

The Indian Law Reports

REVISIONAL CIVIL

Before D. Falshaw, C.J., and Tek Chand, J.

ROSHAN LAL GOSWAMI,—Petitioner.

versus

GOBIND RAJ AND OTHERS,—Respondents.

Civil Revision No. 157-D of 1959.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 29—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rules 19 and 90—Acquired evacuee property sold by auction but sale certificate not issued—Whether amounts to transfer of proprietary rights—Tenant of the property attorning to the auction-purchaser—Auction purchaser—Whether can maintain a suit for ejectment against the tenant—Tenant—Whether entitled to protection under section 29—Delhi Rent Control Act (LIX of 1958)—Whether applicable—Vesting of ownership rights in a land-lord—Whether 'sine qua non' of relationship of landlord and tenant—"Attornment"—Meaning and effect of—Interpretation of Statutes—Casus omissus—Whether can be cured by construction by Courts.

1963
February, 21st.

Held, that Rule 90 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, provides elaborate procedure for the sale of property by public auction and one of the requirements is that when the purchase price has been realised in full from the auction-purchaser, the Managing Officer shall issue to him a sale certificate in the specified form. Till such sale certificate is issued to the highest bidder and till the balance of the purchase money has been paid, rights of ownership do not vest in the auction-purchaser and the proprietary rights, therefore, do not stand transferred by the mere fact that the bid of the auction-purchaser being the highest has been accepted. Transfer of ownership depends on the conditions of the auction.

Held, that if transfer of ownership has not taken place, the provisions of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act are not attracted. The protection under this section from ejection can be availed of where the immovable property is transferred to another person under the provisions of the Act. The protection applies against the transferee but not against the highest bidder at the auction who in contemplation of the formalities has been given provisional possession. The time lag between the acceptance of the bid of the auction-purchaser and the giving of the sale certificate may in conceivable cases be considerable. In so far as the ownership of the property still vests in the Government and not in the auction purchaser, the provisions of the Delhi Control Act, 1958 cannot be invoked by the tenant in order to prevent his ejection. If that Act is not applicable, then the law applicable is the ordinary law, the principles of which are embodied in the Transfer of Property Act. Outside the Transfer of Property Act, there is no other provision upon which the tenant can lean in order to avoid the recovery of possession by the landlord. Hence an auction-purchaser, who has not yet obtained a sale certificate but to whom the occupier has attorned, can, under the ordinary law, maintain a suit for ejection.

Held, that possession and ownership may co-exist but in a number of cases a person may be the owner of a thing and not possess it; and conversely, a person may be the possessor without being the owner. A person, who is a possessor but not the legal owner, is entitled to certain rights by virtue of his possession alone. Thus, a person in possession may transfer his possession to another by lease and thereby create a relation of lessor and lessee or landlord and tenant, despite the fact that the rights of ownership have not been acquired so far by the transferor. The vesting of ownership rights in a landlord is not the *sine qua non* of relationship of landlord and tenant. Thus, a person having possession of land without yet being its owner can allow that land to be occupied by a tenant giving rise to creation or mutual rights and obligations as between the lessor and the lessee. One of the Chief duties of the tenant is to pay rent while he is in the beneficial enjoyment of the premises. If a tenant is evicted, he is released from the obligation to pay

rent, or if he commits default in payment of rent, he is liable to be evicted. This is generally so, apart from special statutory inhibitions against eviction.

Held, that the word "attornment" mean to "turn over" or to transfer to another. In modern law attornment signifies an acknowledgement or agreement by a tenant with the person to whom he is attorning as his landlord. On the alienation of land from one landlord to another, the former tenant agrees to become the tenant of the new landlord. One of the modes of creating relationship of landlord and tenant is by attornment by the tenant. Attornment estops the tenant from disputing the landlord's title. Upon an attornment taking place, the tenant continues to hold upon the same terms as he held of his former landlord. During the continuance of the relationship of landlord and tenant, the latter is estopped from denying the former's title. The estoppel does not rest on the validity of the landlord's title. It exists despite the landlord not having any title at all. Thus, the effect of estoppel cannot be avoided by saying that the landlord did not have any colour of title. The estoppel endures during the currency of the relationship of landlord and tenant, and the tenant is released from the estoppel only on surrendering possession to the landlord. A tenant, cannot question the character or the extent of the landlord's title or his power or capacity to lease the property. A tenant, cannot contend that the landlord is not the owner, or the sole owner of the demised premises, or that he is a mere trustee.

Held, that where the meaning of the statute is plain, need for construing the words does not arise, and the statute, must be given the literal interpretation. The Courts set upon themselves the task of discovering the legislative intent where the words create doubt and admit of more meanings than one. The Courts cannot say to themselves that through oversight the legislature has failed to provide for a particular situation and, therefore, what was not done by the legislature may be done by the Court. This does not lie within the judicial field. If the meaning of the statute is sensible without the omitted word, Courts will not be justified in making interpolations. The general rule in all such cases is that a court may interpret doubtful or obscure phrases in a statute so as to give effect to the presumed intention of the legislature and to carry out

what appears to be the general policy of the law. Courts cannot by construction cure a *casus omissus*, however just and desirable it may be to supply the omitted provision; and it will make no difference, if it appears that the omission on the part of legislature was a mere oversight; and even if there be no doubt, that the Act would have been worded otherwise, if the attention of the legislature had been drawn to the oversight at the time of passing of the Act. It is not possible for the Court to deflect from its course on the specious plea that the interpretation would cause hardship and suffering to the tenants and that the law, as propounded, is not in tune with recent trends. In such a contingency, the hardship of the law should not be a consideration for the Courts but only for the legislature. The Courts are guided by the logic of the law where construction admits of no doubt; and for the hardship, the relief can only be given by the Legislature.

Petition under Section 35 of Act XXXVIII of 1952 for revision of the order of Shri R. S. Bindra, Senior Sub-Judge, Delhi, dated 2nd March, 1959 reversing that of Shri Shiv Charan Dass Bajaj, Sub-Judge, 1st Class, Delhi dated 9th June, 1958, accepting the appeal, setting aside the judgment and decree of the trial Court and decreeing the suit of the plaintiffs-appellants in the manner prayed for in the plaint against the defendant-respondent.

S. L. PANDHI, ADVOCATE, for the Petitioner.

UDHA BHAN, ADVOCATE, for the Respondents.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This Civil Revision and five other cases, R.S.A. 146-D of 1961, R.S.A. 162-D of 1961, R.S.A. 163-D of 1961, R.S.A. 164-D of 1961 and R.S.A. 165-D of 1961, can conveniently be disposed of by one order as the question of law, which was referred by Khosla C.J. to a Division Bench, is the same. The relevant passage from the order of reference is as under:—

“I, therefore, direct that quite apart from the fact that the plaintiffs could fall back upon

the ordinary law in the present case a Division Bench should consider the point whether an auction purchaser of evacuee property, who has not yet obtained a sale certificate but to whom the occupier has attorned, can under the ordinary law maintain a suit for ejectionment."

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

It was directed that this matter be placed before a larger Bench and if there were any other petitions of a similar type pending they may also be put up for hearing before the same Bench so that the counsel appearing in those petitions might have, if they so chose, an opportunity of representing their views before the Court. The facts of each case in certain particulars are different but as we are merely answering the question of law under reference, these cases will be disposed of by a Single Judge on their respective merits in the light of the answer which is being given by this Bench.

In all these cases, the plaintiffs were landlords who had instituted suits for the ejectionment of their respective tenants, contending that the premises were required for their own use and the tenants had defaulted in making payment of rent. The suits were resisted by the tenants on the ground that a case for eviction was not made out under the Rent Control Act (Act 38 of 1952).

In Civil Revision No. 157-D of 1959, the defendant had denied being a defaulter or that the premises were required by the Landlord *bona fide* for their own use and occupation. A question was also raised that the landlords had no right to institute the suit and that the same was premature. In this case, the following issues were framed:—

"(1) Whether the plaintiffs have the *locus standi* to bring this suit ?

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

- (2) Whether the defendant is liable to ejection from the suit premises on the ground given in the plaint ?
(3) Is the suit of the plaintiff premature ?
(4) Relief.

The property in this case—as also in other cases—was acquired by the Government of India under the Central Act 44 of 1954. The house was put up for sale by auction and the plaintiff in question was the highest bidder. After the purchase in auction, the Managing Officer addressed the parties stating that with effect from 14th of December, 1956, the rent should be paid by the tenant to the auction-purchaser. The sale certificate had not yet been issued. Notices were given by the landlords to the tenant that the respondent was a defaulter in payment of rent and the house was required *bona fide* by the plaintiffs for their own use. In these cases, the Managing Officer had addressed a communication to the tenants in the following forms :—

“No. XIII|D|1669,
Government of India,
Ministry of Rehabilitation,
Office of the Additional Settlement
Commissioner,
Jamnanagar House, New Delhi.

Dated : the 19th March, 1959.

*Subject:—*Provisional Possession of Property
No. XIV|352-54|291-93 Sold on — in —.

DELHI:

Whereas it has been decided to give provisional possession of the above said property to Shri Attar Lal, son of Murli Dass, — R|O — the auction purchaser of the property, you are hereby directed to pay

rent to him and deal otherwise with him directly with effect from 20th February, 1959.

2. You are further advised, in your own interest, to pay arrears of the previous period immediately to this office to avail yourself of the protection from ejection in terms of the provisions contained in Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, read with the relevant notification in this behalf, failing which you may render yourself liable to eviction.

(Sd.) . . . ,
Managing Officer,
Ward XIII-2".

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

A copy of this communication was also sent to the auction-purchaser, for information. The details of the property, the name of occupant and the monthly rent were given below.

Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, gave special protection from ejection to certain classes of persons in lawful occupation of the property which has been transferred to another person under the provisions of this Act. Such a person is deemed to be a tenant of the transferee on the same terms and conditions on which he was holding the property under the Central Government. This protection is, however, conditional on his not contravening the conditions given in the section. For facility of reference, section 29 is given below *in extenso*:—

[His Lordship read section 29 and continued:].

In the plaint, plaintiffs claim themselves to be the owners of the house as auction-purchasers and that they had been put in provisional possession and the tenant had been intimated to attorn to the plaintiffs

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

and to pay rent to them. In the written statement, the plaintiffs' claim to ownership was denied and it was said that they were not yet the owners. It was admitted that the defendants had been tendering rent to the plaintiffs and on plaintiffs' refusal rent had been deposited in the Court of the Administrative Sub-Judge.

The contention of the landlords has been that since the sale certificate has not been issued in their favour, they had not become complete owners of the property and their rights were governed by the ordinary law relating to landlords and tenants as contained in the Transfer of Property Act. The main ground advanced by the landlords in support of their claim was that the tenants had attorned to them and there was the relationship of landlord and tenant between them. In that view of the matter, the landlords contended, they were entitled to a decree for ejectment as they had served upon the tenants a notice terminating the tenancy in accordance with the ordinary law and had asked them to vacate the premises within a month. They were, therefore, entitled to eject their tenants and to recover vacant possession.

The most important question, which arises under reference, is whether the ordinary law is open to a person, who has not yet become a complete owner of the property by issue of sale certificate in his favour. In *Messrs Bombay Salt and Chemical Industries Vs. L. J. Johnson and others* (1), which was also a case under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, it was held that where in respect of the sale by auction of property of the class notified under section 29(2) it is not shown that the sale certificate was issued to the highest bidder, nor that the balance of the purchase-money had been paid, it must be held

(1) A.I.R. 1958 S.C. 289.

that there has till then been no transfer of the property sold at the auction and the benefit of section 29 could not be availed of. Rule 90 of the statutory Rules provides elaborate procedure for the sale of property by public auction and one of the requirements is that when the purchase price has been realised in full from the auction-purchaser, the Managing Officer shall issue to him a sale certificate in the specified form. Till such sale certificate is issued to the highest bidder and till the balance of the purchase money has been paid, rights of ownership do not vest in the auction-purchaser and the proprietary rights, therefore, do not stand transferred by the mere fact that the bid of the auction-purchaser being the highest has been accepted. Transfer of ownership depends on the conditions of the auction. In this case, the transfer has not taken place and, therefore, the provisions of section 29 are not attracted. The protection from ejection can be availed of where the immovable property is transferred to another person under the provisions of the Act. Apparently, there is a lacuna in the Act as the transitional stage after the acceptance of the highest bid at the auction and till the sale certificate is granted has not been visualized. The protection applies against the transferee but not against the highest bidder at the auction, who in contemplation of the formalities has been given provisional possession. The time lag between the acceptance of the bid of the auction-purchaser and the giving of the sale certificate may in conceivable cases be considerable.

After provisional possession has been given, the auction-purchaser, even though he does not possess proprietary rights, has possessory rights. He has the right of possession which can exist independently of ownership. Possession and ownership may co-exist but in a number of cases a person may be the owner of a thing and not possess it; and conversely, a person

Roshan Lal
Goswami

v.

Gobind Raj
and others

Tek Chand, J.

Aoshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

may be the possessor without being the owner. A person, who is a possessor, but not the legal owner, is entitled to certain rights by virtue of his possession alone. Thus, a person in possession may transfer his possession to another by lease and thereby create a relation of lessor and lessee or landlord and tenant, despite the fact that the rights of ownership have not been acquired so far by the transferor. The vesting of ownership rights in a landlord is not the *sine qua non* of relationship of landlord and tenant. Thus, a person having possession of land without yet being its owner can allow that land to be occupied by a tenant giving rise to creation of mutual rights and obligations as between the lessor and lessee. One of the chief duties of the tenant is to pay rent while he is in the beneficial enjoyment of the premises. If a tenant is evicted, he is released from the obligation to pay rent, or if he commits default in payment of rent, he is liable to be evicted. This is generally so, part from special statutory inhibitions against eviction.

One of the important incidents of this relationship is, that a tenant is estopped from denying the validity of his landlord's title unless he first surrenders possession to him. When a lessee is sued for rent, he cannot escape payment by taking the plea of want of title in the lessor. To this general principle, there are, however, well-known exceptions which are not relevant for purposes of these cases, e.g., the termination of lease, or acquisition by the lessee of a title paramount or the relationship having been vitiated by fraud or mistake. The element of ownership does not enter in the creation of a lease which confers upon the lessee the benefit of occupation and profits of lands and terevents and in exchange the lessor is recompensed by rent, payable in cash or kind.

It is true that an owner of a thing has ordinarily the right of possession, unless it has been parted with

expressly. A mere possession without ownership is also protected by law. The man in possession has a right to stay in possession, and where he has been deprived of it, except by the rightful owner, to be restored to possession. Just as *jus possidendi* is the right of the owner to possess, *jus possessionis* is the right of the possessor to continue in possession. Of course, there always are degrees of possession depending upon the relationship of a person to the thing under his control. Highest degree of possession is imputed to the person who considers himself, rightly or wrongly, to be the owner of the thing held by him. In the lower rung of possession are lessee of land, a mortgagee, a borrower, a pledgee or a servant entrusted with the property of his master. A higher degree of control was called by the early civilians possession and it was a lower degree of control when possession was on behalf of another, "*alieno nomine possidere*". The later civilians called the lower degree of possession by the name of *detentio* (*vide* Jurisprudence by Holland Page 199). In the case of a mere detention, as by a servant, lessee or bailee, there is, a recognition of the outstanding right of the other person, that is the lessor or bailor. The possession of the former is merely derivative. Law has given possessory remedies to persons in possession of land or who have the custody of thing regardless of their title. To a limited extent, law protects even wrongful possession. A lessee who derives this right to occupy the land of the lessor cannot question the latter's title or, in other words, he cannot set up a better *jus tertii*. Not even an owner can apparently disturb the possession of a person who is unlawfully there. The well-accepted principle, that a tenant is estopped from denying the validity of his landlord's title, is based upon sound public policy, the reason being, that the tenant acquired his tenancy rights either because he has been inducted on the land by the landlord or that he has acknowledged the landlord's title by accepting the demise. A man in possession can

Roshan Lal
Goswami

v.
Gobind Raj
and others

Tek Chand, J.

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

exercise all the proprietary rights against everybody, except the rightful owner. The well known attributes of title being *jus utendi* right of user, *jus fruendi* right to the fruit *jus disponendi* right to transfer or dispose of the thing *jus vindicandi* the power to assert in a Court of law, a right in or to a thing. These rights come under three heads of possession, enjoyment and disposition. In the words of Holland, "of the right to possess, little more need to said than that it includes, "*jus vindicandi*". The right to claim or challenge or to attorn as one's own, is available to a person entitled to possession as much as to a person claiming superior title of ownership. This leads to the inevitable conclusion that a person having such a status, as landlords in the instant case, can claim recovery of possession from a tenant, who commits the breach of his tenancy obligations, subject, of course, to a statute which may bar the remedy of ejection. Such a person's right to the remedy is not taken away simply because the landlord has not yet perfected his title to complete ownership.

At this stage, the effect of attornment may be considered. The word 'attornment' means to 'turn over' or to transfer to another. Under early Feudal Law in England the term was used when a Lord transferred the homage and service of his tenant to a new Lord. In modern law, attornment signifies an acknowledgment or agreement by a tenant with the person to whom he is attorning as his landlord. On the alienation of land from the one landlord to another, the former tenant agrees to become the tenant of the new landlord. One of the modes of creating relationship of landlord and tenant is by attornment by the tenant "when a person is already in occupation of property, the relation of landlord and tenant may be established between another person and himself by attornment. He who is in occupation attorns tenant, i.e., acknowledges that he is a tenant, to him who is to be landlord. Where the occupier is a tenant and agrees to

hold of a new landlord during the currency of the agreement without any change in the terms of the tenancy, this is a mere attornment. . . . Attornment estops the tenant from disputing the landlord's title", (*vide* Hill and Redman's Law of Landlord and Tenant, Eleventh Edition, page 5). Upon an attornment taking place, the tenant continues to hold upon the same terms as he held of his former landlord. During the continuance of the relationship of landlord and tenant, the latter is estopped from denying the former's title. This doctrine has not merely antiquity in its support, but is founded on public policy and public convenience, and has for its basis good faith between landlord and tenant. Actual possession being of vital importance, the tenant is not allowed to trifle with the right of the landlord by questioning the latter's title. The estoppel does not rest on the validity of the landlord's title. It exists despite the landlord not having any title at all. Thus, the effect of estoppel cannot be avoided by saying that the landlord did not have any colour of title. The estoppel endures during the currency of the relationship of landlord and tenant, and the tenant is released from the estoppel only on surrendering possession to the landlord. A tenant cannot question the character or the extent of the landlord's title or his power or capacity to lease the property. A tenant cannot contend that the landlord is not the owner, or the sole owner of the demised premises, or that he is a mere trustee. These principles are embodied in section 116 of the Indian Evidence Act. There is ample authority for the proposition that a tenant, who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. In the instant case, at the bidding of the former landlord, i.e., the Government, the plaintiff, pending finalization of the sale, was given provisional possession and the tenant was asked to attorn to the plaintiff. After the attornment, the

Roshan Lal
Goswami

v.
Gobind Raj
and others

Tek Chand, J.

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

relationship between the contending parties is that of landlord and tenant regardless of the fact that the ownership rights have not yet vested in the landlord. The inchoate ownership is not a legal bar to the plaintiff exercising the rights of landlord against the tenant, and to the former the remedy permitted by law against the tenant, e.g., eviction cannot be denied on the ground of imperfect title because of the inchoate purchase.

The next question is, whether the protection, given to the tenant from eviction, under the Rent Restriction Act, avails, in a case like the present. Section 3 of the Delhi Rent Control Act, 1958, which is similar in wording as section 3, of Delhi and Ajmer Rent Control Act of 1952, provides:—

“Nothing in this Act shall apply—

- (a) to any premises belonging to the Government or:
- (b)

In so far as the ownership still vests in the Government and not in the auction-purchaser, the above provisions are attracted and, therefore, the provisions of Delhi Rent Control Act, 1958, cannot be invoked by the tenant in order to prevent his ejection. If Delhi Rent Control Act is not applicable, then the law applicable is the ordinary law, the principles of which are embodied in the Transfer of Property Act. Outside the Transfer of Property Act, there is no other provision upon which the tenant can lean in order to avoid the recovery of possession by the landlord. Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, gives certain powers to the managing officers regarding variation and cancellation of leases, subject to the provisions of the statutory rules. According to Rule 102 of the Displaced Persons (Compensation and

Rehabilitation) Rules, a managing officer may in respect of the property in the compensation pool entrusted to him terminate a lease, wherein the lessee has sublet or parted with the possession of the property leased, or has used property for a purpose other than that for which it was leased, or has committed any act of waste, or for any other sufficient reasons to be recorded in writing. In all these cases, the lessee has to be given a reasonable opportunity of being heard. Reference to the above provisions relating to the powers and limitations of the managing officers serves no useful purpose in these proceedings, as, the managing officer has already parted with possession to the auction-purchaser and has asked the tenants to attorn to the transferee. The rights and obligations formerly of the managing officer henceforward are of the auction-purchaser in possession.

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

This case, it is true, presents an anomaly. A tenant has certain protection under the Delhi Rent Control Act, where the premises do not belong to the Government. There are also some safeguards under Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which a tenant can avail of if his eviction is sought by the Managing Officer. But in these proceedings which cover a transitional stage—e.g., after the possession has been delivered to the auction-purchaser but before he becomes owner in the eye of law as he has not yet got the sale certificate—can it be said to be the intention of the legislature to take away all protection from the tenant against his ejection? In construing statutes, it is a fundamental rule that the Courts have to find out the legislative intent. The rules of construction and interpretation of statutes are in the nature of guides for discovering the legislative intent. The question of probing into the legislative mind will only arise, where the language, by reason of ambiguity leaves room for doubt as to the meaning of the words used in the enactment. It is not

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

unoften that there is a divergence between legislative purpose and the legislative meaning. The legislative purpose of Rent Control Acts, including Delhi and Ajmer Rent Control Act, 1952 and Delhi Rent Control Act, 1958, is to control the rents and to protect the tenants against eviction except in eventualities expressly provided in the Act. The Rent Control Acts and the rules made thereunder, override other laws to the extent of inconsistency therewith. So far as the specific provision is concerned, section 3(a) of the Delhi and Ajmer Rent Control Act, 1952, excludes the operation of the act in regard to any premises belonging to the Government. It was, therefore, not the legislative purpose to provide for the control of rents and evictions regarding lands belonging to the Government. Despite the sale of the land to the auction-purchaser, his title has not been perfected as the sale certificate has not yet been given. It is the purpose of the Act to control evictions of tenants provided the land belongs to the Government. It will be stretching the language of section 3 if it were read to mean, that the Act shall not apply to any premises of which the landlord is the Government. The only difference that has now been made in the status of the auction-purchaser, is, that though the premises in the eye of law still belong to the Government, the Government has ceased to be the landlord.

To my mind, it is a case not so much of construction of the statute as of *casus omissus*. So far as the language of section 3 is concerned, it is unambiguous. As the premises belong to the Government, in the sense, that the ownership is not transferred to the auction-purchaser, the Act cannot be held to apply. To give a different meaning to section 3, would tantamount to invasion by the judiciary on the powers of the legislature. The Court must also hesitate in substituting their opinion for the intent of the legislature. This is

a case where the transitional stage was not in contemplation of the law-makers, and therefore, no provision is made for the gap between the transfer of provisional possession to the auction-purchaser, and the transfer of title to him on the delivery of the sale certificate. The only safe rule for ascertaining the legislative intent is to be found in the words the legislature has chosen to employ; and an attempt to get at the legislative meaning *aliunde* is fraught with risks. Where the meaning of the statute is plain, need for construing the words does not arise, and the statute, must be given the literal interpretation. The Courts set upon themselves the task of discovering the legislative intent where the words create doubt and admit of more meanings than one. For that purpose, the Courts resort to the relevant rules of construction.

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

It appears to be a case of an omission in a statute which cannot be supplied by construction. Even assuming that it was not the purpose of the Act to deprive the tenants of the auction-purchaser, who had not yet become a complete owner, of the benefit of the Act which controls rents and evictions, the Court cannot supply the lacuna, left by the legislature by inadvertence. Sometimes it happens, that legislature has not been able to foresee the missing case. The Courts, by supplying the omission in an Act of legislature, would be travelling far afield, and it would be open to serious objection, when the Courts deviate from their real function of construction and enter upon legislation which is obviously outside their purview. The Courts cannot say to themselves that through oversight the legislature has failed to provide for a particular situation and, therefore, what was not done by the legislature may be done by the Court. This does not lie within the judicial field. If the meaning of the statute is sensible without the omitted word, Courts will not be justified in making interpolations. The general rule in

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand, J.

all such cases is, that a Court may interpret doubtful or obscure phrases in a statute so as to give effect to the presumed intention of the legislature and to carry out what appears to be the general policy of the law.

Courts cannot by construction cure a *casus omissus*, however just and desirable it may be to supply the omitted provision; and it will make no difference, if it appears that the omission on the part of legislature was a mere oversight; and even if there be no doubt, that the Act would have been worded otherwise, if the attention of the legislature had been drawn to the oversight at the time of the passing of the Act (*vide* Statutory Construction by Crawford page 272). I do not think it is possible for the Court to deflect from its course on the specious plea that the interpretation would cause hardship and suffering to the tenants and that the law, as propounded, is not in tune with recent trends. In such a contingency, the hardship of the law should not be a consideration for the Courts but only for the legislature. The courts are guided by the logic of the law where construction admits of no doubt; and for the hardship, the relief can only be given by the Legislature. Romer, J. in *Davies v. Parry* (2), said:

“What I desire to point out is that I wish the law was not so but that being the law, I must follow it.”

Similarly, Lord Esher, M. R. in *Re Perkins* (3), said:

“I agree that is the law, though I think it is a hard law; but we have nothing to do with the question of hardship.”

In similar strain, Lord Coleridge, C. J. said:—

“A Court has no right to strain the law because it causes hardship.” (*Body v. Halse* (4)).

(2) L.R. (1899) 1 Ch. D. 605.

(3) L.R. (1890) 24 Q.B.D. 618.

(4) L.R. (1891) 1 Q.B. D. 207.

A century earlier than the above cases, Buller, J. in *Yates v. Hall* (5), remarked:—

Roshan Lal
Goswami

v.
Gobind Raj
and others

Tek Chand, J.

“All arguments on the hardship of a case, either on the one side or the other, must be rejected, when we are pronouncing what the law is; for such arguments are only quicksands in the law; and, if indulged, will soon swallow up every principle of it.”

If the language is unambiguous and not susceptible to more than one construction, the Court has no alternative but to accept the construction even if it appeared and that if the legislature was alive to the question before the Court, it would have in all logic made a provision for such an event. In their search for the legislative intent, it will not be correct for the Courts to change the meaning of the statutory text. If there is scope, the Courts try to avoid a construction which may lead to injustice or oppression or which may turn out to be contrary to public interest, but the Court is helpless where the language employed is clear, leaving no room for flexibility. As long ago as 1584, Lord Coke formulated the rule which still remains the keystone. He said in *Heydon's case* (6).

“And it was resolved by them, that for the full and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :—

“1st. What was the common law before the making of the act ? 2nd. What was the mischief and defect for which the common law did not provide ? 3rd. What remedy the

(5) (1785) I.T.R. 80.

(6) 76 Eng. Repr. 637 at P. 638.

Roshan Lal
Goswami

v.

Gobind Raj
and others

Tek Chand, J.

Parliament hath resolved, and appointed to cure the disease of the commonwealth? And 4th, the true reasons of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief, advance the remedy, and to suppress subtle invention and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the act *pro bono publico*.

The above rule has been re-formulated, expanded, restricted, explained and rephrased but the basic objective of judicial interpretation has remained the same. The gist of the principle is that a clear and unambiguous statute is not subjected to statutory interpretation. Lord Greene, M. R. in *Re A Debtor* (7), said:—

“... and if there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used.”

The result of legislative omission, assuming it to be inadvertent, may be unfortunate, and in the words of Craies “a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made”. The judicial Committee in *Crawford v. Spooner* (8).

“We cannot aid the legislature’s defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.”

(7) 1948(2) A. E. R. 533 at P. 536.

(8) (1846) 6 Moo., P.C.C.1 (8 and 9)

The above observation was cited with approval by the House of Lords in *Lord Howard De Walden v. Inland Revenue Commissioners* (9). I am persuaded by the above reasoning not to construe section 3(a) of the Delhi and Ajmer Rent Control Act, 1952; in a manner so as to add an exception in the case of auction-purchasers to whom sale certificate has not yet been issued. The decision of the Supreme Court in *Messrs Bombay Salt and Chemical Industries v. L. J. Johnson and others* (1), leaves no room for doubt that an auction-purchaser in the condition of the present landlords is not transferee of the property sold at the auction.

Roshan Lal
Goswami
v.
Gobind Raj
and others

Tek Chand. J.

The question referred to the Division Bench must be answered in the affirmative. I am, therefore, of the view that an auction-purchaser of evacuee property, who has not yet obtained a sale certificate but to whom the occupier has attorned, can, under the ordinary law, maintain a suit for ejection.

By this judgment, only the question referred to the Division Bench is being answered. It will not be for learned Single Judge to decide this and other connected cases on their respective merits in the light of the above answer.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

K.S.K.

CIVIL MISCELLANEOUS

Before S. B. Kapoor and Prem Chand Pandit, JJ.

MESSRS GOKAL CHAND NATHI RAM.—Petitioners.

versus

THE STATE OF PUNJAB.—Respondent.

Civil Writ No. 1171 of 1962.

Punjab Agricultural Produce Markets (General) Rules, 1962—Rule 24 sub-rules (12) and (14)—Whether ultra vires.

1963

April, 24th