

the Laboratory as envisaged under section 13(2) and thus the accused cannot take advantage of the non-compliance of rule 9(j). Under section 13(2) as well as rule 9(j), the Food Inspector or the Local Health Authority has been expressly enjoined the duty to supply a copy of the report of the Public Analyst to the accused within a specified time. The prosecution cannot get out of the rigour of these provisions only on the plea that the accused was likely to have knowledge of the adverse report of the Public Analyst. The accused having been acquitted by the trial Court, it will not be in the interest of justice to take a different view in the circumstances of this case as referred to above.

(18) Consequently, this appeal fails and is dismissed.

S. S. Sidhu, J.—I agree.

N.K.S.

Before Rajendra Nath Mittal and J. V. Gupta, JJ.

SURJIT SINGH,—*Petitioner.*

versus

RATTAN LAL and others,—*Respondents.*

Civil Revision No. 337 of 1978.

May 15, 1979.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(ii)(a)—Premises validly sub-let by the tenant before coming into force of the Act—Such sub-letting—Whether a ground for ejection under section 13(2)(ii)(a).

Held, that it is well established that a new law affects future transactions and not past ones. No statute is given a retrospective operation so as to impair existing rights and obligations unless it is specifically provided in it. This is, however, not true in the case of statutes dealing with procedures which are retrospective in nature. From a plain reading of section 13 of the East Punjab Urban Rent Restriction Act 1949 it is evident, that a landlord could apply for ejection of the tenant if he (tenant) after the commencement of the Act without his written consent sublet the building. The words

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“after the commencement of this Act” are significant. These show that the Legislature conferred right on the landlord to eject a tenant on the ground of sub-letting without his written consent in case the building was sublet after the commencement of the Rent Act. If it wished otherwise it could have specifically provided so. Thus, a tenant who validly sublet the building before the coming into force of the Rent Act is not liable to ejection after its enforcement on the ground mentioned in section 13(2)(ii)(a).

(Paras 7 and 15).

Nand Kishore v. Shri Krishan Lal and another 1979(1) R.C.R. 411
OVERRULED.

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of Shri H. L. Randev Additional Appellate Authority Chandigarh, dated the 22nd September, 1977 affirming that of Shri A. S. Sodhi, Rent Controller, Chandigarh, dated the 17th March, 1977 dismissing the petition and directing the parties to bear their own costs.

K. G. Choudhry, Advocate, for the Petitioner.

Kirpal Singh, Advocate, for the Respondent.

JUDGEMENT

(1) This judgment will dispose of Civil Revision Nos. 337 of 1978 and 1366 of 1977. The short question that arises for determination in these cases is whether a tenant, who validly sublet the building before coming into force of the East Punjab Urban Rent Restriction Act (hereinafter to be referred to as the Rent Act) within the area of Chandigarh is liable to ejection after its enforcement on the ground mentioned in Section 13(2)(ii)(a).

(2) The facts which gave rise to Civil Revision No. 337 of 1978 are as follows:—

(3) Surjit Singh is the owner of House No. 3255 situated in Sector 23-D, Chandigarh. He let it out to Rattan Lal Aggarwal, respondent No. 1, at the rate of Rs. 175/- per month. Subsequently, by the consent of the parties, the rent was increased to Rs. 470 per month with effect from March 19, 1975. The respondent before enforcement of the Rent Act sublet a part of the building to respondents Nos. 2, 3 and 4. The petitioner filed a petition under section 13 of the Rent Act for ejection of the respondents *inter alia* on the

ground that respondent No. 1 sublet a portion of the building to respondents Nos. 2, 3 and 4 without his consent. Respondents Nos. 2 and 3 contested the eviction petition and pleaded that they were in possession before the enforcement of the Rent Act and consequently were not liable to ejection. However, respondent No. 4 did not contest the petition. The learned Rent Controller gave a finding to the effect that respondent No. 1 had sublet a part of the building to respondents Nos. 2 to 4. He, however, held that the respondents could not be ordered to be ejected on the ground of subletting as respondent No. 1 sublet the premises before enforcement of the Rent Act in the town of Chandigarh. Consequently, he dismissed the petition. The petitioner went up in appeal before the Appellate Authority, Chandigarh, who confirmed the judgment of the Rent Controller and dismissed the same. He has come up in revision to this Court.

(4) It is contended by the learned counsel for the petitioner that if a tenant, whether having a right to sublet or not, sublet a building prior to coming into force of the Rent Act, the landlord has a right to eject the tenant after its enforcement on the ground mentioned in Section 13(2)(ii)(a). In support of his contention he placed reliance mainly on *Gappulal v. Thakurji Shriji Dwarkadheeshji and another*, (1) *Bahadur Mal Bholu Nath etc. v. Bhanu Mal & another (1-A)*, *Shri Des Raj v. Shri P. N. Kaul Bahadur Mal Bholu Nath etc. v. Bhanu Mal & another (2)*, *Shri Nand Bahadur v. Krishan Lal and others (3)* and *Kishori Lal v. Basant Singh (4)*.

(5) In order to decide the question it would be proper to determine in the first instance whether respondent No. 1 could sublet the building to other respondents when it was sublet to them. It is not disputed that the building was sublet by respondent No. 1 before coming into force of the Rent Act. No lease deed executed between the petitioner and respondent No. 1 has been produced. In order to determine whether respondent No. 1 had a right to sublet the building or not, we shall have to take into consideration the general law. It is a settled proposition of law that the general principles of the Transfer of Property Act relating to leases are applicable in the State of Punjab. Clause (j) of Section 108 authorises the lessee to sublease whole or part of his interest in the property. This is subject to the condition that there is no contract to the contrary between the

(1) AIR 1969 S.C. 1291.

(1-A) C.R. 980/65, decided on 20th April, 1967.

(2) 1978 (1) R.C.R. 330.

(3) 1979 (1) R.C.R. 411.

(4) 1979 P.L.R. 148.

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landlord and the tenant. In case there is an express prohibition to the effect that the tenant cannot sublease the property, in that eventuality he has no right to do so. In the aforesaid view we get force from the observations of the Full Bench in *Bishamber Dutt Roshan Lal and others v. Gian Chand Charan Das* (5), wherein it was held that there is no prohibition against subletting and it is only if it is expressly provided in terms of the lease that subletting involves forfeiture of the lease and entitles a landlord to seek ejectment of his tenant. In the present case there is no contract between the petitioner and respondent No. 1 by which he (respondent No. 1) was debarred from subletting the property. Consequently, the subletting by respondents No. 1 in favour of respondents Nos. 2 to 4 was a valid one.

(6) Now, we advert to the main question. In order to determine it, it will be appropriate to notice the relevant provisions of Section 13 of the Rent Act. Sub-section (1) says that a tenant in possession of a building shall not be evicted therefrom in execution of a decree passed before or after the commencement of the Rent Act or otherwise and whether before or after the termination of the tenancy except in accordance with the provisions of this section. Sub-section (2) prescribes the procedure for making a petition for ejectment and also contains the grounds on which the tenant can be ejected. Clause (ii) of sub-section (2) is relevant and is reproduced below:—

S. 13(2)(ii) "A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied:—

- (i)
- (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; or
- (b) used the building or rented land for a purpose other than that for which it was leased.
-"

(5) AIR 1970 Pb. & Haryana 60.

(7) It is well established that a new law affects future transactions and not past ones. No statute is given a retrospective operation so as to impair existing rights and obligations, unless it is specifically provided in it. This is, however, not true in the case of statutes dealing with procedures, which are retrospective in nature. From a plain reading of the section it is evident, the landlord could apply for ejection of the tenant if he (tenant) after the commencement of the Rent Act without his written consent sublet the building. The words "after the commencement of this Act" (underlined by us to lay emphasis) are significant. These show that the legislature conferred a right on the landlord to eject a tenant on the ground of subletting without his written consent in case the building was sublet after the commencement of the Rent Act. If it wished otherwise it could have specifically provided so.

(8) A similar matter came up before Madras High Court in *Mohammed Haji Gani v. A. Mohsin Raja* (6). The language of section 7(2)(ii)(a) of the Madras Building (Leases and Rent Control) Act 1946, is *pari materia* with that of section 13(2)(ii)(a). The learned Judge while interpreting that section held that a tenant cannot be evicted merely because he has let a sub-tenant into possession before the commencement of the Act. We, respectfully agree with the observations.

(9) *Gappulal's case* (supra) was from Rajasthan. The Jaipur Rent Control Order, 1947, came into force in 1947 and was subsequently replaced by the Rajasthan Premises (Control of Rent and Eviction) Act 1950. The Supreme Court held on facts that the subletting of two shops took place before the Rent Control Order came into force. The question for decision was as to whether the tenant was liable to ejection under section 13(1)(e) of the Rajasthan Premises Act. Clause (e) reads as follows:—

"The tenant has assigned, sublet or otherwise parted with the possession of the whole or any part of the premises without the permission of the landlord."

The petitioner's contention was that subletting before the coming into force of the Act was not within the purview of clause (e). The Supreme Court held as follows:—

"The question whether a sub-letting before the coming into force of the Act is within the purview of clause (e) of

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Section 13(1) depends upon the construction of that clause. The relevant words are "has sub-let". The present perfect tense contemplates a completed event connected in some way with the present time. The words take within their sweep any sub-letting which was made in the past and has continued up to the present time. It does not matter that the sub-letting was either before or after the Act came into force. All such sub-lettings are within the purview of clause (e)."

It is contended by the learned counsel for the petitioner that the above observations are applicable to the present case. He further submits that the Supreme Court also held that if the tenant had sub-let the premises without the permission of the landlord either before or after the coming into force of the Rent Act, he was not protected from eviction under section 13(1)(e) and it mattered not that he had a right to sublet the premises under section 108 (j) of the Transfer of Property Act. According to the learned counsel it was evident from the observations of the Supreme Court that even if the sub-letting was authorised prior to coming into force of the Rajasthan Act the tenant could still be ejected under section 13(1)(e). We are unable to accept the contention. Their Lordships of the Supreme Court were interpreting section 13(1)(e) of the Rajasthan Premises Act, the language of which was different than that of the Rent Act. In our view the counsel for the petitioner cannot derive any benefit from the said observations.

(10) In *Des Raj's case* (supra), Surinder Singh, J. interpreted clause (ii)(b) of sub-section (2) of Section 13, which has been reproduced above. In that case a contention was raised by the counsel for the tenant that the words used in the aforesaid provision were "after the commencement of this Act" and use of these words contemplates a fresh changed user after the enforcement of the Act. The contention was repelled by the learned Judge, observing that the crucial words in the provision are "used the building" and these words clearly included a user even though the same may have commenced before the enforcement of the Act. In our view the ratio in the said case is not helpful to the petitioner as the language of clause (b) is different than that of clause (a). In clause (b) the word "use" is significant. It means 'to make use of'. The act in the case of user is a continuous one and does not come to an end on a particular date. The stress in the clause is on the user of the building and not the date of the commencement of the user. In clause (a) the word used

is 'transferred'. The act of transfer is not a continuous one but is completed as soon as the transfer is made. Thus, the act of transfer if had been done prior to the enforcement of the Act then the clause will not be applicable as it requires that the act should have been done after the commencement of the Act. There is thus material difference between clause (b) and clause (a). In our opinion the observations in the case are not helpful to interpret clause (a). It will be relevant to point out at this stage that in Civil Revision No. 980 of 1965, the learned Judge also interpreted clause (ii)(b) of sub-section (2) of Section 13. For similar reason the ratio in that case cannot be made applicable to the present case. The learned counsel for the petitioner had also made a reference to *Kesavan v. State and another* (7), wherein the learned Judge interpreted sub-clause (ii)(b) of clause (2) of section 9 of the Travancore-Cochin Building (Lease and Rent Control) Order 1950. The clause which was interpreted by the learned Judge was *pari materia* with clause (ii)(b) of sub-section (2) of section 13. Therefore, the ratio in that case also is not applicable to the facts of the present case.

(11) In *Shri Nand Kishore's case* (supra) the controversy was the same as in the present case. The learned Judge accepted the contention of the landlord and held that if a tenant was prohibited from doing certain acts after the commencement of the Act, it did not mean that when the Act was not enforced and he had done the acts, he would continue to do them even after the commencement of the Act. In making the observations, the learned Judge relied on *Des Raj's case* (supra). It was not brought to the notice of the learned Judge that the language employed in clause (ii)(b) was different than that of clause (ii)(a). It appears that the learned Judge was more persuaded by the observations in *Des Raj's case* (supra) which were clearly distinguishable. It is not clear from the judgment whether the sub-lease was authorised or not. Consequently, we are assuming that the observations were made by the learned Judge considering that the sub-lease, when made, was valid. With great respect to the learned Judge, we are unable to accept the observations.

(12) *Kishori Lal's case* (supra) was also under clause (ii)(a) of sub-section (2) of Section 13. The learned Judge, while deciding the case, observed: "It is settled law that there are two principal covenants of contract of tenancy, they are (1) that the tenant shall not deny the title of the landlord, and (2) that he shall not sublet the

(7) AIR 1952 Travancore Cochin 290.

premises without the express consent of the landlord. In the face of these two implied covenants even if the sub-letting had been made prior to the date when the Act was brought in force in the Union Territory of Chandigarh, the act of the petitioner was against the provisions of law. Sub-letting necessarily implies the continued occupation of the premises by the sub-tenant. In other words sub-letting is a continuous wrong committed by the tenant against his landlord." The learned Judge, consequently, affirmed the judgment of the appellate Court ordering ejection of the tenant on the ground of sub-letting effected prior to coming into force of the Rent Act. It is evident that the learned Judge proceeded on the assumption that the sub-letting was unauthorised. In the present case, we are of the opinion that the sub-letting was authorised. We do not intend to deal with the situation, where the sub-letting before the Rent Act was unauthorised. With great respect to the learned Judge, it may, however, be stated that it is not possible for us to persuade ourselves to agree with the observations that the general law of the land is that the tenant cannot sublet the premises without the express consent of the landlord. Therefore, the ratio in the said case does not apply to the case in hand.

(13) In the end, it may be noticed that the counsel for both the sides placed reliance on *Bishamber Dutt's case* (supra). The learned counsel for the petitioner referred to some observations whereas the counsel for respondents to some others. In that case the property was a part of the compensation pool and was therefore exempted from the operation of the Rent Act. The tenant sublet it during that period. The purchasers of the property filed a petition for ejection of the tenant under the Rent Act on the ground of sub-letting. There the main controversy was regarding the interpretation of Section 13 of the Rent Act read in conjunction with section 29 of the Displaced Persons (Compensation and Rehabilitation) Act 1954. It will be relevant to point out that sub-letting was not permissible without the permission of the authorities concerned at the time when the property was sublet. From the above facts, it is clear that the Bench was dealing with a different situation. Therefore, the observations in that case will not be of any benefit in deciding the revision petition.

(14) The learned counsel for the petitioner has then argued that the Rent Act was enforced in the State of erstwhile East Punjab in March, 1949. He has urged that even if section 13(2)(ii)(a) is interpreted strictly, still the respondents are liable to ejection as the sub-letting took place after March, 1949. In our view the argument has no substance. The Rent Act has a limited application. It was

extended to all urban areas in the East Punjab. 'Urban Area' has been defined as any area administered by a Municipal Committee, Cantonment Board, Town Committee or a Notified Area Committee or any area declared by the Central Government, by notification, to be urban for the purpose of this Act. The town of Chandigarh came into existence much after March, 1949. The Rent Act was made applicable to Chandigarh with effect from November 4, 1972, by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974. In view of the aforesaid circumstances, the words "after the commencement of this Act" in section 13(2)(ii) are to be read in context of the date of enforcement of the Rent Act in the area of Chandigarh. We, consequently, reject the contention of the learned counsel.

(15) After taking into consideration all the aforesaid reasons, we are of the opinion that a tenant, who validly sublet the building before coming into force of the Rent Act within the area of Chandigarh, is not liable to ejection after its enforcement on the ground mentioned in section 13(2)(ii)(a). The question that a tenant, who illegally sublet the building before coming into force of the Rent Act, is liable to ejection or not after the enforcement of the Rent Act, on the ground mentioned in section 13(2)(ii)(a), has been left open by us.

(16) The facts of civil revision 1366 of 1977 are analogous to the present case. In that case the landlord also moved an application on the ground that the tenant sublet the building without his consent before coming into force of the Rent Act. There was no covenant between the parties which prohibited the tenant from subletting the building. The Rent Controller dismissed the petition. In appeal, the Appellate Authority came to the conclusion that the ground of sub-letting provided by section 13(2)(ii)(a) of the Rent Act was available to the appellant. Consequently, it accepted the appeal and ordered ejection of the tenant. The tenant, namely, M/s. Snow White Dry Cleaners, has come up in revision against the order of ejection to this Court. No additional argument was advanced in this case. After taking into consideration the above-said circumstances, we are of the opinion that the order of ejection is illegal and liable to be set aside.

(17) For the reasons recorded above, we dismiss Civil Revision No. 337 of 1978 and accept Civil Revision No. 1366 of 1977 and set aside the judgment of the Appellate Authority in this case.

No costs.

N.K.S.