

Before G. C. Mital, J.

JAI GOPAL,—Petitioner.

versus

OM PARKASH,—Respondent.

Civil Revision No. 2400 of 1978.

August 17, 1979.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—Sections 2(h) and 13—Transfer of Property Act (IV of 1882)—Section 111(g)—Landlord seeking ejectment under section 13—Tenant denying relationship of landlord and tenant—Such denial—Whether itself a ground for ejectment under the Rent Control Act.

Held, that it is well established that no order of ejectment can be passed under the Haryana Urban (Control of Rent and Eviction) Act, 1973 even on the basis of consent of the parties *de hors* the grounds contained in the Act. There is a mandatory prohibition contained in section 13(1) of the Act due to which the Rent Controller is not allowed to travel beyond the statutory grounds mentioned in section 13(2) of the Act. A reading of section 13(2) shows that there are numerous grounds on which an order of ejectment can be passed by the Rent Controller but the ground of ejectment on account of forfeiture of tenancy on denouncing the relationship of landlord and tenant is not contained therein. A reading of the definition of a 'tenant' shows that it includes an ex-tenant continuing in possession even after the termination of his tenancy. The tenancy can be terminated in several ways contained in section 111 of the Transfer of Property Act, 1882 and even on the termination of the tenancy on any of those grounds by virtue of definition of a tenant such a person would be deemed to be a tenant under the Act liable to ejectment only on the grounds contained in section 13(2) of the Act by virtue of section 13(1). A reading of clause (g) of section 111 of the Transfer of Property Act would show that the lease of immovable property stands determined even when "the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself." In spite of determination of tenancy on the aforesaid ground such a ground has not been included in section 13 of the Act to entitle a landlord to seek ejectment of his tenant on denouncing his title. Meaning thereby that in spite of the determination of the tenancy on account of renunciation of the title of the landlord, such a person continues to be a tenant under the Act and is

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liable to be ejected only on the grounds contained in section 13(2) of the Act. (Paras 5 and 7).

Petition under Section 15(6) of the Haryana Urban Control of Rent & Eviction Act for revision of the Order of Shri N. S. Rao, District Judge, Appellate Authority, under Haryana Urban (Control of Rent & Eviction Act, 1973), Hisar, dated 25th November, 1978 reversing that of Shri Rajpal Singh, Sub-Divisional, Officer (Civil) exercising powers of Rent Controller, Hansi, dated 5th January, 1978, allowing the application for ejectment filed by Om Parkash appellant against Jai Gopal respondent and leaving the parties to bear their own costs throughout and giving three months time to Jai Gopal respondent to vacate the demised shop and directing to deliver its possession to Om Parkash.

H. L. Sarin, Advocate & M. L. Sarin & R. L. Sarin, Advocates with him, for the Petitioner.

Anil Pawar, Advocate for S. C. Kapur, Advocate, for respondents.

JUDGMENT

Gokal Chand Mital, J.

(1) An important point of law arises in this revision as to whether an order of ejectment can be passed under section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called the Act) against a tenant solely on the ground that he denied the relationship of landlord and tenant in the ejectment proceedings. The point arises out of the following facts.

(2) Om Parkash brought an application for ejectment under Section 13 of the Act against Jai Gopal alleging that the shop was in the tenancy of Jai Gopal at a monthly rent of Rs. 75 from August 14, 1970 and that he is in arrears of rent from January 1, 1975 onwards and that the tenant had decreased the rental value of the demised shop by damaging the same. The application for ejectment was, therefore, based on two statutory grounds namely the tenant being in arrears of rent and having damaged the demised premises.

(3) On the first date of hearing the tenant paid all the arrears of rent with costs within the statutory period and, therefore, the ground of ejectment on this account ceased to exist. The tenant

denied the other ground, but while doing so denied the relationship of landlord and tenant between the parties. The Rent Controller after trial found that neither the ground of ejection for arrears of rent survived nor the ground of ejection of diminishing the value of the property by damaging the same was established. However, the landlord urged before the Rent Controller that the order of ejection should be passed against the tenant as on denial of tenancy by the tenant the tenancy stood terminated and as such the order of ejection should be passed. This point did not find favour with Rent Controller and the application for ejection was dismissed by an order dated January 25, 1978. Against the order of the Rent Controller the landlord filed an appeal before the Appellate Authority. The Appellate Authority found that none of the two grounds of ejection pleaded in the application for ejection was established, but found that it was proved on the record that Om Parkash was the owner of the property and that Jai Gopal had throughout been admitting Om Parkash as his landlord. However, since the tenant disclaimed the title of Om Parkash by raising the plea that no relationship of landlord and tenant exists between the parties, his tenancy stood determined. It will be useful to quote the words of the learned Appellate Authority in this case which are reproduced as under:—

“It stands fully proved that Om Parkash appellant is the owner of the demised shop ever since the decree, certified copy Ex. AX, was passed in his favour on 2nd June, 1972 and that Jai Gopal respondent has throughout been admitting Om Parkash appellant as his landlord. If in spite of that, in the proceedings, out of which this appeal has arisen, Jai Gopal respondent has disclaimed the title of Om Parkash appellant by raising the plea that no relationship of landlord and tenant exists between the parties, and his tenancy is held to have been determined because of the same, he has only to thank himself.”

(4) After coming to the above finding and after following the Single Bench judgment in *Smt. Suhag Rani v. Sukhdev* (1) and a Division Bench judgment in *Seha Ram v. Gajan* (2) of this Court and after not giving much weight to *Kanti Lal v. Smt. Ashok Lata* (3),

(1) 1971 C.L.J. 391.

(2) 1970 C.L.J. 88.

(3) A.I.R. 1977 Patna 118.

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Hindustan Trust v. C. S. Gupta (4), and *Madan Lal v. Zahur Hussain and another* (5), the Appellate Authority passed an order of ejectment dated November 28, 1978 against the tenant on the sole ground of disclaimer of tenancy. The tenant has come up in revision to this Court against the aforesaid order of the Appellate Authority ordering the ejectment.

(5) After hearing learned counsel for the parties I am of the considered view that the Appellate Authority has taken an erroneous view of law in passing an order of ejectment on a ground which is not contained under the Act. It is well established by now that no order of ejectment can be passed under the Act even on the basis of consent of the parties *de hors* the grounds contained in the Act. There is a mandatory prohibition contained in section 13(1) of the Act due to which the Rent Controller is not allowed to travel beyond the statutory grounds mentioned in section 13(2) of this Act. A reading of section 13(2) of the Act shows that there are numerous grounds on which an order of ejectment can be passed by the Rent Controller, but the ground of ejectment on account of forfeiture of tenancy on denouncing the relationship of landlord and tenant is not contained there. Accordingly the Appellate Authority had no jurisdiction to pass an order of ejectment on a ground other than contained in section 13(2) of the Act.

(6) For supporting the above view, reference may be made to section 2(h) which defines a tenant and section 13(1) of the Act which may be reproduced hereunder for facility of reference:—

“2 (h) “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 his tenancy and in the event of such person’s death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents

(4) 1971 R.C.R. 879 (Delhi).

(5) 1973 R.C.R. 695 (J & K).

for shops has been framed out, or leased by a municipal, town or notified area committee;"

"13(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section."

(7) A reading of definition of a tenant reproduced above shows that it includes an ex-tenant continuing in possession even after the termination of his tenancy. The tenancy can be terminated in several ways contained in section 111 of the Transfer of Property Act and even on the determination of the tenancy on any of those grounds by virtue of definition of a tenant such a person would be deemed to be a tenant under the Act liable to ejection only on the grounds contained in section 13(2) of the Act by virtue of section 13(1) reproduced above. A reading of clause (g) of section 111 of the Transfer of Property Act would show that the lease of immovable property stands determined even when "the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself." In spite of determination of tenancy on the aforesaid ground such a ground has not been included in section 13(2) of the Act to entitle a landlord to seek ejection of his tenant on denouncing his title. Meaning thereby that in spite of the determination of tenancy on account of renunciation of the title of the landlord such a person continues to be a tenant under the Act and is liable to be ejected only on the grounds contained under section 13(2) of the Act.

(8) By a string of authorities, it has been held by the Supreme Court that no order of ejection would be valid under the Rent Control Act even if passed on the basis of consent of the parties unless the same is passed on any of the statutory grounds contained under the Rent Control Act. See in this connection *Bahadur Singh and another v. Muni Subrat Dass and another* (6), *Ferozi Lal Jain v. Man Mal and another* (7), *Smt. Kaushalya Devi and others v. K. L. Bansal* (8), *K. K. Chari v. R. M. Sehshadri* (9), *Nagindass Ramdas v. Dalpat Ram Ichcharam* (10) and *Mohan Lal and another v. Madan Lal and others* (11).

(6) 1969 R.C.J. 276.

(7) A.I.R. 1970 S.C. 794.

(8) A.I.R. 1970 S.C. 838.

(9) A.I.R. 1973 S.C. 1311.

(10) A.I.R. 1974 S.C. 471.

(11) A.I.R. 1970 S.C. 2130.

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(9) The learned Appellate Authority has taken notice of *Sada Ram's case and Smt. Suhag Rani's case* (Supra) in passing the order of ejectment. A reading of *Sada Ram's case* (supra) would show that it was a regular civil suit for ejectment of a tenant with regard to agricultural land on the ground of forfeiture of tenancy as the defendants had claimed ownership in themselves. In the plaint it was stated that Smt. Malaro under whom the defendants were the tenants became absolute owner by virtue of enforcement of Hindu Succession Act and thereafter she made a gift of the property to the plaintiff who asked the defendant to accept him as the landlord and pay the rent to him, but the defendants refused to do so and claimed ownership in themselves. As such a regular civil suit for their ejectment was brought. Again in the written statement, the defendants denied that they were ever tenants under Smt. Malaro and pleaded that she had surrendered the entire estate in their favour and in return they gave her some money and some grain by way of maintenance and not by way of rent. On these facts it was held that the tenancy stood determined by denial of title under section 111(g) of the Transfer of Property Act and a civil suit was competent. One more point was under consideration and that is as to whether the denial of title of the landlord in the written statement could amount to forfeiture of tenancy or not, with which we are not concerned in this case. Therefore, a reading of the judgment shows that it was not a case under the Rent Control Act, but was a case under the ordinary law for possession on forfeiture of tenancy. As such this case cannot be of any help for deciding the controversy in the present case. To my mind the learned Appellate Authority did not minutely consider this case while applying to the facts of the case which is clearly distinguishable and has no bearing.

(10) Coming to *Smt. Suhag Rani's case* (Supra), the only point which came up for consideration before P. C. Pandit, J. on the basis of *Sada Ram's case* (Supra) was whether a notice for termination of tenancy under section 106 of the Transfer of Property Act is necessary to be served before filing an application for ejectment under section 13 of the Act when the tenant had denied the relationship of landlord and tenant. Otherwise it was a case for ejectment under section 13 of the East Punjab Urban Rent Restriction Act for ejectment of Suhag Rani from the house on the ground of non-payment of rent and sub-letting, besides alleging that the tenant had ceased to occupy the house since 1961 without any reasonable cause. The

Appellate Authority ordered the ejection of the tenant on the ground of sub-letting alone as the tenant had tendered arrears of rent on the first date of hearing, when the revision came up before this Court at the instance of the tenant and the tenant failed to convince that it was not a case of sub-letting, then an argument was raised that since no notice under section 106 of the Transfer of Property Act was given by the landlord to the tenant before filing the ejection application, therefore, no order of ejection could be passed against her. While dealing with this contention P.C. Pandit, J. called upon *Sada Ram's case* (Supra) and came to the conclusion that since the tenant denied the relationship of landlord and tenant between the parties the tenancy stood determined in view of *Sada Ram's case* (Supra). No notice was required to be served under section 106 of the Transfer of Property Act before filing the petition. But otherwise the ejection order was passed on the ground of sub-letting which is the ground for ejection under section 13 of the Rent Restriction Act. If in the aforesaid case the ejection had not been granted on the ground of sub-letting, but simply on the ground of denial of title, then it would have been applicable to the present case. Accordingly this case also is of no help in passing the order of ejection unless a statutory ground of ejection is made out as contained under section 13 (2) of the Act.

(11) I have no doubt that if the learned Appellate Authority had read both the judgments relied upon by it in detail along with the other judgments cited before it and had analysed them, it would not have ordered the ejection merely on the ground of denial of tenancy.

(12) The above view of mine finds full support from the Division Bench judgment in *Kahulal Kachhi v. Smt. Ashokalata Devi and others* (12), which is on all fours with the present case, the head note of which is as follows:—

“Section 11 of the Act does not mention disclaimer of the title of the landlord by a tenant a ground for eviction, though it is provided under T.P. Act (1882), section 111(g)(2). The law is that if there is any conflict between provisions of T. P. Act and S. 11 of the Bihar Building Control Act, the latter provisions would prevail on account

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of the non-obstante clause in it. Hence the landlord cannot evict the tenant on the ground of forfeiture based on section 111(g)(2) of the T. P. Act.”

Similar view has been taken by a Single Judge of Rajasthan High Court in *Bhura and another v. Bahadur Singh and another* (13). Head note ‘B’ and para 5 of the judgment deserves to be noticed. Similar view has been taken by a Single Judge of Jammu and Kashmir High Court in *Madan Lal v. Zahur Hussain and another* (14).

(13) Before me no argument has been raised on behalf of the respondent-landlord that any of the statutory grounds of ejection on which he came in his application for ejection, has been made out. Moreover, the findings on the grounds of ejection recorded by the Courts below are based on facts and no interference is called for in revision.

(14) For the reasons recorded above I allow this petition, set aside the order of the Appellate Authority and restore that of the Rent Controller with no order as to costs.

S.C.K.

Before Prem Chand Jain and D. S. Tewatia, JJ.

PARKASH WOOLLEN INDUSTRIES—Petitioner

versus

STATE OF HARYANA and another,—Respondents.

Civil Writ No. 1010 of 1974

August 20, 1979.

Punjab Agricultural Produce Markets Act (XXIII of 1961) as amended by Haryana Amending Acts (21 of 1973 and 19 of 1979)—Sections 2(a), 5, 6, 8 and 23—Punjab Agricultural Produce Markets

(13) A.I.R. 1976 Rajasthan 249.

(14) 1973 R.C.R. 695.