

Before P. C. Jain and J. M. Tandon.

MADAN LAL,—Petitioner.

versus

VIDYA WATI and others,—Respondents.

Civil Revision No. 1873 of 1977.

September 23, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Landlord renting out vacant land to tenant—Tenant constructing a Khokha on the said land—Such Khokha further let by tenant to another person—Letting out of Khokha—Whether amounts to sub-letting of land underneath it—Tenant—Whether liable to be evicted on the ground of sub-letting.

Held, that the position of tenant of a rented land would not undergo any change with the construction that may be made by him thereon. In the event of the building constructed on the rented land being let out, it cannot be said that the sub-letting of the land therein is not involved. The building so constructed on the rented land cannot conceivably be let out without sub-letting the land thereunder. In this view of the matter the tenant would be liable to eviction under section 13 of the East Punjab Urban Rent Restriction Act, 1949 on the ground of sub-letting. (Para 4).

Banarsi Dass vs. Faquir Chand and others, 1976 P.L.R. 110 no longer held to be a good law.

Petition under section 15(5) of Act III of 1949 for revision of the order of the Court of Shri Gian Inder Singh, Appellate Authority under the East Punjab Urban Rent Restriction Act, Amritsar, dated the 18th November, 1977 reversing that of Shri H. R. Nohria, Rent Controller, Amritsar, dated the 21st December, 1976 accepting the appeal, and passing an order for the eviction of the respondents from the suit premises and directing the respondents to put the appellant in possession of the suit premises by 18th December, 1977, and leaving the respondents to bear the costs.

H. L. Sibal, Sr. Adv. (Mr. D. V. Sehgal and P. S. Rana, Advocates with him).—for the petitioners.

H. L. Sarin, Sr. Advocate (M. L. Sarin and R. L. Sarin, Advocates with him).—for the respondents.

JUDGMENT

J. M. Tandon, J.

(1) Vidya Wati respondent filed an application under section 13 of the East Punjab Urban Rent Restriction Act for the eviction of Madan Lal petitioner from the vacant site 15'x26' (part of bungalow No. 519 Majitha Road, Amritsar) on the grounds of sub-letting and *bona fide* requirement for own use and occupation. The Rent Controller found both the grounds not proved and dismissed her petition. On appeal filed by the respondent, the Appellate Authority held that the respondent had proved that she required the land in dispute for her personal use and occupation and further the petitioner had sublet the demised premises without the written permission of the land-lady. He consequently accepted the appeal and ordered the ejection of Madan Lal petitioner, who feeling aggrieved filed Civil Revision No. 1873 of 1977 in this Court. The learned Single Judge,—*vide* order, dated February 22, 1980, has found the finding of the Appellate Authority on the point of *bona fide* requirement for the respondent in her favour unsustainable and has consequently reversed it.

On the point relating to the ground of sub-letting, the Rent Controller found:—

“Even if for the sake of arguments, the argument of the learned counsel for the applicant that it is a case of exclusive use of one of the *khokhas* by Rattan Lal to the exclusive of Madan Lal is believed to be tenable the mere use of *Khokha* by Rattan Lal would not tantamount to the sub-letting of the demised premises. As already stated the demised premises in this case is the vacant land and not any of the *Khokha* constructed thereon. It is the admitted case of the parties that the *khokhas* were built on the site in dispute by Madan Lal respondent and these *khokhas* do not form part of the tenancy.”

The Appellate Authority held that there was no evidence to prove that Rattan Lal was using the shop as a brother of Madan Lal and in these circumstances the ground of sub-letting was established. In Civil Revision No. 1873 of 1977 before the learned Single Judge

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the learned counsel for the petitioner cited *Banarsi Dass v. Faquir Chand and others* (1), which had also been relied upon by the Rent Controller and wherein it had been observed:—

“What is prohibited to be sub-let without the written consent of the landlord is the premises which have been let out to the tenant. What had been let out to the tenant was the open plot of land on a part of which some shops were constructed. What the petitioner has let out to the other respondents are the shops constructed by him and not the plot of land which he had taken on rent originally from Kishore Chand and subsequently from Parkash Chand.”

(2) It was urged before the learned Single Judge that in view of the observations made in *Banarsi Dass's case* (supra), the Appellate Authority wrongly reversed the finding of the Rent Controller on the ground of sub-letting, The learned Single Judge has observed as under:—

“After hearing the learned counsel for the parties, I am of the opinion that in view of this judgment, the finding of subletting given by the Appellate Authority, cannot be maintained, unless I take a different view in this respect. Even if it is held that Rattan Lal is in exclusive possession of a *Khokha* raised on the premises in dispute, it may not amount to subletting according to the observation of the learned Judge referred to above. Sitting singly, I think it proper that the case be referred to a Division Bench on this point only, to decide the correctness of the observation made by Narula C.J. (as he then was), in *Banarsi Dass's case* (supra).”

(3) It is under these circumstances that this case has come up before us.

(4) The learned counsel for the petitioner has argued that in view of the fact that the respondent had let out the land to the petitioner and a *khokha* thereon had been constructed by the petitioner who had allegedly let out to Rattan Lal, no sub-letting of the rented land is involved. The sub-letting of the *khokha* by the

(1) 1976 P.L.R. 110.

petitioner, in favour of Rattan Lal cannot, therefore, be taken as a good ground for ejection of the former on the ground of sub-letting of the rented land and the observations made by Narula C.J. in *Banarsi Dass's case* (supra) are correct. We are unable to agree with this contention. The position of the tenant of a rented land would not undergo any change with the construction that may be made by him thereon. In the event of the building constructed on the rented land being let out, it cannot be said that the sub-letting of the land therein is not involved. The building constructed on the rented land cannot conceivably be let out without sub-letting the land thereunder. In this situation, with respect, we are unable to subscribe to the observations made by Narula, C.J., in *Banarsi Dass's case* (supra), which have been reproduced above. We, therefore, hold that the observations made in *Banarsi Dass's* (supra) do not lay down a good law.

(5) The file of this case he laid before the learned Single Judge for disposal of Civil Revision No. 1873 of 1977.

Prem Chand Jain, J.—I agree.

H. S. B.

Before S. S. Sandhawalia C.J. and S. S. Kang, J.

NARINDER SINGH and another,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Criminal Miscellaneous No. 1251 of 1980.

September 24, 1980.

Code of Criminal Procedure (II of 1974)—Section 145(1)—Existence of a dispute likely to cause breach of peace—Executive Magistrate recording a preliminary order under section 145 in regard thereto—Omission to record the grounds of his satisfaction—Whether vitiates the whole proceedings.

Held, that though compliance with the provisions of section 145(1) of the Code of Criminal Procedure 1973 is desirable, yet a failure to do so is not a defect of jurisdiction which is either incurable or one which would vitiate the whole proceedings. Unless grave prejudice can be shown by the aggrieved party, the proceedings