant, against Charanji Lal, etc. as sub-tenants for their ejectment on the ground of non-payment of rent which

up to the 31st of January, 1962 amounted to Rs. 4,350. The other event was the institution by Charanji Lal etc. of a regular civil suit against Shrimati Bhagwanti and Hira Lal for a declaration that they were not liable to be ejected from the shop in suit under the consent order of the Rent Controller dated the 8th of December, 1961, which was alleged to be fraudulent and collusive and obtained without impleading Charanji Lal etc. as parties, and also an injunction was sought restraining the landlord from ejecting the plaintiffs in pursuance of that order. In that case the plaintiffs' suit was decreed by the trial Court on the 17th of August, 1962 and the landlord's appeal was dismissed on the 21st of February, 1963.

The learned Subordinate Judge who decreed the plaintiffs' suit also happened to be the Rent Controller at Muktsar, and in that capacity he dismissed the applition of Hira Lal. He found that arrears of rent due up to the 31st of January, 1962, were Rs. 4,350 and that Rs. 4,500 had been deposited in Court by Charanji Lal, etc., and he largely relied on the judgment of the learned Chief Justice in holding that there were no arrears of rent on account of which ejectment could be ordered. He gave that decision on the 17th of August, 1962, the same day on which he decreed the suit of Charanji Lal, etc. However, on the appeal of the landlord the learned Appellate Authority on the 4th of January, 1963, reversed the order of the learned Rent Controller and granted Hira Lal an order for ejectment. Hence Charanji Lal, etc. have filed the revision petition against the order of the Appellate Authority and the landlord has filed a second appeal against the decree of the Civil Court.

The facts in these cases disclose an unusual, if not unique, state of affairs. It is in fact quite clear that

Chiranji Lal and others
v.
Hira Lal

Falshaw, C.J.

although the only interest of Hira Lal in the affair is that the original lease was in his name, and that almost from the inception of the tenancy Charanji Lal etc. have been recognised by the landlord as sub-tenants from whom he accepted the first year's rent through Hira Lal, the latter has been pushed by the landlord into the foreground both in consenting to a decree for ejectment in December, 1961 in the landlord's second petition, and as the petitioner in the petition under section 13 of the Act in the third attempt to get rid of Charanji Lal etc. under the Act. There can be no doubt whatever that in the second and third petitions Hira Lal was a mere tool or agent of the landlord, and in the circumstances, whatever the general principles of law may be regarding the relationship between a landlord and a sub-tenant, it would be an iniquitous result if Charanji Lal etc. were ordered to be ejected either on the ground of subletting by the original tenant or on the ground of non-payment of rent.

In the civil suit there is no difficulty in holding that Charanji Lal etc. could not be ejected from the shop in suit under the order of the Rent Controller fraudulently and collusively obtained by the landlord against Hira Lal alone shortly after the landlord's petition against both Hira Lal and Charanji Lal etc. had been dismissed on the finding that the subletting took place with the written consent of the landlord and there was a valid tender of the arrears of rent by Charanji Lal etc.

In the case under the Rent Act, the learned Appellate Authority, while accepting, as he was bound to do, the view of my learned predecessor in the previous case between the parties that in the case of a sub-tenancy with the written consent of the landlord the latter cannot claim ejectment on the ground of non-payment of rent in case the rent is tendered by the

sub-tenant, was of the opinion that in no case even where a sublease was with the consent of the landlord could the sub-tenant become the tenant of the landlord. For this he relied on the remarks of Bhandari C.J. in *Dr. Prem Nath* v. *Pt. Manmohan Nath Dar and others* (1), as follows:—

> "There was no privity of contract between the landlord and Dr. Prem Nath and it cannot be stated therefore that the relationship of landlord and tenant came to be established between these two parties. By giving his consent to the creation of a sub-tenancy in favour of Dr. Prem Nath the landlord did not enter into any contractual relationship with Dr. Prem Nath. His action in giving his consent amounted merely to a declaration that he would not eject his tenant Kidar Nath on the ground that he had sublet the premises to Dr. Prem Nath. In other words, he merely waived his right to eject Dr. Kidar Nath for subletting the premises to Dr. Prem Nath, a right which he could, in the absence of this waiver, have exercised under clause (c) of section 9(1) of the Delhi and Ajmer-Merwara Rent Control Act."

It is, however, to be noted that that decision was under the Delhi & Ajmer-Merwara Rent Control Act of 1947 in which the word 'tenant' is defined in section 2(d) as, "tenant" means a person who takes on rent any premises for his own occupation or for the occupation of any person dependent on him, but does not include a collector of rents or any middleman who takes or has taken any premises on lease with a view to subletting them to another person". On the other hand the

(1) 1954 P.L.R. 427.

Chiranji Lal and others v. Hira Lal

Falshaw, C.J.

definition of 'tenant' in section 2(i) of the East Punjab Urban Rent Restriction Act reads—

> "'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord....."

This clearly means that a sub-tenant placed in occupation by a tenant with the written consent of the landlord is in the position of tenant for the purposes of the Act, and if a tender of arrears of rent by such a person to the landlord is a valid tender for the purpose of averting a decree for ejectment on the ground of non-payment of arrears of rent on the landlord's petition, I fail to see how the tenant who originally placed him in the possession of the premises can claim to eject him when such a tender has been made. The result is that I accept the revision petition of the tenants and dismiss the application of Hira Lal for ejectment and I dismiss the landlord's appeal, both with costs. Counsel's fee Rs. 50 in each case.

B.R.T.

CIVIL MISCELLANEOUS

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

KHUSHI RAM,—*Petitioner*

versus

SMT. BHAGO AND ANOTHER,—*Respondents*

S. C. A. No. 2 of 1962

1963

Nov., 26th

Code of Civil Procedure (Act V of 1908)—Order XLV rule 4—Two appeals involving common points of law