

(12) In view of the above, I find that the respondent has no power to reinvestigate the case, and, therefore, he is restrained from arresting Kulwant Singh, petitioner, his son Mohinder Singh, his (petitioner's) son-in-law Arjan Singh and Mehma Singh. The petition is allowed accordingly.

(13) Whether the police will have power to investigate the case after the withdrawal of the case pending against Dyal Singh, Chand Singh and Balwant Singh, is a point on which I am not called upon express any opinion on this occasion and I would say nothing either way.

K.S.K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

KIRPAL SINGH,—Petitioner.

versus

PARABHJOT SINGH,—Respondent.

Civil Revision No. 957 of 1967.

October 24, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 3 and 13—Municipal land let out by the Municipal Committee—Tenant building superstructure thereon and sub-letting it—Such superstructure—Whether becomes part of the land—Application for eviction of the sub-tenant—Whether lies.

Held, that a petition for eviction regarding Municipal land cannot be filed before the Rent Controller under the provisions of the East Punjab Urban Rent Restriction Act, 1949, because the provisions of this Act have been expressly kept in abeyance by a notification sofar as the Municipal land is concerned. When a Municipal Committee lets out some municipal land and the tenant builds superstructure thereon, the superstructure becomes part of the land. The Act will not apply to this superstructure also and no application for eviction by the tenant against his sub-tenant lies under the Act. (Para 4).

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, for revision of the order of the Court of Shri Udham Singh, Appellate Authority (District Judge), Patiala, dated 29th August, 1967 affirming that of Shri D. R. Mahajan, Rent Controller, Rajpura, dated 31st August,

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1966, directing the respondent tenant (Kirpal Singh) to put the landlord applicant (Parabhjot Singh) in possession of the shop in dispute.

D. C. AHLUWALIA, ADVOCATE, for the petitioner.

B. S. SODHI, ADVOCATE, for the respondent.

JUDGMENT

MAHAJAN, J.—This petition for revision is directed against the order of the appellate authority confirming on appeal the order of the Rent Controller ordering eviction of the tenant, Kirpal Singh.

(2) The site in dispute belongs to the Municipal Committee. It was leased out by the Municipal Committee to Parabhjot Singh. Parabhjot Singh, in turn, rented out the same to Kirpal Singh. It is in evidence that Parabhjot Singh constructed some structures on the land and it were those structures which were rented out to Kirpal Singh. This renting was under the Rent Note, dated 1st of September 1963. The rent was fixed at Rs. 35/- per mensem. Before the present eviction application was filed, a few other events that took place may be noticed. On November 25, 1963, this very plot was allotted by the Municipal Committee to Kirpal Singh who had been inducted on the same by Parabhjot Singh in September, 1963. This allotment in favour of Kirpal Singh was cancelled by the Municipal Committee on April 9, 1964 and the plot was re-allotted to Parabhjot Singh. In 1965, the present application for eviction of Kirpal Singh was lodged by Parabhjot Singh under the Rent Restriction Act on the solitary ground that the rent was in arrears. On the first hearing the rent was not paid. On the other hand, the defence set up by Kirpal Singh was that the application under section 13 of the Punjab Urban Rent Restriction Act was not maintainable because the provisions of the Act were not made applicable to Municipal lands. He further pleaded that there was no relationship of landlord and tenant between him and Parabhjot Singh because the subletting to him was without the consent of the Municipal Committee. Both these defences were rejected by the Rent Controller and an order of eviction was passed. An appeal against this decision to the appellate authority also failed. The findings of the Rent Controller were affirmed. The tenant has come up in revision to this Court. The only point that has been seriously canvassed is that the provisions of the Rent Restriction Act are not applicable because of the following Notification :—

“Notification No. 4696 CI (II CI)-59/17859, dated 3rd June, 1959—In exercise of the powers conferred by section 3 of

the East Punjab Urban Rent Restriction Act the Governor of Punjab is pleased to direct that the provisions of the aforesaid Act shall not apply to the buildings and rented lands belonging to Municipal Committees, Notified Area Committees, District Boards or Panchayats."

(3) It is also argued in the alternative that there is no relationship of landlord and tenant because there was no consent by the Municipal Committee for the subletting of the premises. I may dispose of the latter contention first because there is no substance in the same in view of the resolution of the Municipal Committee, Exhibit A-3. By this resolution, the Municipal Committee permitted Parabhjot Singh to sublet the premises. Therefore Kirpal Singh directly falls within the definition of the word 'tenant' in section 2(1) of the Rent Restriction Act. There is no denying the fact that Parabhjot Singh is covered by the definition of the word 'landlord' in section 2(c) because he is entitled to receive rent from Kirpal Singh.

(4) Adverting to the first contention, the argument is that the superstructures with the land underneath were rented out to Kirpal Singh. Therefore, there is part renting out of the land as no superstructure can stand without the land inasmuch as land becomes an integral part of the building or the superstructure. In support of this contention, reliance has been placed on *Corporation of the City of Victoria v. Bishop of Vancouver Island* (1) and *Mathura Prosad Rajghoria and others v. Corporation of Calcutta*, (2). Both these decisions fully support the contention of the learned counsel. No decision taking the contrary view has been brought to my notice. The only decision on which reliance was placed for the respondent is *Pyara Singh v. Mahant Gurmukh Das and another* (3), but that case does not help the learned counsel for the respondent for the simple reason that in that case the landlord had authorized the tenant to put superstructures on the land. In the present case, there is no such resolution of the Municipal Committee permitting the tenant to build on the rented land. The superstructures have been constructed on the land by Parabhjot Singh without the consent of the Municipal Committee and they have not yet accorded their consent to the construction of the superstructures either impliedly or expressly. Therefore, the position is that the land on

(1) (1921) 2 A.C. 385.

(2) A.I.R. 1945 Cal. 470.

(3) 1964 P.L.R. 193.

Hans Raj v. The State (Sodhi, J.)

which the superstructures stand, being Municipal land, it is exempt from the provisions of the East Punjab Urban Rent Restriction Act in view of the notification. The words of the notification are very clear and admit of no other construction. The result, therefore, would be that no petition for eviction regarding Municipal land can be filed before the Rent Controller under the provisions of the East Punjab Urban Rent Restriction Act. It appears that both the Rent Controller and the appellate authority were obsessed with the idea that the superstructure is something apart from the land but this contention would only mean that the superstructure hang in the air and do not rest on Municipal land. It appears to me, therefore, that the decision of the Rent Controller as well as the appellate authority cannot be sustained so far as the Rent Restriction Act is concerned because the provisions of this Act have been expressly kept in abeyance so far as the Municipal land is concerned. The remedy of the respondent is to seek eviction of the petitioner in a civil Court.

(5) For the reasons recorded above, this petition is allowed. The decisions of the appellate authority and the Rent Controller are set aside and the petition for eviction is dismissed on the short ground that it cannot be filed in the Court of the Rent Controller. In the circumstances of the case, there will be no order as to costs throughout.

N. K. S.

REVISIONAL CRIMINAL

Before H. R. Sodhi, J.

HANS RAJ,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 838 of 1969.

October 29, 1969.

Prevention of Food Adulteration Act (XXXVII of 1964)—Section 13(3) and (5)—Report of the Director, Central Food Laboratory, Calcutta—Whether supersedes that of the Public Analyst—Such report not indicating the analysis to be done personally by the Director—Whether defective and not conclusive.