refreshments to the members and assist them in carrying on their activities. In this view, it must be held that the Additional Industrial Tribunal was wrong in the view it took that the canteen is an 'industry'. It follows that the reference made to the Additional Industrial Tribunal is bad in law and must, therefore, be quashed. The writ petition is, therefore, allowed and the impunged award of the Additional Industrial Tribunal and the reference made under notification No. F. 26(160)/64-Lab, dated the 1st June, 1964, set aside. Parties will, however, bear their own costs.

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v.
The Chief Commissioner and others

Kapur, J.

B.R.T.

FULL BENCH

Before D. Falshaw, C.J., Daya Krishan Mahajan and R. S. Narula, JJ.

GULZARI LAL,—*Appellant*

versus

DEWAND CHAND,—*Respondent*

Regular Second Appeal No. 210 of 1965

1966

March, 16th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 20 and 29—Auction-purchaser of evacuee property who has not yet obtained sale certificate—Whether can maintain suit for ejectment against a tenant in occupation who has attorned to the auction-purchaser.

Held, that an auction-purchaser of evacuee property who has not yet obtained sale certificate but to whom the occupier has attorned, can, under the ordinary law, maintain a suit for ejectment against the said occupier.

NOTE.—It has been pointed out that there is no conflict between *Roshan Lal Goswami* v. *Gobind Ram and others* (1) *and Attar Lal* v. *M/s Lakhmi Dass and Co.*, Letters Patent *Appeal No.* 139-*D of* 1963, *decided by Dua and*

(1) I.L.R. (1963)2 Punj. 745=1963 P.L.R. 852.

JJ., on 4th May, 1964, and that, as a matter of fact, the decision in *Attar Lal's* case really gives effect to the decision in *Roshan Lal Goswami's case*. Editor).

Case referred by the Hon'ble Mr. Justice R. S. Narula, on 21st September, 1965, to a larger Bench, for decision of the importatnt question of law involved in the case. The full Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula, after considering the question of law referred to them finally disposed of the case on 16th March, 1966.

Regular Second Appeal from the decree of the Court of Shri Sarup Chand Goyal, Senior Sub-Judge, with enhanced appellate powers, Amirtsar, dated the 24th day of November, 1964, reversing that of Shri O. P. Aggarwal, Sub-Judge, 1st Class, Amritsar, dated the 22nd September, 1964, and dismissing the plaintiff's suit and leaving the parties to bear their own costs.

H. L. SARIN, SENIOR ADVOCATE, WITH MISS ASHA KOHLI, BALRAJ BHAL AND A. L. BAHRI, ADVOCATES, for the Appellant.

ROOP CHAND, SUBASH CHANDER, ADVOCATES, for the Respondents.

ORDER OF REFERENCE

Narula, J.

NARULA, J.—A two-storeyed building including some shops on its ground floor bearing municipal Nos. 2228—30 in Katra Baggian, Amritsar, was evacuee property and subsequently vested in the Central Government in pursuance of a notification issued under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 44 of 1954. Dewan Chand, defendant-respondent (hereinafter referred to as the tenant) was a lessee of shop No. 2229/1 in the above-said property under the District Housing and Rent Officer-cum-Managing Officer. The entire property was transferred to the plaintiff, who was in occupation of the residential portion of its first floor under section 20 of the Compensation Act. The property was valued at Rs. 9,851. Out of the said sale price of the property, Rs. 6,188.13 P. were recovered from the plaintiff by adjustment of the compensation payable to him against his verified claims. By an agreement, dated 14th June, 1963, the balance of Rs. 3,662.87 P. was undertaken to be paid by the plaintiff in seven instalments. On July 25, 1963, after the execution of the above-said agreement

for the payment of the balance, the Managing Officer wrote letter Exhibit P. 1 to the tenant which is in the following words:—

> "Property No. 2228—30/1 has been transferred to Shri Gulzari Lal. You should attorn in his favour and pay rent in future to him at the rate of Rs. 5 per mensem, with effect from 1st October, 1955.
>
> A sum of Rs. nil is due from you on account of arrears of rent up to 30th September, 1955 (the date of transfer of property). You will not be entitled for the special protection from ejectment under section 29 of the D.P. (C. & R.) Rules, 1954, unless you clear the arrears of rent within 60 days from that date of the transfer of the property. You should, therefore, if non-claimant deposit the amount in cash or if claimant produce the documents to provide that your rent arrears on the date of transfer do not exceed the net compensation payable to you."

Exhibit P. 1 is the original signed copy of the above-said communication which was endorsed by the Managing Officer to the plaintiff-appellant, who, as stated above, is the intended transferee of the property in question. On or about 18th January, 1964, the tenant remitted a sum of Rs. 300 by money order to the plaintiff.

The admitted coupon of that money order has been proved in this case and has been marked as Exhibit P. 3. On that coupon the tenant wrote as follows:—

> *"Mablag tin sad rupayia babat kiraya dukan No. 2229/1 waqia Katra Baggian Amritsar arsal hai. Rasid se mutla karen."*

Translated into English it would read as follows:—

> "A sum of Rs. 300 on account of rent of shop No. 2229/1 situated in Katra Baggian, Amritsar is remitted. Please acknowledge receipt."

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This money order was admittedly received by the plaintiff-appellant on or about 31st January, 1964. On March 3, 1964, the plaintiff instituted a suit for ejectment and for recovery of Rs. 200 as the alleged balance of rent due to him for the period 1st October, 1955 to 31st January, 1964 at the rate of Rs. 5 per mensem against the tenant. While claiming Rs. 200 for the above-said period of 100 months the plaintiff had given credit to the tenant for the sum of Rs. 300 which he had remitted by money order, Exhibit P. 3.

The suit was contested by the tenant. From the pleadings of the parties the trial Court framed the following eight issues:—

(1) Whether the plaintiff has *locus standi* to bring the present suit ?

(2) Whether the defendant had accepted the plaintiff as his landlord and had paid a sum of Rs. 300 to him out of the arrears of rent of the disputed shop as alleged in the plaint?

(3) Whether the defendant is a tenant under the plaintiff in respect of the premises in dispute, with effect from 1st October, 1955?

(4) Whether the civil court has jurisdiction to entertain the present suit?

(5) Whether any valid notice under section 106 of the Transfer of Property Act had been duly served upon the defendant before the institution of the present suit ?

(6) Whether the plaintiff is entitled to recover Rs. 200 as arrears of rent?

(7) Whether the suit is within time?

(8) Relief.

By judgment dated 22nd September, 1964 the trial Court decided all these issues in favour of the plaintiff except the one relating to the quantum of rent and decreed the suit for ejectment and for payment of Rs. 170

(instead of Rs. 200 claimed by the plaintiff, on the ground that 34 months rent for the period ending February, 1964 was proved to be within time. Against the decree for ejectment, the tenant filed an appeal. This appeal was disposed of by the Court of Shri Sarup Chand Goyal, Senior Sub-Judge, Amritsar on 24th November, 1964. It was the finding of the trial Court on issues Nos. 2 and 3 alone which was questioned by the tenant before the first appellate Court. The finding of the trial Court on these issues was reversed by the learned Senior Sub-Judge on the ground that the instant case was distinguishable from *Roshan Lal Goswami's case* (1), on the ground that there was no evidence to prove the transfer of provisional possession in favour of the plaintiff in this case and on the further ground that the plaintiff had not yet paid the entire sale price to the Government. The learned Senior Sub-Judge further purported to hold that there was no evidence of the tenant having attorned in favour of the plaintiff. The ground on which the first appellate Court held that there was no attornment was that no overt act except mere payment of rent was attributed to the appellant and that the property being still evacuee property for want of execution of a conveyance deed, the plaintiffs were not owners of the property and the District Rent and Managing Officer had no authority to issue the letter of attornment as contained in Exhibit P. 1.

In this second appeal against the above-said judgment and decree of reversal by the learned Senior Sub-Judge, Amritsar it has been contended by Shri Harbans Lal Sarin, the learned Senior Advocate appearing for the plaintiffs that the lower appellate Court was clearly in error in holding that the District Rent and Managing Officer had no authority to issue the letter of attornment. The learned counsel appears to be correct in this submission. The Managing Officer has all the powers of managing the property in the compensation pool under section 17 of the Compensation Act. Moreover the letter of attornment issued by the Managing Officer has been held to authorise the intended transferee to file a suit for ejectment in an ordinary Civil Court even prior to the issue of a sale certificate or a conveyance deed in favour of the intended transferee by a Division Bench of this Court in *Roshan Lal Goswami* v. *Gobind Ram* (1). The question of law,

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which was referred to Division Bench by Khosla, C.J. in that case, was in the following words:—

> "—quite apart from the fact that the plaintiffs could fall back upon the ordinary law in the present case a Division Bench should consider the point whether an auction-purchaser of evacuee property, who has not yet obtained a sale certificate, but to whom the occupier has attorned, can under the ordinary law maintain a suit for ejectment."

After discussing the case law on the subject the Division Bench answered the above-said question referred to it in the following words:—

> "The question referred to the Division Bench must be answered in the affirmative. I am, therefore, of the view that an auction-purchaser of evacuee property, who has not yet obtained sale certificate but to whom the occupier has attorned, can, under the ordinary law, maintain a suit for ejectment."

The only question that, therefore, calls for determination in the circumstances of this case is whether the Managing Officer had or had not the authority to attorn the tenant to the plaintiff before the full payment of the price of the property in question and before granting a sale certificate in respect thereof. In *Roshan Lal Goswami's case* the Bench held in this connection as follows:—

> "Reference to the above provisions relating to the powers and limitations of the managing officers serves no useful purpose in these proceedings, as the managing officer has already parted with possession to the auction-purchaser and has asked the tenants to attorn to the transferee. The rights and obligations formerly of the Managing Officer henceforward are of the auction-purchaser in possession."

If things had rested with the above judgment, I was inclined to allow this appeal without any further trouble. Chaudhri Rup Chand, the learned counsel appearing for the respondent has pointed out that the correctness of the

above-said observations in *Roshan Lal Goswami's case* was doubted by a subsequent Division Bench (Dua and Mahajan, JJ.) while deciding Letters Patent Appeal No. 139-D of 1963, *Attar Lal* v. *M/s Lakshmi Dass and Co.* In the note appended by Dua, J., to that judgment, after discussing the above-said observations of Tek Chand, J., in *Roshan Lal Goswami's case,* Dua, J., held as follows:—

> "The sentence mentioned above must, in our view, be considered in the context of that case and confined to the question directly before that Bench. It does not represent the ratio of that decision."

In Attar Lal's case Mahajan, J., held as follows:—

> "Letting is a positive act and mere acquiescence or acceptance of the existing state of affairs will not, in law, amount to letting. There could be letting only if the tenancy created by the Government had been determined by the plaintiff and thereafter he had leased out the premises to the respondents or had accepted the respondents as tenants by his conduct. In the present case, there was no determination of the tenancy created by the Managing Officer in favour of the respondents. All that has happened is that instead of paying rent to the Managing Officer they were required by the Managing Officer to pay rent to the plaintiff. The position of the plaintiff is that of a nominee, who receives rents from the tenants at the behest of the owner; because till the sale certificate is granted the property in law still belongs to the Government. Merely because the right to receive rent has been transferred by the owner will not lead to the conclusion that the person to whom such a right has been transferred becomes the owner of the premises and thereby becomes entitled to let them out.
>
> This matter can be viewed from another angle. Till a sale certificate is granted, there is nothing to prevent the Managing Officer from countermanding his directions asking the tenants to

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pay rent to the transferee of provisional possession, i.e., the plaintiff..."

In *Attar Lal's case* the question, which had arisen was whether the purported tenancy, which continues in favour of a tenant of the Managing Officer after the sale in favour of an auction-purchaser or an allottee of the property forming part of the compensation pool before the transfer of rights of ownership could be called "lawful letting" for the purpose of deciding whether the protection afforded by the Delhi Rent Control Act, 59 of 1958 extended to the property in spite of its being still property belonging to the Government. The Division Bench (Dua and Mahajan, JJ.) held that unless the original tenancy created by the Managing Officer was determined and a new tenancy created by a contract between the original tenant of the Government and the intended transferee, there could be no 'lawful letting'.

If that view is correct the plaintiffs cannot eject the tenants in the instant case. As observed by Dua, J., in the note appended to the judgment of Mahajan, J., in *Attar Lal's case* this shows a conflict between the view of Tek Chand, J., in *Roshan Lal Goswami's case* and of Mahajan, J., in *Attar Lal's case*. That is why Dua, J., observed that some passages in *Roshan Lal Goswami's case* should be confined to the facts of that case alone.

The question that there is a conflict between the views expressed by Tek Chand, J., in *Roshan Lal Goswami's case* and by Mahajan, J., in *Attar Lal's case* came up for consideration in *Ram Parkash* v. *Sunder Das* (2). In view of fact that the tenant in that case had been inducted by the intended transferee himself, who had not yet obtained a sale certificate, Mehar Singh, J., observed that even if the judgment in *Attar Lal's case* was correct the landlord would be entitled to eject the tenant in that litigation because Mahajan, J., had left the field open for a case where a new tenancy had been entered into after the attornment of the tenant to the prospective transferee. Pandit, J., appended a note to the judgment of Mehar Singh, J., in *Ram Parkash's case* wherein the learned Judge observed as folows:—

"So far as this matter is concerned, there are two Division Bench decisions of this Court. The first is

Roshan Lal Goswami v. *Gobind Ram*, decided by Falshaw, C.J., and Tek Chand, J., on 21st February, 1963. The other is *Attar Lal* v. *Messrs Lakshmi Dass and Co.*, Letters Patent Appeal No. 139-D of 1963, decided by Dua and Mahajan, JJ., on 4th May, 1964. According to the former, a person in possession can transfer his possession to another by lease and thereby create a relationship of lessor and lessee or landlord and tenant despite the fact that the rights of ownership had not been acquired so far by the transferor. The vesting of ownership rights of a landlord, according to this authority, is not a *sine qua non* of the relationship of the landlord and tenant. The latter authority, however, has taken a contrary view. According to this, the possession of such a person is that of a nominee, who receives rent from the tenants at the behest of the owner (Government), because till the sale certificate is granted, the property in law still belongs to the Government. Merely because the right to receive rent has been transferred by the owner will not lead to the conclusion that the person to whom such a right has been transferred becomes the owner of the premises and thereby becomes entitled to let them out. This authority further goes on to say that whatever rights such a person has are subject to the control of the Managing Officer till the grant of the sale certificate. In the very nature of things, there can be no question of such a person getting any right to let out the premises. It is argued by the learned counsel for the appellant that *Attar Lal's case* was distinguishable, because therein the premises had already been let by the Government and there had been no letting as such by the transferee after he had obtained the provisional possession of the property and the only change that had come about was that the tenants let in by the Government had stayed on and instead of paying rent to the Government, they started paying it to the transferee. It was submitted that during the course of the judgment, the learned Judges had observed that letting was a positive act and mere acquiscence

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or acceptance of the existing state of affairs did not in law amount to letting. In the present case, the respondent had, admittedly, let out the premises to the appellant and on that account *Attar Lal's case* had no application. It is true that there was this distinction regarding the facts, but the point still remains that the learned Judges had clearly and unequivocally laid down in that authority the proposition of law which I have already set out above. That, undoubtedly, runs counter to the one mentioned in *Roshan Lal Goswami's case*. It is noteworthy that in *Attar Lal's case* the effect of the proviso to section 3 was also considered. If this decision has to be followed, then under no circumstances could these premises be lawfully let by the respondent to the appellant and, therefore, the proviso to section 3 would not be attracted. If, on the other hand, *Roshan Lal Goswami's case* is followed, then the respondent could create a lawful tenancy in favour of the appellant. In this state of law, the only proper course, in my opinion, was that this matter should have been settled by a larger Bench."

After going through the record of the instant case and hearing the learned counsel for both sides I have reached the following conclusions:—

(1) that the property in question was part of the compensation pool and vested in the Central Government and the Central Government itself continues to be the owner of the property so long as conveyance deed or sale certificate in respect thereof is not granted to the plaintiffs.

(2) that Dewan Chand was a tenant of the Central Government through the Managing Officer and has been attorned by the Managing Officer to the plaintiff as a tenant and Dewan Chand, defendant has accepted that position by voluntarily paying out part of the rent of the premises due to the plaintiff.

(3) that actual physical possession of the first floor of the building was already with the plaintiff

and symbolic possession of the shop in dispute was given to the plaintiff as evidenced by letter P. 1. Provisional possession of the entire property was given by the Managing Officer to the plaintiff. I have given this finding on a consideration of Exhibit P.1. and the evidence of the official of the office of the Managing Officer who has said that the property was provisionally transferred to the plaintiff.

(4) That relationship of landlord and tenant could come into existence between the plaintiff and the tenant even without rights of ownership being acquired by the plaintiff.

(5) That on account of a notification under section 3 of the East Punjab Rent Restriction Act, the protection of that Act would not be available to the tenant in this case till execution of a sale deed of the property in favour of the plaintiff.

As stated above, if nothing had happened after the judgment in *Roshan Lal Goswami's case,* I would have accepted this appeal and decreed the suit for ejectment of the defendant. The ratio of the judgment in *Roshan Lal Goswami's* case about the powers of the Managing Officer and about the effect of the Managing Officer attorning an existing tenant to an intended transferee having been doubted, it remains to be decided whether in such circumstances the intended transferee can without determining the previous relationship between the Central Government and the old tenant and without creating a new tenancy proceed to eject him or not. This is extremely doubtful if the judgment in *Attar Lal's case* is correct. This is, however, unexceptionable if the judgment in *Roshan Lal Goswami's case* is correct. In view of this divergence of opinion on one of the crucial questions involved in the above-said two judgments of two different Division Benches of this Court, I think, it is but proper to direct that the papers of this case may be placed before my Lord, the Chief Justice to consider the advisability of the following questions being referred to a Bench of at least three Judges so as to resolve the conflict between the above-said two Division Bench judgments of this Court:—

(1) Whether before the grant of a sale certificate the Managing Officer can bestow on an intended

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transferee of the property from the compensation pool the right to deal with a tenant in matters other than for the recovery of rent and particularly for ejecting a tenant from the premises intended to be transferred to such a landlord by merely attorning a tenant to the intended transferee.

(2) Whether the erstwhile tenancy under the Government, which continues as a result of attornment of the tenant by the Managing Officer can be called lawful letting by the intended transferee so as to entitle him to terminate the lease and eject the tenant.

The learned counsel for the appellant states that the property is in a somewhat dilapidated condition and the appellants are liable to suffer by the delay in the disposal of the appeal. I, therefore, direct that after the constitution of the larger Bench the case may be placed before that Bench as early as possible.

JUDGMENT OF THE FULL BENCH

Mahajan, J.

MAHAJAN, J.—This Regular Second Appeal was referred by my learned brother Narula, J., for decision by a Full Bench in view of the apparent conflict between two Division Bench decisions of this Court, namely, *Roshan Lal Goswami* v. *Gobind Ram* (1) and *Attar Lal* v. *M/s Lakhmi Dass and Company,* Letters Patent Appeal No. 139-D of 1963, decided on 4th May, 1964. *Roshan Lal Goswami's case* was decided by my Lord, the Chief Justice and Tek Chand, J., and *Attar Lal's case* was decided by me sitting with Dua, J.

It is not necessary to set out the facts of the present case because they have been elaborately set out in the referring order of my learned brother, Narula, J., which may be read as part of this order in as much as I am of the view that there is no conflict between the two decisions already referred to. *Attar Lal's case* was in fact before the Division Bench which dealt with *Roshan Lal Goswami's case.* As a matter of fact, there were number of Regular Second appeals before the Division Bench. The Division Bench merely settled one question that had been referred

for decision by Khosla C.J. The question that was referred arose in a number of appeals which were before the Division Bench including *Attar Lal's case.* The question, that Kholsa C.J. had referred for decision to a Division Bench, is set out below:—

> "Whether an auction-purchaser of evacuee property, who has not yet obtained a sale certificate, but to whom the occupier has attorned, can under the ordinary law maintain a suit for ejectment?"

The Division Bench answered the question in the affirmative and sent back all the Second Appeals to the learned Single Judge for a decision on their respective merits in the light of its answer. All these appeals were placed for hearing before my learned brother, Shamsher Bahadur J., who dismissed the appeals, because in his opinion, by the amendment of the Delhi and Ajmer Rent Control Act by the Delhi Rent Control (Amendment) Act (No. 4 of 1963), the situation had been completely altered. It will be appropriate to set down the relevant part of the observations of Shamsher Bahadur J. at this stage. These observations are as follows:—

> "What has now been contended on behalf of the respondent is that the Delhi Rent Control (Amendment) Act, 1963 (Act 4 of 1963) has completely altered the situation in so far as it has been provided that premises belonging to Government which have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise will be governed by the provisions of the Delhi Rent Control Act. Section 3 of the Delhi Rent Control Act no doubt says that the provisions of the Delhi Rent Control Act shall not apply to any premises belonging to the Government. There is now an amendment in the form of a proviso inserted to section 3 and the appellate Court must take account of it and mould the relief to which a party is entitled accordingly. As I read the amendment inserted by the proviso, the premises which are the subject-matter of these appeals having been purchased by the landlord in an open auction through the agency of the Managing

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Officer, must be regarded as a property which has been acquired from the Government in pursuance of an agreement and the applicability of the Delhi Rent Control Act, 1958, does not appear to be in any doubt. Mr. S. N. Chopra, the learned counsel for the appellant, has asked me to construe the Amending Act in a restricted sense and in support of this contention he has invited my attention to the statement of object and reasons of 16th of January, 1963. In the first place, I do not think that the statement contained in the object clause helps the counsel for the appellant. In the earlier part of the statement of objects and reasons, mention is made of the fact that the Rent Control Tribunal, Delhi, had given a decision that the provisions of section 3 of the Delhi Rent Control Act made its provision applicable to 'premises built on Government leasehold land' because such premises should be considered as 'premises belonging to the Government'. It is stated subsequently that this decision would have the effect of depriving a larger number of tenants in Delhi of the benefits of the Delhi Rent Control Act. As I read the statement of objects and reasons as to which it seems to be clear that the Legislature was intending to extend the benefit of the provisions of the Delhi Rent Control Act to a large number of tenants in Delhi being in possession of premises which have come to be acquired by the landlord under an agreement with the Government or otherwise. In any event, the statement of objects and reasons has to be ignored in interpreting the statute. The object clause can only assist in looking at the background and history of the legislation, as has been ruled recently by their Lordships of the Supreme Court in *Gujarat University* v. *Shri Krishna* (2)".

Against his decision in all these appeals, Letters Patent Appeals Nos. 139-D to 142-D of 1963 were preferred. These appeals came up for hearing before me sitting with Dua J. and we reversed the decision of the learned Single

(2) A.I.R. 1963 S.C. 703.

Judge on the short ground that the proviso added to section 3 of the Delhi Rent Control Act by the Delhi Rent Control (Amendment) Act, 1963 (Act 4 of 1963) had no application to the facts of the Regular Second Appeals that were dismissed by the learned Single Judge. I will, a little later, set out my reasons for disagreeing with the view of the learned Single Judge. My learned brother, Dua, J., fully agreed with my reasoning and while dealing with *Roshan Lal Goswami's case* was careful enough to observe that—

"* * *

> Lest the view taken by us may be said to come in conflict with the view expressed in the last sentence of the above passage, I may state that a Full Bench of this Court in *Shri Parshotam Sarup* v. *M/s. J.B. Mangharam and Co.*, L.P.A. No. 66-D of 1962, the judgment of which was prepared by the learned Chief Justice, who was also a party to the reported case, observed that the Bench in the reported case was not considering what was the position of the officers of the Rehabilitation Department and the Full Bench also expressed a doubt if the observations contained in the above passage could be taken as a final pronouncement on whether any powers still remained with the managing officer. The sentence mentioned about must, in our view, be considered in the context of that case and confined to the question directly before that Bench. It does not represent the ratio of that decision."

It will also be proper to set out my opinion in *Attar Lal's case*, which is as follows:—

"* * *.

> The proviso presupposes an act of letting. The letting, in the instant case, was by the Government. There has been no letting by the transferee after he obtained the provisional possession of the premises. The only change that has come about is that the tenants let in by the Government have stayed on and instead of paying rent to the Government rent has been paid to the plaintiff. Nothing further has been done by the plaintiff which would justify the conclusion that there has been letting by him.

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There could only be letting if the plaintiff had determined the tenancy created by the Government and thereafter had created a fresh tenancy expressly or by necessary implication. The premises till a sale certificate is granted are admittedly Government premises. See in this connection, the decision of the Supreme Court in *Bombay Salt and Chemical Industries* v. *L.J. Johnson and others* (3). If the proviso does not apply, the substantive part of section 3 will certainly take them out of the applicability of the Rent Control Act. The substantive part of section 3 is to the effect that the provisions of the Delhi Rent Control Act will not apply to premises belonging to the Government or to any tenancy or other like relationship created by the grant from the Government in respect of premises taken on lease or requisitioned by Government. If there is no letting, the proviso will also not apply. The respondents were in possession of the premises and were paying rent to the Managing Officer. In place of the Managing Officer, the plaintiff has stepped in and by reason of the agreement with the Managing Officer has now got the right to receive rent from the respondents.

Faced with this difficulty, the learned counsel for the respondents contended that a contractual tenancy came into being, the moment the respondents started attorning to the plaintiff and, therefore, it should be assumed that there is letting. Letting is a positive act and mere acquiescence or acceptance of the existing state of affairs will not, in law, amount to letting. There could be letting only if the tenancy created by the Government had been determined by the plaintiff and thereafter he had leased out the premises to the respondents or had accepted the respondents as tenants by his conduct. In the present case, there was no determination of the tenancy created by the Managing Officer in favour of the respondents. All that has happened is that instead of paying rent to the Managing Officer they were required by the Managing Officer to pay rent to the plaintiff. The position of the plaintiff is that of a nominee, who receives rent from the

(3) A.I.R. 1958 S.C. 289.

tenants at the behest of the owner; because till the sale certificate is granted the property in law still belongs to the Government. Merely because the right to receive rent has been transferred by the owner will not lead to the conclusion that the person to whom such a right has been transferred becomes the owner of the premises and thereby becomes entitled to let them out. The expression 'letting out' is also used in the Rent Control Act and means the same thing as leasing out in the Transfer of Property Act, i.e., there must be a lessor and a lessee as contemplated by section 105 of the Transfer of Property Act. See in this connection *New Delhi Municipal Committee* v. *H. S. Rikhy* (4).

This matter can be viewed from another angle. Till a sale certificate is granted, there is nothing to prevent the Managing Officer from countermanding his directions asking the tenants to pay rent to the transferee of provisional possession, i.e., the plaintiff. The immunity which section 3 of the Delhi Rent Control Act gives is to the premises. The proviso restricts the application of the main provision to tenancies created by persons lawfully entitled to do so by virtue of any agreement with the Government or otherwise. See in this connection *Bhatia Co-operative Housing Society* v. *D. D. Patel* (5), wherein while examining a similar provision in the Bombay Rents, Hotel and Lodging House Rents Control Act, it was observed by their Lordships as under:—

> 'The first part of section 4(1) provides that the Act shall not apply to any premises belonging to Government or a local authority. The Legislature did not by the first part intend to exempt the relationship of landlord and tenant but intended to confer on the premises itself an immunity from the operation of the Act.
>
> It is not correct to say that the immunity given by the first part should be held to be available only to the Government or a local authority to which the premises belong. If that were the intention, then the Legislature would have used phraseology similar to what it did in the second part, namely, it would have expressly made the

(4) I.L.R. 1956 Punj. 1279=A.I.R. 1956 Punj. 181.
(5) A.I.R. 1953 S.C. 16.

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Act inapplicable 'as against the Government or a local authority.' This it did not do and the only inference that can be drawn from the circumstance is that this departure was made deliberately with a view to exempt the premises itself. Therefore, the first part of the section should be so construed as to exempt the premises from the operation of the Act, not only as between the Government or a local authority on the one hand and its lessee on the other, but also as between that lessee and his sub-tenant.'

In the present case, no agreement with the Government has been brought to our notice by virtue of which it can be said that any authority was given by the Government to the plaintiff to let out the premises. It also cannot be said that any tenancy was created by the plaintiff lawfully. In this situation, there is no lawful letting out of the premises by the plaintiff to the respondents. The case of the respondents does not fall within the ambit of the proviso. Whatever rights the plaintiff has are subject to the control of the Managing Officer till the grant of the sale certificate. Thus in the very nature of things, there can be no question of the plaintiff getting any right to let out the premises."

I have deliberately set out in extenso my reasons because it is these reasons on which considerable reliance has been placed by the learned counsel for the respondent for his contention that there is no relationship of landlord and tenant between the transferee from the Rehabilitation Department and the tenant of the Rehabilitation Department of a given premises. Suffice it to say that if this contention was valid, we would not have reversed the decision of Shamsher Bahadur J., in *Attar Lal's case*. The fact of the matter is that we gave effect to the decision of *Roshan Lal Goswami's case* in *Attar Lal's case* and held that the proviso to section 3 of the Delhi Rent Control Act added by the Delhi Rent Control (Amendment) Act (No. 4 of 1963) did not alter the situation, as was thought by the learned Single Judge. If the matter is viewed in this context, it will become apparent that there is no conflict whatever between the two decisions, that is, in *Roshan Lal Goswami's case* and *Attar Lal's case*. As a matter of fact, the latter decision gives effect to the former decision

and both are complimentary to each other. However, in *Ram Parkash* v. *Sunder Das* (2), a decision by Mehar Singh and Pandit JJ., Mehar Singh J. did not find any conflict between my decision in *Attar Lal's case* and the decision of Tek Chand J. in *Roshan Lal Goswami's case.* As a matter of fact, support was derived by the learned Judge from my decision in rejecting the appeal of the purchaser of the evacuee building. The facts in *Ram Parkash's* case were that after the transfer of the property by the Rehabilitation Department to Sunder Das, Sunder Das let out the premises to Ram Parkash. Sunder Das sued for eviction of Ram Parkash and obtained a decree. When he sought to execute the decree, a plea was raised by Ram Parkash that he could not be evicted in execution of the decree in view of the provisions of the Delhi Rent Control Act because it were those provisions which had to be resorted to for eviction of the tenant. This plea of Ram Parkash was allowed to prevail by Mehar Singh J. on the short ground that there was a direct relationship of landlord and tenant between Sunder Das and Ram Parkash inasmuch as Sunder Das had inducted Ram Parkash into the premises as his tenant. Reliance was placed before Mehar Singh J., on the decision of *Attar Lal's* case on behalf of Sunder Das; but the learned Judge held that *Attar Lal's* case had nothing to do with *Ram Parkash's* case and on the contrary, it supported the view that the learned Judge took in *Ram Parkash's* case.

However, Pandit J. thought that there was a direct conflict between the decisions in *Roshan Lal Goswami's* case and *Attar Lal's case,* and, according to the learned Judge, *Roshan Lal Goswami's* case laid down the correct rule of law and, therefore, the learned Judge agreed with the ultimate decision; but observed that it would have been better to get the conflict resolved by a Full Bench. It is these observations of Pandit J., which impelled my learned brother Narula J. to refer the present case to the Full Bench.

I have already explained that there is no conflict between the two decisions. As a matter of fact, the decision in *Attar Lal's case* really gives effect to the decision in *Roshan Lal Goswami's* case. If there was a conflict, the decision in *Attar Lal's* case would have been totally different.

Gulzari Lal
v.
Dewan Chand

Mahajan, J.

Before parting with this matter, I may mention that the Supreme Court in *Bishan Paul* v. *Mothu Ram* (6), agreed generally with the observations of Tek Chand J. in *Roshan Lal Goswami's* case. It must, therefore, be held that *Roshan Lal Goswami's* case is correctly decided and so also *Attar Lal's case and* that there is no conflict between the two. The questions referred do not arise and, therefore, need not be answered.

In this view of the matter, as observed by Narula J. in his referring order that if there is no conflict between the two decisions, the appeal has to be allowed in view of the judgment in *Roshan Lal Goswami's case,* I allow the appeal and set aside the decision of the Senior Subordinate Judge and restore that of the trial Court. The parties are left to bear their own costs throughout.

Falshaw, C.J.
Narula, J.

D. FALSHAW, C.J.—I agree.

R. S. NARULA, J.—So do I.

B.R.T.

FULL BENCH

Before Inder Dev Dua, Shamsher Bahadur and R. S. Narual, JJ.

MST. SANTI AND ANOTHER,—*Appellants*

versus

PRITAM SINGH,—*Respondent*

Civil Revision No. 602 of 1963.

1966

March 21st

Limitation Act (IX of 1908)—Schedule I Art. 182(2)—*Dismissal of application for leave to appeal in* forma pauperis *accompanied by a memorandum of appeal—Whether gives a fresh start of limitation under clause* 2 *of the third column of Article* 182.

Held, that for the purposes of clause 2 of the third column of Article 182 of the Indian Limitation Act, 1908, all that has to be seen is whether there has been an appeal and not whether there was a valid appeal. If a memorandum of appeal were to be treated as an appeal only when it is properly stamped and duly registered, it would superimpose a consideration which is beyond what is actually required by Article 182(2) of the Limitation Act. The decree-holder can, therefore, take advantage of a fresh start of limitation under clause 2 of the third column of Article 182 of the Indian Limitation Act, 1908, from the date when the application of the judgment-debtor for leave to appeal in *forma pauperis* accompanied by a memorandum of appeal is dismissed. The order declaring the judgment-debtor to be a person of sufficient means and allowing him time to pay the court fee keeps the appeal alive till it is dismissed for failure to pay the

(6) A.I.R. 1965 S.C. 1994.