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mode of performing an act of the class which the driver was employed to perform but the performance of an act of a class which he was not authorised to perform at all. A learned Single Judge of the Madras High Court (Venkatadri, J.) in *M. S. Ramachandram Pillai* v. *K. R. M. K. M. Kumarappa Chettiar and another* (7), held that a general servant remains the servant of the master who pays him and there is a presumption against the transfer of that servant as distinct from his services, and the presumption is all against there being such a transfer.

In our opinion, the liability of the defendants follows as a necessary corollary of the principle of *respondeat superior* and the plaintiff is entitled to a decree against defendants 1 to 3. It is true that Shanker Singh, the first defendant, died during the pendency of the appeal and his legal representatives have not been impleaded, but the liability of partners is co-extensive and the second defendant would be equally liable for the entire amount as a surviving partner of the third defendant-firm under whose ownership the vehicle was plying at the time of the accident. The appeal only abates in respect of Shanker Singh's legal representatives who have not been brought on record.

In the result, this appeal is allowed with costs and the decree granted by the trial Judge will also be enforceable against the second and third defendants.

P. D. SHARMA, J.—I agree.

Sharma, J.

K.S.K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

ATMA PARKASH,—*Appellant*

versus

HARBANS LAL,—*Respondent.*

S.A.O. No. 5-D of 1964

1965

July, 30th.

Delhi Rent Control Act (LIX of 1958)—S. 12—Delhi Rent Control (Amendment) Act (IV of 1963)—S. 3—Acquired property purchased on 19th September, 1960, sale certificate granted on 16th August, 1961, Amendment Act came into force on 12th March, 1963 and application for fixation of standard rent filed on 23rd July, 1963 by the landlord—Whether within time.

(7) A.I.R. 1964 Mad. 362.

Held, that till 12th March, 1963, when the Delhi Rent Control (Amendment), Act, 1963, came into force, the landlord's right to bring an application for fixation of standard rent had not been clarified. Though the sale certificate was granted to the landlord on 16th of August, 1961, his right to bring an application still was a matter of doubt till the passing of the Amendment Act. Clause (a) of section 12 of the Delhi Rent Control Act, 1958, does not extend the *terminus quo* beyond the date of commencement of the Act and it matters not when the right to bring an action for lawful increase of rent arose. No doubt, clause (a) lays emphasis on premises and these having been with the tenants before the commencement of the Act, this provision comes into operation. However, there is sufficient cause in the present case for the Controller to have exercised the indulgence which he has under the proviso. The Amending Act came into force on 12th of March, 1963, and it always takes some time before persons affected by the change of legislation come to know of it. No case for interference with the discretion of the Rent Control Tribunal has been made out.

Second Appeal under section 39 of Act 59 Rent Control Act of the order of Shri Pritam Singh Pattar, Rent Control, Tribunal, Delhi, dated the 22nd May, 1964. Affirming that of Shri Amarjit Chopra, dated 31st January, 1964 and remanding the case for decision on Merits.

M. L. RAWAL AND R. L. TANDON, ADVOCATES, for the Appellant.

H. K. L. SABHARWAL, ADVOCATE, for the Respondent.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This judgment will dispose of four appeals by different tenants of the same landlord raising the question of construction of the proviso to section 12 of the Delhi Rent Control Act (Act No. 59 of 1958) (hereinafter called the Act).

The facts on which there is no dispute are these. Building bearing municipal Nos. 1309—12, which is the subject-matter of the four different appeals, is situated in Mohalla Faizganj, Bahadurgarh Road, Delhi, belonging to a Muslim evacuee. This entire property was purchased at a public auction by the respondent Harbans Lal on 19th of September, 1960, for a sum of Rs. 26,050. The auction was confirmed on 26th of October, 1960, but the sale certificate came to be granted much later on 16th August, 1961. The new landlord moved applications for fixation of standard rent against four tenants

of the four different units comprised in the property purchased by him in open auction. These applications were made on 23rd July, 1963. The short question for determination in all these four appeals is whether the applications made by the landlord for fixation of rent were barred by time under the provisions of section 12 of the Act to which I would advert in a moment. The Rent Controller holding that the applications were barred by time dismissed them by four different orders passed on 31st of January, 1964. On the appeals preferred by the landlord, the Rent Control Tribunal took a different view on the question of limitation and found them to be covered by the proviso to section 12 of the Act. As in the view of the Tribunal the applications for fixation of standard rent were in time, all the four cases were remanded for decision on merits. The four different tenants feeling aggrieved have approached this Court for interference in appeal.

The cases of the tenants have been argued with great fairness by Mr. Rawal, their learned counsel. It is common ground that before the Delhi Rent Control (Amendment) Act, 1963 (Act No. 4 of 1963), section 3 was as follows:—

> "Nothing in this Act shall apply—
>
> (a) to any premises belonging to the Government; or
>
> (b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government."

It is not disputed that under section 3 of the Act, the landlord could not move an application for fixation of standard rent as the premises belonged to the Government. This fetter on the rights of the landlord was removed by Act No. 4 of 1963 in the amendment introduced to section 3, by the following proviso:—

> "Provided that where any premises belonging to the Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy."

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This Act which was published in the *Government Gazette* on 12th March, 1963, came into force from that date and it cannot be doubted that the landlord thereafter could make application for fixation of standard rent.

Reference may now be made to section 12 on which reliance has been placed by the learned counsel for the appellants both here and before the authorities under the Act:—

> "12. Any landlord or tenant may file an application to the Controller for fixing the standard rent of the premises or for determining the lawful increase of such rent,—
>
> (a) in the case of any premises which were let, or in which the cause of action for lawful increase of rent arose, before the commencement of this Act, within two years from such commencement;
>
> (b) in case of any premises let after the commencement of this Act;
>
> (c) in the case of premises in which the cause of action for lawful increase of rent arises after the commencement of this Act within two years from the date on which the cause of action arises:
>
> Provided that the Controller may entertain the application after the expiry of the said period of two years, if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time."

It is common ground between the parties that the case is governed by clause (a) of section 12 as the premises had been on lease before the commencement of the Act and the application was not made for any lawful increase of rent within the meaning of clause (c). The premises were under the tenancy of the appellants before the enforcement of the Act on 9th of February, 1959.

It is contended by the learned counsel for the appellants that an application for increase in standard rent has to be made within two years of the commencement of the Act. The landlord was thus bound to make

these applications up to 9th of February, 1961. The proviso would operate, in the submission of the learned counsel, only if the delay was sufficiently accounted for to the satisfaction of the controller. In his ensuing contention the learned counsel submits that the affidavit does not disclose the reason which prevented the landlord from making the applications within two years. The reference about illness for about two months is vague and is not a sufficient compliance of the requirements of the proviso which are the same as in section 5 of the Limitation Act.

It is incontrovertible that till the 12th of March, 1963, the landlord's right to bring an application for standard rent had not been clarified. Though the sale certificate was granted to the landlord on 16th of August, 1961, his right to bring an application still was a matter of doubt till the passing of the Act No. 4 of 1963. In the view of the Rent Control Tribunal, the date from which time began to run was 16th of August, 1961, when the sale certificate was given for before that date the landlord in any event could not, in his capacity as owner, bring an application for enhancement of rent. The applications for enhancement which were made on 23rd of July, 1963, were thus within a period of two years. I am inclined to agree with the learned counsel for the appellants that clause (a) of section 12 does not extend the *terminus quo* beyond the date of commencement of the Act and it matters not when the right to bring an action for lawful increase of rent arose. No doubt, clause (a) lays emphasis on premises and these having been with the tenants before the commencement of the Act, this provision comes into operation. It is still to be examined whether the Controller could, in the circumstances of the case, have entertained the applications after the expiry of two years. In my opinion, there is sufficient cause in the present case for the Controller to have exercised the indulgence which he has under the proviso. The Amending Act came into force on 12th of March, 1963, and it always takes some time before persons affected by the change of legislation come to know of it. Though no specific plea has been taken to this effect, I am not minded to interfere with the discretion which has been exercised by the Rent Control Tribunal keeping in view the circumstances that the sale

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certificate was granted as late as 16th of August, 1961 and the amending legislation came into force on 12th of March, 1963.

These appeals, therefore, fail and are dismissed. In the circumstances, I would make no order as to costs.

B.R.T.

FULL BENCH

Before Mehar Singh, A. N. Grover, D. K. Mahajan, H. R. Khanna and S. K. Kapur, JJ.

Khacheru Ram,—Petitioner

versus

DISTRICT MAGISTRATE AND ANOTHER,—*Respondents.*

Criminal Writ No. 7-D of 1965.

1965

August, 8th.

Defence of India Rules (1962)—*Rule* 30—*Activities of a person for which he was tried in courts of law and was either acquitted or convicted—Whether can furnish the basis for an order of detention under rule* 30—*Grounds on which detention order can be challenged stated.*

Held, that although a person had been acquitted of a certain offence, he could still be detained with regard to that very offence. There may not be evidence which would justify a conviction and yet there may be materials placed before the detaining authority which might satisfy it as to the prejudicial conduct of the detenu. The past conduct or antecedent history of a person can be taken into account by the detaining authority as it is largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. Such past conduct or antecedent history on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of that person is necessary.

Held, further that a detention order made under rule 30 of the Defence of India Rules can be challenged either under section 491(1) (b) of the Code of Criminal Procedure or Article 226(1) of the Constitution on all such grounds on which its validity or legality could always be challenged except for the enforcement of such rights as are conferred by Part III of the Constitution which may be mentioned in the Presidential order declaring an emergency under Article 359 of the Constitution. It is inexpedient