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Dulat, J.

among persons entitled thereto." It is obvious that if in the urban land mentioned in Nand Lal's claim there was included some land which had originally belonged to Uttam Chand and which was the subject of the decision of the Privy Council, then compensation for that portion of land would be payable to the heirs of Uttam Chand and there seems no reason why the authorities acting under the Displaced Persons (Compensation and Rehabilitation) Act should not be able to investigate the facts and come to a decision. In my opinion, therefore, the Chief Settlement Commissioner, Shri Sapra erred in law in holding that he was not competent to decide such a dispute and that error led to a failure on his part to exercise jurisdiction which properly vested in him. His order dated the 7th January, 1961, therefore, cannot in law stand. I would, therefore, allow the writ petition (Civil Writ No. 178 of 1961), quash the order made by the Chief Settlement Commissioner dated the 7th January, 1961, and direct that the Chief Settlement Commissioner will proceed to decide the appeal on the merits after going into the relevant facts.

In view of the circumstances I would leave the parties before us in both the cases to their own costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

MILKHA SINGH AND OTHERS,—*Petitioner.*

versus

MAHARAJ KISHEN AND OTHERS,—*Respondents.*

Civil Revision No. 704 of 1963

1964

May, 26th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (ii) (a)—Tenant becoming a dealer for supply of

petrol—Agreement with the Petrol company whereby company installing the outfit and dealer to pay rent for the same—Whether amounts to subletting—Adding petrol pump to the business of motor repairs and servicing—Whether amounts to change of user.

Held, that when a dealer has taken a site on lease from a third party and permits the Petrol company to instal a petrol pump and other parts of the outfit, which must certainly be regarded as immovable property, since the storage tanks or the pumps have to be installed at a certain depth below ground level, it is obvious that the company intends to stay there, and if there is any disagreement between the company and the dealer it is the dealer who will have to go. Under the agreement the company retains possession and strict control of all the parts of the outfit and in the event of any disagreement, though this is not specifically stated, or on the termination of the agreement by either party, the dealer, if he is the owner of lease-holder of the site, will have to transfer his rights to the company or if he is only a tenant he is bound to sublet the site to the company. Such an agreement amounts to subletting within the meaning of section 13(2) (ii) (a) of the East Punjab Urban Rent Restriction Act, 1949, and entitles the landlord to evict the tenant. It cannot be said that the company is a mere licensee of the tenant in such a case.

Held, that where already a business was being carried on for repairing and servicing motor vehicles the addition of facilities for supplying petrol and oil could not be held to be a change of user since this business was allied to and connected with the existing business.

Petition under Section 15 of the East Punjab Urban Rent Restriction Act of 1949, for revision of the order of Shri Banwari Lal Nagpal, District and Sessions Judge, Jullundur, dated 25th September, 1963, reversing that of Shri Ranjit Singh, Rent Controller, Jullundur, dated 23rd April, 1963, accepting the appeal and dismissing the ejectment application filed by the petitioners.

BHAGIRATH DASS, HIRA LAL SIBAL, AND BALWANT SINGH GUPTA, ADVOCATES, for the Petitioners.

RANJIT SINGH NARULA, H. L. SARIN, AND RAJESH KAPOOR, ADVOCATES, for the Respondents.

JUDGMENT.

Falshaw, C. J.

FALSHAW, C.J.—This is a landlords' revision petition against the order of the Appellate authority setting aside an order for the ejectment of the tenant passed by the Rent Controller.

The premises in dispute comprise a building on land measuring 4 kanals situated alongside the G. T. Road in the town of Jullundur and it was leased by Milkha Singh, petitioner, on behalf of himself and the other landlords Gurdial Singh and Shrimati Swarn Kaur to Maharaj Kishen under an agreement, dated the 24th June, 1954, for a period of three years on a rent of Rs. 1,020 per annum for the purpose of both residence and running the business of a motor workshop. It does not appear that at any time there were any kind of residential premises built on the land where Maharaj Kishen carried on his business in the name of Messrs. Kesar Motor Garage. On the 25th of May, 1961, by which time the name of the business had been changed to Kesar Service Station, Maharaj Kishen entered into an agreement in the standard form with the Standard Vacuum Oil Company, a branch of an American company which has now changed its name to Esso Standard Eastern Inc. with its office at New Delhi, for the installation of a petrol pump on the leased land. The necessary installations were made in part of the leased land by the company which obtained the necessary licence in the name of the Standard Vacuum Oil Company, New Delhi, Dealers, Kesar Service Station, for the installation of the necessary storage tanks with a capacity of 3,000 gallons of petrol and 3,000 gallons of diesel oil.

The ejectment petition was filed by the landlords on the 30th June, 1960, impleading the Standard Vacuum Oil Company and Messrs Esso

Standard Eastern Inc. as respondents as well as the tenant Maharaj Kishen. Three grounds for ejectment were pleaded (i) that the installation of the petrol pump by the company constituted subletting, (ii) that the premises were *bona fide* required by the landlords for their own use, and (iii) that the installation of the petrol pump amounted to a change in the user of the premises.

As regards the latter point even the learned Rent Controller who passed an order for the ejectment of the tenant held that where already a business was being carried on for repairing and servicing motor vehicles the addition of facilities for supplying petrol and oil could not be held to be a change of user since this business was allied to and connected with the existing business and I agree with this view. However, the learned Rent Controller found in favour of the landlords on the points of subletting and personal requirement.

On the question of subletting great stress was laid on the terms of the agreement R.W. 6/2 entered into between the tenant and the company in which great stress was laid throughout on the fact that the installations including the storage tanks buried in the ground, pumps, other apparatus, signs, etc., comprehensively termed "the outfit" in the agreement would continue to be the property of the company, which was to be exclusively responsible for their maintenance and repair and was responsible for the locks on the storage tanks. In fact under the agreement the dealer was to pay an annual rent of Rs. 74 for the outfit. To be strictly accurate the rent was merely Rs. 24 and the remaining Rs. 50 were the cost of the annual licence obtained in the name of the company.

In support of the argument that the tenant had surrendered the whole or major portion of his

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rights in the rented land to the company particular reliance was placed on the terms of clause 16 of the agreement which reads—

"In consideration of the premises and of the services rendered by the company to dealer in the development of the outlet dealer agrees with the company as follows:—

(a) The company shall have the right at any time during the currency of this agreement or within one month thereafter by notice in writing to require the dealer to sell or to assign according as the site may be held by dealer on freehold or leasehold tenure to the company or its nominee the site together with all buildings, structures and fixed assets thereon standing and belonging to the dealer (hereinafter collectively referred to as 'the immovable assets') and thereupon the dealer shall sell or assign the immovable assets to the company or its nominee within three months next after receipt of such notice at or for a price which shall be computed as follows:—

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* * * * *
* * * * *

If the site shall be held by the dealer as a tenant or lessee of another then, in the event of the dealer being unable for any valid

reason beyond his control to assign the immovable assets to the company, the dealer shall, as soon as possible after receipt of the company's notice requiring assignment, inform the company in writing of such inability and the reason therefor and the company shall be entitled within one month after receipt of such information to require the dealer to sublet the immovable assets to the company or its nominee. In such case the dealer shall sublet the immovable assets to the company or its nominee at the expense of the company for the unexpired residue of the term of the lease or tenancy at a rental which shall be equal to the amount of the rental which the dealer himself is liable to pay for the site with a further sum calculated at 6 per cent per annum on the amount representing the price of the buildings, structures and fixed assets arrived at in manner provided in this clause for the case of sale or assignment * * * * * * * * * Options granted by this clause to the company for purchase assignment or sublease of the immovable assets may be specifically enforced by the company."

The question is whether by executing this agreement the tenant has in the words of section

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13(2)(ii) (a) of the East Punjab Urban Rent Restriction Act, 1949, transferred his right under the lease or sublet the entire building or rented land or any portion thereof.

The learned Rent Controller found that by entering into this agreement the tenant had parted with his rights under the lease and virtually sublet the premises to the company, but the learned Appellate Authority came to the conclusion that the agreement only amounted to a licence in favour of the company and the tenant retained his essential rights as such.

The question is obviously not free from difficulty and it does not seem that the position of a tenant who has become a dealer of one big oil distributing companies under the standard form of agreement, which I think does not differ much from company to company, *vis-a-vis* his own landlord has previously come before the Courts for decision. The only case I am aware of in which a dealer's agreement has come up for consideration was *Messrs Delhi Gate Service Private Ltd., Delhi* v. *Messrs Caltex (India) Ltd., New Delhi* (1); but there the position was different in that the company was the owner of the site, as apparently, judging by the terms of the present agreement, the company prefers to be. In that case the company had terminated the agreement with the dealer and had instituted a suit in an ordinary civil Court for possession of the site which was resisted by the dealer on the ground that he was a tenant entitled to the protection of the Delhi Rent Control Act. I held that where the company owns a site under the terms of the agreement the dealer is only a licensee who can be disposed under the terms of the agreement.

(1) 1962 P.L.R. 559.

The position, however, is not the same when the dealer has taken a site on lease from a third party. The position of the company as evidenced by the terms of the agreement, is obviously that once it has obtained a licence from the authorities and installed a petrol pump and other parts of the outfit, which must certainly be regarded as immovable property since the storage tanks or the pumps have to be installed at a certain depth below ground level, the company intends to stay there, and if there is any disagreement between the company and the dealer it is the dealer who will have to go. Under the agreement the company retains possession and strict control of all the parts of the outfit and in the event of any disagreement, though this is not specifically stated, or on the termination of the agreement by either party the dealer, if he is the owner or lease-holder of the site will have to transfer his rights to the company or if he is only a tenant he is bound to sublet the site to the company.

In these circumstances it is difficult to agree with the finding that the company is a mere licensee of the tenant.

It may be argued that since the agreement contains a provision agreeing to sublet the site to the company in certain conditions, it cannot be said to amount to a sublease in itself, but it is not necessary for there to be a total sublease in order to give the landlord a right of ejectment. A sublease of any portion of the property confers this right and there appears to be a clear sublease in a case of this kind of that part of the property which actually contains the installations of outfit of the company for which in fact under the terms of the agreement the tenant has to pay rent to the company. A major part of this rent admittedly covers the cost of

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the licence which is taken out in the name of the company every year, but part of it is definitely rent for the outfit, and it is difficult to resist the conclusion that the tenant in fact has become the tenant of the company in respect of that part of the property which is covered by the outfit. I am, therefore, of the opinion that on this part of the case the view taken by the learned Rent Controller was correct.

Once this finding is given the landlord is obviously entitled to evict the tenant even if the alleged *bona fide* requirement by the landlord of the land for his own use, which was found in the landlord's favour by the learned Rent Controller but against him by the learned Appellate Authrity, is not found to be established. On this point I am inclined to agree with the finding of the learned Appellate Authority that no such *bona-fide* requirement was established. The landlord alleged that he wanted the site in dispute in order to set up a woodwork or furniture factory with some machinery which he was using at the time of the trial in a factory situated in Kenya, East Africa. He claimed that the position of Indians in Kenya was becoming difficult and he wanted to settle in Jullundur, and while there is no difficulty in accepting his position regarding the prospects of Indians in Kenya, which may have become even worse by now since Kenya attained its independence last year, I do not think it can possibly be said that he needs this particular site since it is admitted that he has an adjoining site which is almost as large as the property in suit as well as other properties in Jullundur.

However, the petition succeeds on the main point and I accordingly accept the petition and restore the order of the Rent Controller for the

eviction of the tenant. The parties will be left to bear their own costs. Three months' time allowed to the tenant to vacate the premises.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Gurdev Singh, JJ.

MESSRS BAJAJ ELECTRICALS, LTD.,—
Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 1609 of 1961

1964

May, 29th.

Punjab Professions, Trades, Callings and Employments Taxation Act (VII of 1956)—S. 3—Company having no place of business or resident representative in the State of Punjab and supplying goods to its various customers in the Punjab from its office in Delhi—Whether can be said to be carrying on business in the Punjab and hence liable to pay tax—Interpretation of statutes—Construction of fiscal statutes—Liability of a subject to tax under—How to be determined.

Held, that when a company does not have any place of business or a representative in the State of Punjab and has not entered into any contract of purchase or sale within this State, the mere fact that it despatches goods to its customers living in Punjab from a place outside the State would not justify the conclusion that it has been engaging in trade within the area of Punjab State. Such a company is not liable to any tax under the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956.

Held, that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the