

APPELLATE CIVIL.

*Before Harnam Singh, J.*SHRIMATI SHANTI DEVI,—*Defendant-Appellant.**versus*MOHINDER SINGH,—*Plaintiff-Respondent.*

Regular Second Appeal No. 125 of 1951.

Delhi Rent Control Order, 1939—Clause 11-A (2)(iii)—Presumption as to its validity—Clause whether ultra vires—Defence of India Rules, 1939—Rule 81 (2) (bb)—Whether empowered Central Government to promulgate the impugned law.

1952

August 6th

Held, that there is a presumption in favour of the validity of the provision of law contained in Clause 11-A (2)(iii) of the Delhi Rent Control Order, 1939, until it is proved beyond reasonable doubt that that provision of law is *ultra vires*.

Held, that clause 11-A (2)(iii) of the Delhi Rent Control Order, 1939, is not *ultra vires* as the power to make the impugned law is conferred on the Central Government by rule 81 (2) (bb) of the Defence of India Rules, and paragraphs (i), (ii) and (iii) of Clause (bb) are merely illustrative of the power so conferred. Clause 11-A (2)(iii) deals with the regulation of letting and sub-letting of accommodation within Clause (bb) of rule 81 (2) of the Defence of India Rules.

Emperor v. Sibnath Bannerji and others (1), relied on.

Held, that the subject matter of regulation in Clause 11-A (2) (iii) of the Order is the accommodation and it cannot be said that the said clause does not conserve the thing which is the subject of regulation.

Held, that the provisions of rule 81 (2) read with paragraph (iii) of Clause (bb) show that the law-making authority within rule 81(2)(bb) possesses the power to make the law dealing with the eviction of tenants in specified circumstances.

Attorney-General for Ontario v. Attorney-General for the Dominion, (2), held not applicable.

Held, that the law-making authority under Rule 81 (2) (bb) possesses power to set up suitable machinery for the enforcement of the law made by it and it is, therefore, wrong to say that Rule 81 (2) (bb) does not authorise the Central Government to empower the Controller to deal with cases of the eviction of tenants and that it contemplates the eviction of tenants to be dealt with by Civil Courts.

(1) A.I.R. 1945 P.C. 156

(2) (1896) A.C. 348

Second appeal from the decree of Shri M. L. Vijn, Senior Sub-Judge, Delhi, dated the 20th November 1950, affirming that of Shri Gulal Chand Jain, Sub-Judge, 1st Class, Delhi, dated the 6th July 1949, decreeing the plaintiff's claim with costs against the defendant.

DARYA DATT, for Appellant.

K. L. GOSAIN and ANANT RAM WHIG, for Respondent.

JUDGMENT.

Harnam Singh
J.

HARNAM SINGH, J. On the 13th of November, 1946, the Assistant Rent Controller, Delhi, made an order under clause 11-A (2)(iii) of the Delhi Rent Control Order, 1939, hereinafter referred to as the Order, directing Mohinder Singh, tenant, to put *Shrimati* Shanti Devi, landlord, in possession of house No. 5764-65, Shanti Bhawan, 3, Darya Ganj, Delhi, on the finding that the tenant had, without the consent of the landlord, sublet the entire house and used the house for a purpose other than that for which it was leased.

On the 23rd of March 1948, Mohindar Singh instituted civil suit No. 219 of 1948, for declaration that clause 11-A of the Order being *ultra vires* the order passed by the Controller, on the 13th day of November 1946, was not binding on him. *Shrimati* Shanti Devi resisted the suit.

Finding that clause 11-A, of the Order was *ultra vires* the Court of first instance decreed with costs civil suit No. 219 of 1948, on the 6th of July 1949.

From the decree passed by the Court of first instance on the 6th of July 1949, *Shrimati* Shanti Devi appealed in the Court of the Senior Sub-Judge, Delhi. That appeal has been dismissed with costs.

Shrimati Shanti Devi, defendant, appeals under section 100 of the Code of Civil Procedure from the decree passed on appeal.

In these proceedings the point that arises for decision is whether clause 11-A (2) (iii) of the Order is *ultra vires*.

In deciding the point the subordinate Courts seem to think that the Central Government was not empowered by rule 81 (2) (bb) of the Defence of India Rules to enact clause 11-A of the Order.

Shrimati
Shanti Devi
v.
Mohinder
Singh

In approaching the matter I wish to state that there is a presumption in favour of the validity of the provision of law contained in clause 11-A (2) (iii) of the Order until it is proved beyond reasonable doubt that that provision of law is *ultra vires*.

Harnam Singh
J.

In order to appreciate the point it is necessary to set out the provisions of rule 81 (2) (bb) of the Defence of India Rules. Those provisions read:—

“The Central Government or the Provincial Government so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community may by order provide—

- * * * * *
- (bb) for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in particular,—
- (i) for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances;
- (ii) for preventing in specified circumstances the evicting of tenants and sub-tenants from such accommodation; and
- (iii) for requiring such accommodation to be let either generally, or to specified persons or classes of persons or in specified circumstances.”

Shrimati
Shanti Devi
v.
Mohinder
Singh
Harnam Singh
J.

Indisputably, the power to make the impugned law is conferred on the Central Government by rule 81 (2) (bb) of the Defence of India Rules, and paragraphs (i), (ii) and (iii) of Clause (bb) are merely illustrative of the power so conferred. For authority on this point *Emperor v. Sibnath Banerji and others*, (1), may be seen.

Clause 11-A(2)(iii) of the Order provides that if the controller after giving the tenant a reasonable opportunity of showing cause against the application is satisfied that the tenant has, without the consent of the landlord, sublet the entire house or used it for a purpose other than that for which it was leased, the controller shall make an order directing the tenant to put the landlord in possession of the house. In plain English clause 11-A (2) (iii) deals with the regulation of letting and subletting of accommodation within clause (bb) of rule 81 (2) of the Defence of India Rules.

Basing himself on *Attorney-General for Ontario v. Attorney-General for the Dominion* (1), Mr. Gosain urges that the provisions dealing with the eviction of tenants do not fall within rule 81 (2) (bb) for the reason that the power to regulate letting and subletting given by rule 81(2)(bb) implies the continued existence of that which is to be regulated. In *Attorney-General for Ontario v. Attorney-General for the Dominion* (2), Lord Watson said :—

“A power to regulate, naturally if not necessarily, assumes, *unless it is enlarged by the context*, the conservation of the thing—which is to be made the subject of regulation.”

In my judgment the argument raised cannot be sustained. In the first place, the subject-matter of regulation in clause 11-A(2)(iii) of the Order is the accommodation and it cannot be said that clause 11-A(2) (iii) of the Order does not conserve the thing which is the subject of regulation. In the second place, the provisions of rule

(1) A.I.R. 1945 P.C. 156
(2) (1896) A.C. 348

81 (2) (bb) read with paragraph (iii) of clause (bb) show that the law-making authority within rule 81 (2) (bb) possesses the power to make the law dealing with the eviction of tenants in specified circumstances.

Shrimati
Shanti Devi
v.
Mohinder
Singh

Harnam Singh
J.

Mr. Gosain then urges that Rule 81 (bb) does not authorise the Central Government to empower the Controller to deal with cases of the eviction of tenants. Indeed, it is said that Rule 81 (2) (bb) contemplates the eviction of tenants to be dealt with by civil Courts. I do not accept the argument raised for, in my opinion, the law making authority under Rule 81 (2) (bb) possesses power to set up suitable machinery for the enforcement of the law made by it.

Giving the matter my best consideration, I think, that the subordinate Courts have erred in thinking that clause 11-A (2) (iii) of the Order is *ultra vires*.

No other point arises in these proceedings.

In the result I allow the appeal, set aside the judgments and decrees of the subordinate Courts and dismiss the suit with costs throughout.

Counsel asks for leave to appeal under paragraph 10 of the Letters Patent which I refuse.

Mohindar Singh will vacate the premises within three months from today. In case Mohindar Singh fails to vacate the premises within the time allowed to him *Shrimati* Shanti Devi will be entitled to initiate proceedings for his eviction.