

## FULL BENCH

Before S. C. Mital, D. S. Tewatia and S. S. Kang, JJ.

BRIJ MOHAN,—Appellant

versus

CHIEF ADMINISTRATOR and others,—Respondents.

Letters Patent Appeal No. 101 of 1977.

February 19, 1980.

*Capital of Punjab (Development and Regulation) Act (XXVII of 1952)—Sections 2(k), 8-A and 10—Chandigarh (Sale of Sites and Buildings) Rules, 1960—Rules 8-A and 9—Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971)—Section 5—Tenant of a building using it for a purpose not authorised—Building sought to be resumed under section 8-A—Such tenant—Whether has a right to be heard before passing of the resumption order—Expression ‘transferee’ in section 2(k)—Whether includes a lessee—The tenant—Whether an aggrieved party—Right of appeal under section 10—Whether available to the tenant.*

*Held*, that the definition of expression “transferee” given in clause (k) of section 2 of the Capital of Punjab (Development and Regulation) Act, 1952 cannot be considered to be exhaustive for clause (k) is pre-fixed by the expression “in this Act, unless the context otherwise requires”. The definition of expression ‘transferee’ given in the penultimate portion of Form ‘D’ which is a model conveyance deed available in rule 8-A of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 read with the expression ‘transferee’ given in clause (9) thereof would certainly show that the expression ‘transferee’ in clause (g) refers not only to the transferee of the site or building from the Central Government, but also the lessee. It is no doubt true that the definition of ‘transferee’ as given in the conveyance deed is more elaborate than the one given in clause (k) of section 2 of the Act in that it uses, *inter alia*, the expression ‘assign’ as also ‘lessee’ but it is so because it is intended to be more of a clarificatory nature in order to make it clear beyond doubt that a lessee is as much bound by the rules and orders as his lessor, the transferee from the Central Government of the site of building. Section 8-A of the Act is in the nature of a package provision providing for action for variety of breaches of the conditions or terms of sale of the site or building in question, some of which, in the very nature of things, could be committed alone by the direct transferee or his successors-in-interest and not the lessee and some of which can be committed both by the transferee and his lessee. Where the condition violated is such for which both the lessor and the lessee can be held liable, i.e., breach of the condition of rule regarding the use

of a particular site or building by a tenant, then the expression 'transferee' would cover both of them. The proposed order of resumption has indeed, dual consequences; (i) the depriving of ownership right in the site or building which concerns only the owner of the site or building; and (ii) the deprivation of the lessee of his lawful possession thereof. Such being the consequences of the order of resumption, both lessee and his lessor would be affected by the order and would thus be entitled to be heard before such an order is passed. (Paras 9, 14, 16, 17 and 19).

*Mulkh Raj v. The Estate Officer, etc.*

C.W.P. No. 3825 of 1968, decided on 26th November, 1971.

*Mohan Lal- Ghansham Dass v. The Chandigarh Administration and others.*

1979 P.L.R. 94.

OVERRULED.

Held, that if the objections raised by the lessee are overruled and an order of resumption is passed which would have consequence of putting an end to the lawful possession of the lessee of the site or building, then surely he would be the person, who would be equally aggrieved by the order of resumption and thus would be entitled to challenge that order in appeal under section 10 of the Act.

(Para 21).

Case referred by the Division Bench consisting of Hon'ble Mr. Justice S. C. Mital & Hon'ble Mr. J. V. Gupta, on 7th March, 1980 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice S. C. Mital, The Hon'ble Mr. Justice D. S. Tewatia and The Hon'ble Mr. Justice Sukhdev Singh Kang finally decided the case on 19th February, 1980.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment, dated 28th April, 1977 delivered by Hon'ble Mr. Justice Rajendra Nath Mittal in C.W. No. 1452 of 1974 by which the writ petition has been dismissed.

H. L. Sibal, Senior Advocate.

R. S. Mongia and S. C. Sibal, Advocates with him, for the Petitioner.

Anand Swaroop, Senior Advocate.

M. L. Bansal and Sunil Parti, Advocates with him, for the Respondents.

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### JUDGMENT

*D. S. Tewatia, J.*

(1) In these two referred Letters Patent Appeals Nos. 101 and 102 of 1977, the significant question of law, which is common to both, that falls for determination is as to whether a tenant of a building regarding which an order of resumption is sought to be passed under section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the Act) is entitled to be heard before an order of resumption is made thereunder and further whether the tenant can be considered to be a party aggrieved against the resumption order and thus entitled to file an appeal under section 10 of the Act.

(2) Before proceeding to consider the proposition posed above, it may be useful to have a few facts relevant to each Letters Patent Appeal. In Letters Patent Appeal No. 101 of 1977, the appellant-tenant too was furnished with a copy of the show-cause notice sent to his landlord Faqir Chand, respondent No. 3, requiring him (the appellant-tenant) to prefer his objections, if any. The Estate Officer,—vide his order, dated 5th November, 1973, Annexure P-2, resumed the building which, in this case, is a house which was put to an impermissible use by the appellant-tenant. The appellant-tenant, however, did not challenge order Annexure P-2 in appeal. In due course, he was sought to be evicted from the premises and was served with a show-cause notice under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the Eviction Act) and, ultimately, an order under section 5 of the Eviction Act, Annexure P-3, was passed against the appellant-tenant on 26th March, 1974. He did not challenge this order as well in appeal and, instead of challenging it in appeal, straightway approached this Court on the writ side through Writ Petition No. 1452 of 1974. The learned Single Judge dismissed his petition holding that he had no right to be heard before an order of resumption was passed under section 8-A of the Act and that he having not availed the alternative remedy of appeal against the order passed against him under section 5 of the Eviction Act, the petition was barred in view of clause (3) of Article 226 of the Constitution of India.

(3) In Letters Patent Appeal No. 102 of 1977, unlike Letters Patent Appeal No. 101 of 1977, the appellant-tenant was not furnished with a copy of show-cause notice issued to his landlord Major

Bhagwant Singh, respondent No. 3. The appellant-tenant had, however, in this case challenged in appeal the order of resumption, dated 18th December, 1973, Annexure P-2, but his appeal was dismissed by the Chief Administrator, Chandigarh,—*vide* his order, dated 15th April, 1974, Annexure P-3. Again unlike the appellant-tenant in Letters Patent Appeal No. 101 of 1977, the appellant-tenant herein had availed his right of appeal against the order. Annexure P-4, passed against him on 19th March, 1974, under section 5 of the Eviction Act. However, his appeal met with no success, which was dismissed by the District Judge, Chandigarh, on 16th April, 1974, Annexure P-5, which led him to file Civil Writ Petition No. 1419 of 1974, impugning therein the orders, Annexures P-2 to P-5. The learned Single Judge dismissed his petition on the ground that he, as a tenant, had no right to challenge the order of resumption, Annexure P-2, and Annexure P-3 and since the learned Single Judge did not concede to the tenant, the right to challenge the order of resumption, he ruled that there was no reason to set aside the order of eviction, Annexure P-4, and Annexure P-5 as well.

(4) Section 8-A of the Act is in the following terms:—

- “(1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under section 3, or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both, should not be made.
- (2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1), of the whole or any part of the money paid in respect of such sale.”

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The expression 'transferee' occurring in section 8-A of the Act epitomizes the core of controversy. The resolution of the controversy one way or the other would depend on the meaning that may be given to this expression. The Legislature sought to define this expression in clause (k) of section 2 of the Act as follows:—

“In this Act, unless the context otherwise requires,—

(k) 'transferee' means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns.”

(5) By no stretch of imagination, a tenant can be considered to be the successor of a person to whom a site or building stood transferred under this Act, i.e., the owner of the site or building (who may be his landlord). The question arises: Can he be considered an assign of the owner of site or building under his tenancy.

(6) In two decided cases, i.e., *Manikkam Pillai v. Rathnasami Nadar and others* (1), and *Parbhu Ram v. Tek Chand* (2), one of the Madras High Court and the other of the Lahore High Court respectively (in the circumstances which shall be presently referred to), lessee was held to be the assign of “the right of enjoyment of the property” which is one of the rights which an owner enjoys over the property he owns.

(7) In *Manikkam Pillai's case* (supra), the question cropped up whether a lessee for a fixed period is entitled to issue notice to quit to a monthly tenant and cause his eviction from the very premises. The Division Bench approved the English law which treated “right to enjoy the property” as an assignment of the reversion when the property was held in a lessee's possession, as would be clear from the following observations:—

“Where the landlord had given a 14 years' lease of his premises in the possession of a yearly tenant to a new lessee, it was held that the new lessee was the proper person to give the

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(1) 43 Indian Cases 210.

(2) 53 Indian Cases 825.

notice to quit and the notice given on the landlord's behalf was held to be bad in law. See *Wordsley Brewery Co. v. Halford* (3). We must adopt this rule, unless the Indian law under the Transfer of Property Act is clearly different. Although the matter is not free from difficulty, we are inclined to think that the provisions of that Act are not inconsistent with the English rule. It is true, section 106 of that Act contemplates that the notice is to be given by the lessor or by an authorised agent on his behalf. That no doubt is the primary rule. But section 109 enacts that the transferee of any part of a lessor's interest in the property is entitled to all the rights of the lessor as to the property or part transferred. The words "transferee of any part of his (the lessor's) interest" therein (i.e., in the property) are wide enough to include a term lessee like the plaintiff with a lease for 20 years. No doubt, section 105 in defining a lease does not use the words "interest in property" as in section 58 in defining a mortgage. Nevertheless a "right to enjoy the property" which are the words used in section 105 is an interest in the property. *In English Law it is treated as an assignment of the reversion when the property is already in a lessee's possession.* It was also argued that the rights referred to in section 109 are the rights mentioned in section 108 and no more. But the words used are "all the rights" and the expression is very comprehensive. There does not seem to be any reason why the words should be held not to include the right to recover possession by terminating the tenancy of a previous lessee by giving the necessary notice to quit. That is one of the rights of the lessor "as to the property" transferred. *Prima facie* a person entitled to possession should have the right to reduce the property into possession."

(8) The ratio in *Manikkam Pillai's case* (supra) was followed by a Single Judge of the Lahore High Court in *Parbhu Ram v. Tek Chand* (supra). In this case also, the lessee, for a fixed period, of a house which

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was in possession of a monthly tenant issued notice to him to quit. The question that arose for consideration was whether the notice issued by the lessee to the monthly tenant was a valid notice. Yet another contention raised in that case was that the monthly tenants were not obliged to accept any one as their new landlord without due intimation from the old landlord and that they were, therefore, entitled to treat the notice, served upon them by the lessee for a fixed period, as a nullity. Regarding the later argument, it was observed, expressing the view taken in Court's Law of Property, 4th Edition at page 1701, that no notice was required to be given of an assignment. Regarding the first point, it was observed that a lease of immovable property was, as was defined in section 105, a transfer of a right to enjoy such property, and section 109 provided that if the lessor transferred the property leased or any part thereof or any part of his interest therein, the transferee, in the absence of a contract to the contrary, should possess all the rights of the lessor as to the property transferred and the Lahore High Court approved the rule of English Law referred to in *Manikkam Pillai's case* (supra) that the person entitled to the immediate reversion of the demised premises was the proper person to give the notice to quit and held that "transferee of any interest" occurring in section 109 of the Transfer of Property Act included the term—lessee.

(9) In any case, the definition of expression "transferee" given in clause (k) of section 2 of the Act cannot be considered to be exhaustive, for clause (k) is pre-fixed by the expression "in this Act, unless the context otherwise requires".

(10) The clue for the proposition that expression 'transferee' also includes a lessee, is also available in clause (11), the penultimate portion of Form 'D' which is a model conveyance deed envisaged in rule 8-A of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (hereinafter referred to as the 1960 Rules) which in turn were framed by virtue of the power under section 22 of the Act, Rule 8-A reads:—

"In case of sale by allotment after making payment of the sale price as specified in sub-rule (4) of rule 5, the transferee shall execute the deed of conveyance in Form 'D' or 'E', as the case may be, in such manner as may be directed by the Estate Officer."

Relevant part of clause (11) of the model conveyance deed reads:—

“And it is hereby agreed and declared that, unless a different meaning shall appear from the context:—

	*	*	*	*	*
(11)	*	*	*	*	*
	*	*	*	*	*
(a)	*	*	*	*	*
(b)	*	*	*	*	*

(c) the expression ‘transferee’ used in these presents shall include, in addition to the—————his lawful heirs (permitted), successors, representatives, assigns, transferees, lessees; and any person or persons in occupation of the said site or building erected thereon with the permission of the Estate Officer.”

(11) It has been urged on behalf of the respondent-Union Territory Administration that the definition of expression ‘transferee’ as given in the penultimate portion of the model conveyance deed, Form ‘D’, cannot govern the definition of expression of the ‘transferee’ as occurring in the Act, for that definition was for the purposes of the ‘transferee’ occurring in the conveyance deed.

(12) The Form ‘D’ which, as already observed, is required to be executed by a transferee is envisaged by rule 8-A of the 1960 Rules and rule 8-A in turn is envisaged in section 3 of the Act, which is in the following terms:—

“3(1) Subject to the provisions of this section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.”

In view of the above, the model conveyance deed envisaged in Form ‘D’ acquires a statutory character.



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(13) Clause (9) of the said model conveyance deed is in the following terms:—

“The transferee shall accept and obey all the rules and orders made or issued under the Capital of Punjab (Development and Regulation) Act, 1952.”

(14) Rule 9 of the Rules, which is in the following terms, contains interdict against the impermissible use of the building or site:—

- “(1) The transferee shall not use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial buildings, the transferee shall not carry on any trade or employ any industry other than that specified by the Estate Officer.
- (2) Instead of specifying any particular trade or industry, the Estate Officer may specify that the transferee shall not carry on any trade or employ any industry other than ‘General Trade’, ‘Semi-Industrial Trade’ or ‘Special Trade’.
- (3) The expression ‘General Trade’, ‘Semi-Industrial Trade’ and ‘Special Trade’ shall mean one or more of the trades respectively mentioned in parts A, B and C of the Schedule annexed to these Rules and shall include any other trade which is not so mentioned provided that such other trade is similar to and carried on in the same fashion as mentioned in the respective part of the Schedule.”

Apparently, the definition of the expression ‘transferee’ given in the penultimate portion of the conveyance deed read with the expression ‘transferee’ given in clause (9) thereof would certainly show that the expression ‘transferee’ in clause (9) above refers not only to the transferee of the site or building from the Central Government but also the lessee.

(15) Section 8-A of the Act merely provides for an action contemplated therein for any disobedience or non-acceptance of the rules or orders which clause (9) of the conveyance deed requires a transferee to obey and accept.

(16) It is no doubt true that the definition of 'transferee' as given in the conveyance deed is more elaborate than the one given in clause (k) of section 2 of the Act in that it uses, *inter alia*, the expression 'assign' as also 'lessee' but it is so because it is intended to be more of a clarificatory nature in order to make it clear beyond doubt that a lessee is as much bound by the Rules and Orders as his lessor, the transferee from the Central Government of site or building.

(17) Section 8-A of the Act is in the nature of a package provision providing for action for variety of breaches of the conditions or terms of sale of the site or building in question, some of which, in the very nature of things, could be committed alone by the direct transferee or his successors-in-interest and not the lessee, and some of which can be committed both by the transferee and his lessee. Where the condition violated is such for which both the lessor and the lessee can be held liable, i.e., breach of the condition or rule regarding the use of a particular site or building by a tenant, then the expression 'transferee' would cover both of them.

(18) It is being contended on behalf of the respondent-Union Territory Administration that the interest of the tenant in the site or building is merely a derivative one and comes to an end along with that of the owner or the landlord of the site or building and, therefore, the tenant cannot have an independent grievance against the proposed action of resumption of the site or building and thus is not entitled to raise objection thereto. The learned counsel for the Union Territory Administration held out an example of a tenant brought on the land by the mortgagee whose right to cultivating possession of the land comes to an end the moment the mortgage is redeemed from the mortgagee. In my view, the tenant inducted by the mortgagee on the mortgaged land does not stand on the same footing as does a tenant of an owner whose site or building is being resumed as a result of some breach committed either by him or by his tenant in regard to the use of the site or building or some other breach of rule or condition or term of sale thereof. In the case of a mortgage, the expression "mortgagee" can, by no stretch of imagination, apply to his tenant, while in the present case, the expression "transferee" as defined in the Act as also in the model conveyance deed comprehends a lessee as well.

(19) The proposed order of resumption has dual consequences: (i) the depriving of ownership right in the site or building which

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concerns only the owner of the site or building; and (ii) the deprivation of the lessee of his lawful possession thereof. Such being the consequences of the order of resumption, both lessee and his lessor would be affected by the order and would thus be entitled to be heard before such an order is passed.

(20) That the Estate Officer was alive to the right of a lessee to be heard is apparent from the fact that in Letters Patent Appeal No. 101 of 1977 arising from Civil Writ Petition No. 1452 of 1974 (*Brij Mohan v. The Chief Administrator, Union Territory, Chandigarh and others*), a copy of the show-cause notice sent to the landowner was also served upon the petitioner-lessee inviting his objections, if any, to the proposed action under section 8-A of the Act.

(21) If the objections raised by the lessee are overruled and an order of resumption is passed, which would have the consequence of putting an end to the lawful possession of the lessee of the site or building, then surely he would be the person who would be equally aggrieved by the order of resumption and would thus be entitled to challenge that order in appeal under section 10 of the Act.

(22) Mr Anand Swaroop, learned counsel for the Union Territory Administration, however, sought support for his submission that a lessee has no right to show cause against the action proposed under section 8-A of the Act, from a Single Bench decision of this Court rendered in *Mulk Raj v. The Estate Officer etc.* (4), and a Division Bench judgment reported as *M/s. Mohan Lal Ghansham Dass v. The Chandigarh Administration and others*, (5). In the first case, the learned Single Judge merely observed that "the petitioner cannot make a grouse of the resumption of the site as he claims himself only to be a tenant of Kulwant Singh. The real person who can make any grievance is Kulwant Singh and the petitioner cannot fight the battle for him." He did not examine the issue in detail nor gave any reasons for the conclusion he arrived at.

(23) In the second case, the proposition on behalf of the tenant was that since only the site had been resumed and not the superstructures, so the Union Territory authorities were not legally entitled to take possession of the superstructures from the tenant.

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(4) CW 3825 of 68 decided on 26th November, 1971.

(5) 1979 P.L.R. 94.

Repelling the said contention, it was observed that the site had already been resumed, the superstructures admittedly belonged to the landlords and it was for them to see as to what arrangements they had to make with the Chandigarh Administration regarding the superstructures. Thus, it would be seen that in neither of the aforementioned judgments, there is any consideration of the point in depth. With respect, I hold that in neither of these cases, the law is correctly laid down.

(24) In Letters Patent Appeal No. 101 of 1977, the tenant-appellant's success in getting a finding that a lessee is not only entitled to be heard before an order under section 8-A of the Act is passed but also entitled, if he is aggrieved, to challenge that order in appeal under section 10 of the Act, is short-lived, for the moment it is held that an effective alternative remedy was available to the tenant-appellant when he filed Civil Writ Petition No. 1452 of 1974 in this Court, the writ petition shall have to be held to have abated by virtue of clause (3) of Article 226 of the Constitution of India read with sub-section (2) of section 58 of the Constitution (Forty-Second Amendment) Act, 1976 (hereinafter referred to as the Amendment Act).

(25) Clause (3) of Article 226 is in the following terms:—

“No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.”

Sub-section (2) of section 58 of the Amendment Act provided that every pending petition before a High Court which would not have been admitted by the High Court under the provisions of Article 226 as substituted by section 38 of the Amendment Act if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to such petition, shall stand vacated. In view of the above, the finding of the learned Single Judge on the point that the writ petition stood abated is sustained and it is ordered that the petitioner-appellant shall be entitled to avail of the alternative remedy against the order passed under section 8-A of the Act as also the one passed under section 5 of the Eviction Act, within one month from today.

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(26) As regards Letters Patent Appeal No. 102 of 1977, the matter is remanded to the learned Single Judge to decide Civil Writ Petition No. 1419 of 1974 on merits in the light of the finding rendered already regarding the right of a tenant to file objections to the proposed action under section 8-A of the Act and also, if aggrieved, to challenge the said order in appeal, for I find that the appeal of the tenant-appellant had been dismissed by the Chief Administrator, Chandigarh, on the short ground that an appeal of a tenant was not maintainable as it was only the owner of a site or building who could file an appeal.

S. C. Mital, J.—*I agree.*

Sukhdev Singh Kang, J.—*I also agree.*

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N.K.S.

#### FULL BENCH

*Before S. C. Mital, D. S. Tewatia and Sukhdev Singh Kang, JJ.*

MOHINDER SINGH,—*Appellant.*

*versus*

UNION OF INDIA and another,—*Respondents.*

*Letters Patent Appeal No. 103 of 1977.*

February 19, 1980.

*Capital of Punjab (Development and Regulation) Act (No. 27 of 1952)—Sections 8-A and 10—Impermissible use of a building by the tenant—Such building resumed under section 8-A—Similar impermissible use of other buildings alleged where no action is taken—Order of resumption under section 8-A—Whether discriminatory—Plea that no action is taken in cases of similar impermissible user—Whether available.*

*Held*, that if a citizen feels that he is entitled to make a grievance against the owner or lessee of a building, who happens to be putting that building to an impermissible use, he may move the authority