

Sodhi Sukhdev
Singh
v.
The State
Punjab

relevancy of these documents, if permissible under the law, is open to be raised by the Department of in the trial Court.

Dua, J.

For the reasons given above I allow the revision petition and disallow the privilege with respect to the documents at serial numbers 3, 4, 5, and 6, but the order of the Court below with respect to the documents at serial numbers 1, 2, 7, and 8 is upheld. Costs of these proceedings would be costs in the suit. The parties are directed to appear before the trial Court on the 15th February, 1960.

Dulat, J.

DULAT, J.—I agree.

B. R. T.

REVISION CIVIL

Before A. N. Grover, J.

NIADRE,—Petitioner.

versus

NANNEH,—Respondent.

Civil Revision No. 369 of 1959.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 13 and 15—Landlord obtaining consent decree for ejectment against tenant on the ground of reconstruction and restoration to tenant if no reconstruction takes place within specified time—Landlord while reconstructing converted residential premises into partly commercial and partly residential premises—Tenant of the portion converted into commercial premises—Whether entitled to restoration of possession or compensation—Statutory tenancy—Whether heritable—Application for restoration of possession by the quondam tenant—Whether can be continued by his legal-representatives after his death.

1960

Jan., 19th

Held, that there is no express prohibition in the Delhi and Ajmer Rent Control Act, 1952, against rebuilding the premises or replacing the same by any building which may not be suitable at all for residential purposes. If a residential building is converted into partly commercial and partly residential building, the tenant of the portion converted into commercial premises is not entitled to restoration

of possession of that portion but is entitled to compensation under section 15(3) of the Act.

Held, that a statutory tenancy, unlike the contractual tenancy does not create a right which is heritable. Where a tenant against whom a decree for ejection was passed makes an application for restoration of possession under section 15(3) of the Delhi and Ajmer Rent Control Act, 1952 and lies during the pendency of that application, his legal representatives have no right to continue that application. The institution of a suit for eviction may not have the effect of determining a contractual tenancy but once a decree for eviction is made, the contractual tenancy also comes to an end.

Petition under section 35 of Act 38 of 1952, for revision of the order of Shri D. R. Puri, Senior Sub-Judge, Delhi, dated 24th April, 1959, affirming that of Shri Hukam Chand Goel, 5th Sub-Judge, 1st Class, Delhi; dated 29th July, 1958, dismissing the petition.

R. S. NARULA, for Petitioner.

YOGESHWAR DAYAL, for Respondent.

JUDGMENT

GROVER, J.—This judgment will dispose of all the petitions for revision (Civil Revisions Nos. 369, 370 and 371 of 1959).

Grover, J.

The petitioner, Niadre, instituted separate actions for eviction of his three tenants in respect of the premises in their possession *inter alia* on the plea that the same were required for reconstruction. On 11th July, 1955, the parties made statements in Court with the result that there were consent decrees for ejection. The possession had to be delivered by the tenants by 31st October, 1955. The landlord had to start reconstruction within a month and if the construction was not commenced, possession had to be restored to the tenants. The construction was to be completed within 5 months which period was to be considered to be a reasonable period within the contemplation of section 15 of the Delhi and Ajmer Rent Control Act, 1952.

•
 Niadre
 v.
 Nanneh

 Grover, J.

and if the construction was not so completed, the premises were to be restored to the tenants in whatever condition they were. In March, 1959, the tenants filed applications under section 15 of the Act for being put in possession of the reconstructed premises on the allegation that the landlord had completed the work of rebuilding, but had refused to deliver possession. The landlord filed objections which were later on amended, out of which a number of issues arose. Mathra, one of the tenants, died on 16th April, 1957, and on 20th April, 1957, his legal representatives applied for being substituted in his place. The landlord objected to their substitution on which two issues were framed, but on 18th July, 1957, the first Court allowed substitution. With regard to the premises which were in the possession of Mathra, the trial Court finally on 29th July, 1958, directed his legal representatives to be put in possession of two shops in the reconstructed premises. Similar orders were also made for giving possession to the other two tenants, namely Giarsi and Nanneh, of two rooms and godown, respectively, in the newly constructed building. The landlord went up in appeal, but the appeals were dismissed by the lower appellate Court on 24th April, 1959. This is how three petitions for revision have now been filed by the landlord.

It is pointed out that the character of premises had changed because as a result of sanction given by the Municipal Committee the reconstructed premises are meant for commercial use and not for residential purposes. It is clear from a copy of the resolution passed at a meeting of the Delhi Municipal Committee held on 12th January, 1955. Exhibit R.I., in Civil Revision No. 371 of 1959, that the ground-floor was proposed to be reconstructed

for non-residential purposes and the first-floor for residential purposes. It was resolved that the application be sanctioned according to the plans on the conditions noted on the back of the *ittilana*. The ground-floor was to be declared unfit for human habitation under section 116 of the Municipal Act. It is pointed out by Mr. Narula that even according to the learned Senior Sub-Judge the ground-floor cannot be put to use for purposes of residence without contravening the provisions of the Municipal Act, but the learned Judge was of the view that the tenants were all the same entitled to restoration of possession and it did not matter whether the reconstructed premises could be used for residential purposes or not. Mr. Narula contends that section 15(3) of the Delhi and Ajmer Rent Control Act does not make it absolutely obligatory that the tenant should be put in occupation of the reconstructed premises on the original terms and conditions, but leaves it to the discretion of the Court either to make that order or to direct the landlord to make payment to the tenant of such compensation as may be fixed by the Court. It is suggested that it could never be within the contemplation of the Legislature that the Court should be left with no option, but to order restoration of possession under section 15 even if the reconstructed premises were wholly unfit for human habitation and could be only used for storing goods like godowns or for use as shops and it was for this reason that the provision in the alternative with regard to the payment of compensation was made. There seems to be a good deal of force into the submissions made by Mr. Narula because there is nothing in clauses (f) and (g) of the proviso to sub-section (1) of section 13 or in section 15 which lays any fetter on the right of the owner of the premises to rebuild them in such manner as he desires to do. In other words,

Niadre
v.
Nanneh

Grover, J.

Niadre
v.
Nanneh

Grover, J.

there is no express prohibition against rebuilding the premises or replacing the same by any building which may not be suitable at all for residential purposes and which can be used only for commercial purposes. The learned counsel for the respondent contends that such a prohibition or inhibition should be implied because the whole object of section 15 is to provide for the restoration of possession to the erstwhile tenant against whom a decree had been made on the grounds specified in clauses (f) and (g) of the proviso to sub-section (1) of section 13 and this means that the tenants were being guaranteed that they would have similar type of accommodation in the reconstructed premises which they had in the premises originally in their occupation. So far as a decree made under clause (f) is concerned, such a contingency can hardly arise because there the premises have only got to be repaired and no reconstruction has to take place but under clause (g) a decree can be granted either for the purpose of rebuilding the premises or for the replacement of the premises by any building or for the erection of other buildings and the language is so wide that it is not possible to import any limitation or restriction, on the ordinary rights of the hous-owners to rebuild or reconstruct or replace in any manner they desire. This conclusion is fortified by the fact that in the Delhi Rent Control Act, 1958, in section 14(8) it has been specifically provided that the Controller must be satisfied that the proposed reconstruction will not radically alter the purpose for which the premises were let or that such radical alteration is in the public interest. I am of the view that in cases of the kind before me the Courts' below ought to have exercised discretion in favour of awarding compensation to the tenants instead of ordering restoration of possession under section 15(3). It is needless to say that neither the

trial Court nor the Senior Sub-Judge applied their minds to this aspect of the matter.

Niadre
v.
Nanneh

Grover, J

It was contended by Mr. Narula that so far as the legal representatives of Mathra were concerned, their substitution could not have been ordered as was actually done on 18th July, 1957. It is submitted that the protection given by section 13 of the Act of 1952 to the tenants which creates what is called statutory tenancy is of a personal nature and such a tenancy is not heritable. The status of landlord and tenant is continued by a legal fiction which in no sense could be regarded as a right which can pass to the heirs and successors of a deceased tenant. In *Nihal Chand v. Shiv Narain and others*, (1) Mehar Singh J. has expressed the view that a statutory tenancy under a Rent Act is a personal right to remain in possession of the property of which the legal consequence is that the right comes to an end upon the death of the person in whom it resides. A contractual tenancy, however, continues until it is determined in either of the three ways, that is by efflux of time or forfeiture or on a notice to quit. Therefore, the act of a landlord in instituting a suit for eviction of the tenant under the Rent Act cannot convert a contractual tenancy into a statutory tenancy. In that case the learned Judge held that if Giani Ram deceased had been in possession of the premises under a contractual tenancy, there could be no two opinions that the tenancy devolved upon his heirs according to the law of succession, but on the other hand if he was a statutory tenant of the premises his right would come to an end on his death and nothing passed to his heirs by devolution. As the tenancy was a contractual tenancy in that case, being a tenancy from month to month

(1) 1958 P.L.R. 297

Niadre
v.
Nanneh
Grover, J.

and it had not come to an end in the manner indicated before, it was observed that the contractual tenancy continued right up to the time of his death and later on it devolved upon his heirs. There can be no doubt that according to the law as it prevails in England a statutory tenant has no estate or property as tenant at all, but has a purely personal right to retain possession of the property. He has merely a personal right of occupation (see Megarry's Rent Acts. 7th Edition, page 194). It has not been shown that the position is in any way different in this country and I would follow with respect the view of Mehar Singh, J. that a statutory tenancy does not create a right which is heritable.

The learned counsel for the tenants submits that according to the view of Mehar Singh, J. the contractual tenancy subsisted right up to the time of the date of Mathra's death, 6th April, 1957, because it had not been determined either by efflux of time or forfeiture or by notice to quit and, therefore, Mathra's heirs were properly substituted as legal representatives. If the decree for eviction had not been obtained by the landlord against Mathra in July, 1955, then there could be no doubt that the contractual tenancy would have continued right up to the date of Mathra's death, but although the institution of a suit for eviction may not have the effect of determining such a tenancy but once a decree for eviction is made I can see no escape from the conclusion that the contractual tenancy would come to an end. There is nothing in the statements which were made on 11th July, 1955, on which the decrees for ejection were passed against the various tenants which imported an agreement to create a tenancy as has been contended by the learned counsel for the tenants which contention had found favour with the learned Senior Sub-Judge. The statements then made were not quite satisfactory and I can find no

stipulation in them of the type which is sought to be introduced now. All that was agreed was that the reconstruction had to be started within a specified period and if it was not started, possession was to be restored to the tenants. A period of 5 months was considered to be a reasonable period within the contemplation of section 15 of the Act and if the construction was not so completed, then premises were to be restored in whatever state they were. It may be that by necessary implication the tenants elected to be placed in occupation of the premises from which they were being evicted within the meaning of section 15(1), although even on that point the argument of Mr. Narula is that the fact of such election is not recorded in those statements at all. I cannot for these reasons possibly hold that the contractual tenancy continued between Mathra and the petitioner up to the time of the former's death. The legal representatives of Mathra could not, therefore, have been impleaded in his place.

It has been contended on behalf of Mathra's legal representatives that the order made on 18th July, 1957, allowing substitution was an appealable order under section 34 of the Act which provides that any person aggrieved by any decree or order of a Court passed under the Act may prefer an appeal, etc. Reliance has been placed on *Sansar Chand etc., v. Punjab Industrial Bank Ltd.* (1) and *Lala Mulk Raj Bhalla v. Official Liquidator of the Peoples Bank of Northern India, Ltd.* (2) in which the scope of section 202 of the Indian Companies Act, 1913, was involved and it was held that section 202 was very wide in its terms and covered appeals against any order in the matter of winding up of a Company, provided such order finally decided a dispute between the parties or deprived the appellant of a substantial and important right and

Niadre
v.
Nanneh

Grover, J.

(1) A.I.R. 1929 Lah. 707

(2) A.I.R. 1938 Lah. 658

Niadre
v.
Nanneh

Grover, J.

was not a mere formal and interlocutory order. In *Shri S. Vaidya Nath Aiyar v. R. S. Gopi Chand Sehgal, etc.* (1), decided by Bhandari, C. J. on 15th December, 1955, an order made under section 13(5) granting more time than the period of 15 days prescribed by the statute for depositing the arrears of rent was held to be immune from challenge on account of the landlord having failed to appeal against that order and was held to be binding. It is noteworthy that the order in that case had been made under the Act whereas the order of substitution of legal representatives that was made in July, 1957, after the death of Mathra cannot be said to have been made under the Delhi and Ajmer Rent Control Act, 1952. Consequently this contention is devoid of force. In this view of the matter Civil Revision No. 370 of 1959, is allowed and the order of the Courts below directing possession to be restored to Basanti and others who are the legal representatives of Mathra is set aside.

As regards Civil Revision No. 369 of 1959, the petition is allowed and the order of restoration of possession is set aside, but as Nanneh would be entitled to be awarded compensation under the concluding portion of section 15(3), the learned counsel agree that the compensation may be fixed by this Court. After taking into consideration everything, I fix it at Rs. 300.

As regards Civil Revision No. 371 of 1959. Giarsi tenant has been ordered restoration of possession of two rooms on the first-floor which have not been shown to be either godowns or shops. The order of restoration in that case would, therefore, be maintained and the revision petition is dismissed.

In all the cases the parties are left to bear their own costs in this Court.

B. R. T.

(1) C.R. 92-D of 1955