

Mahabir Prasad Verma vs Dr. Surinder Kaur on 7 April, 1982

Equivalent citations: 1982 AIR 1043, 1982 SCR (3) 607, AIR 1982 SUPREME COURT 1043, (1983) 1 APLJ 3.1, 1982 UJ (SC) 394, 1982 MPRCJ 102, (1982) 3 SCR 607 (SC), (1982) 1 RENCJ 615, (1982) 2 RENCJ 205, (1982) 1 RENTLR 591, (1982) 1 SCJ 362, 1982 (2) SCC 258

Author: Amarendra Nath Sen

Bench: Amarendra Nath Sen, R.S. Pathak

PETITIONER:
MAHABIR PRASAD VERMA

Vs.

RESPONDENT:
DR. SURINDER KAUR

DATE OF JUDGMENT 07/04/1982

BENCH:
SEN, AMARENDRA NATH (J)
BENCH:
SEN, AMARENDRA NATH (J)
PATHAK, R.S.

CITATION:
1982 AIR 1043 1982 SCR (3) 607
1982 SCC (2) 258 1982 SCALE (1) 299
CITATOR INFO :
E 1991 SC2053 (16,18)

ACT:

Landlord and tenant-East Punjab Urban Land Restriction Act, 1949-Section 13(2) (ii) (a)-Scope of-Sub-tenant induced in a portion of the premises with the permission of landlord-Whether such subletting became unlawful on determination of tenancy-Tenant, if liable to be evicted
Evidence-Tape recorded evidence only corroborative in nature.

HEADNOTE:

Section 13(2) (ii) (a) of the East Punjab Urban Land Restriction Act 1949 provides that if a tenant has, after the commencement of the Act, without the written consent of

the landlord sub-let the entire building or any portion thereof the tenant shall be liable to be evicted on the ground of such sub-lotting.

The Act was made applicable to the Union Territory of Chandigarh from November 1972.

The respondent landlady filed a petition before the Rent Controller alleging that The tenant had sub-let a portion of the premises under his occupation in breach of section 13(2) (ii) (a) of the Act and that therefore he was liable to be evicted. The Rent Controller ordered his eviction. The tenant's appeal to the Appellate Authority and later revision petition to the High Court were dismissed.

In the tenant's special leave petition, this Court directed the Rent Controller to record a finding whether the tenant had sub-let any portion of the premises after April 1974. The Rent Controller found that a portion of the premises was sub-let by the tenant in May 1974.

On the question (I) whether the existence of the sub-tenant in the premises after the expiry of the contractual tenancy necessarily rendered the sub-letting illegal and furnished a ground for eviction within the meaning of section 13(2) (ii) (a) of the Act (2) whether the sub-letting by the tenant with the written consent of the landlady during the currency of the tenancy became unlawful and illegal on the determination of the tenancy and furnished a ground for eviction within the meaning of the section.

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Allowing the petition,

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HELD: 1. There is no evidence on record to justify the finding of the Rent Controller that the tenant had sub-let a portion of the premises in May 1974. [623 E]

2.. The tenant has not sub-let any portion of premises without the consent of the landlady after the commencement of the Act and therefore the landlady had no ground for eviction of the tenant on the ground of sub-letting within the meaning of the section. In the instant case the written consent to sub-let a portion of the premises as required by the statute had been given by the landlady to the tenant and it was in terms of that authority that the tenant had inducted a sub-tenant in April 1974 when the contractual tenancy was subsisting. Therefore the sub-letting did not afford any ground for eviction of the tenant on the ground of subletting. [626 F-H]

3. The crux of the matter is that if after the commencement of the Act, the tenant has lawfully sub-let a portion of the premises with the written consent of the landlord, the sub-tenant becomes a lawful sub-tenant and becomes a "tenant" within the meaning of the Act with the tenant as his landlord and continues to enjoy all the protection available to a tenant under the Act. The tenant who inducts such sub-tenant is not entitled to evict him as

landlord of the subtenant except in accordance with the provisions of the Act. [624 E-G]

4 The argument of the land-lady that on the expiry of the month of April her consent had stood withdrawn is of no consequence because in the instant case the tenant has sub-let a portion of the premises in April 1974 when admittedly the written consent of the land-lady was in existence. The continuance in possession of such sub-tenant in a portion lawfully let out to him on the expiry of the month of April did not amount to or have the effect of any fresh sub-letting by the tenant at the end of April. A lawful sub-letting on the basis of the provisions of the Act does not become unlawful merely because the contractual tenancy of the tenant comes to an end. [625 F-H]

5 (a). Tape-recorded conversation between the husband of the landlady and the tenant on which the Rent Controller had relied could only be corroborative evidence of conversation deposed to by any of the parties. In the absence of any such evidence the tape-recorded conversation cannot be proper evidence and cannot be relied upon. [623 E-F]

(b) That apart, the tape-recorded evidence indicated that on the expiry of the term of the tenancy, the land-lady had not merely accepted the rent but had manifested her intention of continuing the tenancy notwithstanding the expiry of the term. The evidence also showed that the husband of the land-lady asked the tenant to induct suitable persons as sub-tenants under him. [623 G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION . Civil Appeal NO. 1830 of 1978.

From the Judgment and order dated the 19th September, A 1978 of the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 1398 of 1978.

V.M. Tarkunde and H.K. Puri for the appellant. T.U. Mehta, N.D. Garg, Rajiv Garg and S.B. Bisaria for the respondent.

The Judgment of the Court was delivered by AMARENDRA NATH SEN, J. Whether on a proper construction C of the terms of tenancy and the provisions of the East Punjab Rent Restriction Act, 1949, the appellant is liable to be evicted from the premises in his- occupation as tenant, on the ground of wrongful sub-letting of the premises, is the question which falls for consideration in this appeal by special leave granted by this Court.

The appellant came into occupation of the shop-cum-flat No. 48, Sector 3-C, Chandigarh on and from 1st of April, 1974 as a tenant under the respondent who happens to be the owner of the said premises on terms and conditions contained in the rent-note dated 24.1.1974. For the sake of

convenience we shall describe the appellant as the tenant and the respondent as the landlady of the premises.

The landlady filed her present petition (R.A. No. 163 of 1977) in the Court of Rent Controller Chandigarh, under S. 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) for the eviction of the tenant on two grounds, namely, non-payment of rent and sub-letting of the flat portion and Barsati portion of the premises. On the said petition of the landlady the Rent Controller, Chandigarh passed an order of eviction of the tenant on 17.11.1977 only on the ground of sub-letting. The other ground, namely non-payment of rent by the tenant, did not succeed.

Against the order of the Rent Controller, the tenant filed an appeal under S. 15 of the Act before the Appellate Authority. The Appellate Authority by its judgment dated 9.8.1978 dismissed the appeal of the tenant and upheld the order of eviction passed by the Rent Controller.

Against the judgment and order of the appellate authority, the tenant filed a revision petition under S. 15 of the Act before the High Court of Punjab and Haryana at Chandigarh. The High Court by its judgment dated 19.9.78 dismissed the said petition. Aggrieved by the judgment and order of the High Court, the tenant has filed this appeal with special leave granted by this Court, challenging the correctness of the decision ordering the eviction of the tenant from the said premises on the ground of sub-letting.

Before we proceed to consider the arguments advanced from the Bar, it will be convenient to set out the terms of tenancy contained in the rent note dated 2.4.1974 and also the relevant provisions of the Act.

The relevant terms contained in the rent note read as follows:-

"1 That the period of tenancy shall be one month commencing from the 1.4.1974 to 30.4.1974.

2. That rent hereby fixed shall be Rs. 450/- p m.

x	x	x	x
x	x	x	x

4. That the possession of the said premises has already been received by the tenant from the owner.

x	x	x	x
x	x	x	x
x	x	x	x

8. That the tenant has a right to sub-let the flat portion and Barsati portion of this said SCF above mentioned.

x	x	x	x
x	x	x	x

14. At the expiry of the tenancy the tenant shall redeliver the vacant possession of the said premises to the owner in the original condition failing which he shall be liable to pay the mesne profits."

The relevant provisions of the Act are contained in S. 13 of the Act, the material provisions of which may be noted:

"13. (1) A tenant in possession of building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended. (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.

If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable;

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his right under the lease or sub-

let the entire building or rented land or any portion thereof; or x x x x x x x In the instant case, there is no dispute that the tenant had sub-let the Flat portion and Barsati portion of said premises to sub-tenants. There is, however, a dispute as to when the sub-tenants were inducted by the tenant. As no clear finding had been recorded in the judgment of the Rent Controller or of the Appellate Authority or the High Court as to when the subtenants were inducted, and as there is no finding as to whether the tenant had sub-let any portion after the month of April, 1974, this Court passed an order on the 24th of November, 1981 remitting the following issue to the Rent Controller, Chandigarh for a finding :-

"Whether any one or more of the sub-tenancies alleged by the Landlady-respondent were created by the tenant-appellant during the month of April, 1974 or it was only thereafter that the sub-letting took place ?"

This Court while passing the said order, further directed that the Rent Controller would permit the parties to lead evidence on the point and would render his findings after taking into consideration the evidence already on record and any additional evidence that might be led.

Pursuant to the said order passed by this Court, the Rent Controller after taking further evidence had recorded his finding on this issue. The finding of the Rent Controller is that there was sub-letting of a small bed-room in the flat portion and also of the Barsati portion by the tenant also in the month of May. This finding of the Rent Controller has been disputed before us by the tenant.

Mr. Tarkunde, learned counsel appearing on behalf of the tenant, has submitted that in view of the express authority given to the tenant as contained in cl. 8 of the rent note to sub-let the flat portion and the Barsati portion which portions had, in fact, been sub let by the tenant, there can be no question of wrongful and illegal sub letting by the tenant of the said portions, as the sub-letting is with the written consent of the land- lady; and the provisions contained in S. 13 (2) (ii) (a) can have no application and there can be no ground or cause of action for eviction of the tenant on the ground of sub- letting within the meaning of the said provision. Mr. Tarkunde has argued that the Act was made applicable to Chandigarh from 4.11.1972 and the tenancy was created in April, 1974 long after the act had come into operation in Chandigarh and had become applicable to the premises in question. It is Mr. Tarkunde's argument that in view of the prohibition on sub-letting without the consent of the landlord in writing contained in the Act, the landlady in the instant case has in writing expressly authorised the tenant to sub-let the flat portion and the Barsati portion of the said premises, so that the tenant does not come within the mischief of the said provision. Mr. Tarkunde contends that it is not in dispute that the tenant had sublet the flat portion and the Barsati portion of the premises in terms of the authority given to the tenant in writing and as the sub-letting has been done by the tenant with the written consent of the landlady after the commencement of the Act and of the portions the tenant was authorised to sub-let, there can be no violation of the provisions of S. 13 (2) (ii) (a) of the Act. It is the contention of Mr. Tarkunde that as the subletting was done by the tenant in terms of the written authority given by the landlady to the tenant, the subletting can constitute no ground for eviction of the tenant within the meaning of the said section of the Act and there can be no order of eviction of the tenant on the ground of subletting by the tenant. Mr. Tarkunde has submitted that the High Court has proceeded on the basis that the sub-tenants had continued in occupation after the month of April, 1974, and as the terms of contractual tenancy ended on the expiry of the month of April, 1974, the continuance of sub-tenants inducted with the written consent of the landlady after the month of April, became unauthorised and illegal and resulted in subletting without the written consent of the landlady and as such the provision contained in S. 13 (2) (ii) (a) became applicable and the tenant became liable to eviction on the ground of wrongful subletting within the meaning of the said provision. Mr. Tarkunde, in this connection, has commented that the view taken by the Punjab and Haryana High Court is that if the sub-tenants, though lawfully inducted? continue to be in possession after the expiry of the lease of the tenants, such sub- letting becomes unlawful and furnishes a ground for eviction of the tenant. In

this connection, Mr. Tarkunde has referred to the following observations of the learned Judge in this case :

"In Kartar Singh & Others v. Tarlok Singh & Others Pandit, J. held that the permission given by the landlord to the tenant to have sub-tenants during the currency of the lease is of no avail after the termination of the tenancy and if the sub-tenants continue on the property even after the expiry of the lease, the tenant was guilty of sub-letting without the written permission of the landlord".

Mr. Tarkunde has submitted that this view of the High Court on the basis of which the order for eviction has been upheld is clearly erroneous. Drawing our attention to the relevant provisions contained in S. 13 (2) (ii) (a) of the Act, Mr. Tarkunde has submitted that the statute only forbids sub-letting without the written consent of the landlord after the commencement of the Act and by necessary implication the statute permits sub-letting by the tenant with the written consent of the landlord. Mr. Tarkunde contends that if the sub-tenants are inducted by the tenant with the written consent of the landlord, the sub-letting is authorised and legal and the continuance of the sub-tenant thereafter cannot be considered to be unlawful or illegal on the ground that the tenancy of the tenant had come to end, as the sub-tenants continue to enjoy possession in their own right as sub-tenant and the tenant who has inducted the sub-tenants cannot and does not enjoy any power or authority of evicting the sub-tenant except in due process of law. In this connection Mr. Tarkunde has drawn our attention to the definition of 'landlord' and also of 'tenant' as given in S. 2 (c) and (i) of the Act.

The definition of the landlord as given in S. 2 (c) is as follows :

" 'landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or administrator for any other person, and includes a tenant who sub-lets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord".

The definition of tenant as mentioned in S. 2 (i) reads:

" 'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, car-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal town or notified area committee".

Mr. Tarkunde argues that the definition of landlord clearly indicated that a 'landlord' within the meaning of the Act includes a tenant who sub-lets with lawful authority and the definition of 'tenant' within the meaning of the Act also includes a sub-tenant who has been lawfully inducted. Referring

to these definitions Mr. Tarkunde has submitted that as soon as the tenant has lawfully sub-let the portions to the sub-tenants the tenant in the instant case becomes a 'landlord' within the meaning of the Act and the sub-tenant lawfully inducted becomes a tenant under him within the meaning of this Act and the provisions of the Act are applicable to them. Mr. Tarkunde argues that by virtue of the aforesaid definitions, a tenant continues to be in possession after the termination of the tenancy in his favour, remains a tenant within the meaning of the Act and continues to enjoy all the benefits of the Act. It is the argument of Mr. Tarkunde that the sub-tenants lawfully inducted must, therefore, be considered to be in lawful possession under the tenant as the landlord and the sub-tenant must also be held to be entitled to remain in possession after the expiry of the term and the termination of the tenancy, whether of the tenant or of the subtenant, by virtue of the provisions of the Act.

Mr. Tarkunde has next contended that though in the instant case the tenancy was granted for the month of April, the tenant on the expiry of the said period is entitled to continue to remain in possession and enjoyment of the premises by virtue of the provisions contained in the Act. It is the contention of Mr. Tarkunde, that even on the expiry of the contractual period of tenancy, the tenancy continues under the provisions of the Act and the tenancy continues on the same terms and conditions. In support of this contention Mr. Tarkunde has relied on the decision of this Court in the case of V. Dhanapal Chettiar v. Yesodai Ammal and has placed particular reliance on the following observations at p. 351-352 :

"This is exactly the reason why we have thought it fit to review all the decisions and lay down a uniform law for all the States. Section 10 (1) of the Andhra Pradesh Act provided that "A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 12 and 13. "A special provision in the Andhra Act was contained in section 10 (7) which says :

'Where an application under sub-section (2) or sub section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act, be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in sub-section (2) or sub-section (3).

This special provision is provided by way of abundant precaution only. Even without this a tenant continuing in possession after the termination of the contractual tenancy and until an eviction order is passed against him continues on the same terms and conditions as before and he cannot be evicted unless a ground is made out for the eviction according to be the State Rent Act."

Relying on the aforesaid observations, Mr. Tarkunde has argued that even on the expiry of the contractual tenancy in the month of April, the tenant continues to be a tenant under the statute on the same terms and conditions as a statutory tenant and be continues to enjoy the authority of subletting of the flat portion and the barsati portion of the said premises in terms of the agreement originally entered into by and between the tenant and the landlady. It is the argument of Mr. Tarkunde that contractual tenancy in the instant case is determined by efflux of time but the tenant

is protected against his eviction by statute and as a statutory tenant, the tenant continues to enjoy the same right of sub-letting which he had as contractual tenant and the said right of the tenant is not lost on the determination of the contractual tenancy. In this connection. Mr. Tarkunde has referred to the decision of this Court in the case of Damadilal and others v. Parashram and others and he has relied on the following observations at pp. 653-654 :-

"We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the provisions of the English Rent Acts. But it is not 13 clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy his status of irremovability and not the estate he had in the premises in his occupation. It is not possible to claim that the 'sanctity' of contract cannot be touched by legislation. It is, therefore, necessary to examine the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondents' predecessors-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy.

Section 2 (i) of the Madhya Pradesh Accommodation Control Act, 1961 defines 'tenant' to mean, unless the context otherwise requires:

'a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made'. The definition makes a person continuing in possession after the determination of his tenancy a tenant unless after a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under the Act such a tenant retains an interest in 13 the premises, and not merely a personal right of occupation, will also appear from section 14 which contains provisions restricting the tenant's power of sub-letting. Section 14 is in these terms:

'Sec. 14. Restrictions on sub-letting:-(1) No tenant shall, without the previous consent in writing of the landlord-

- (a) sub-let the whole or any part of the accommodation held by him as a tenant; or
- (b) transfer or assign his rights in the tenancy or in any part thereof.

(2) No landlord shall claim or receive the payment of any sum as premium or paguee or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the accommodation held by the tenant.' There is nothing to suggest that this section does not apply to all tenants as defined in section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with section 2 (i) makes it clear that the so-called statutory tenant has the right to sub-let in common with a contractual tenant and this is because he also has an interest in the premises occupied by him."

Mr. Tarkunde has further submitted that in the instant case the question of any sub-letting by the tenant on the expiry of the term of tenancy does not really arise, as the tenant had sub-let the flat portion and also the barsati portion in the month of April in terms of the written consent of the landlady, while the contractual tenancy was subsisting and in force. It is his submission that the finding of the Rent Controller that the tenant had sub-let one bed room in the fiat portion and also the barsati portion in the month of May, in answering the issue remitted to him by this Court, is clearly erroneous and not borne out by the evidence on record. Mr. Tarkunde has argued that the Rent Controller in arriving at this finding has mainly relied on the tape-recorded conversation between the tenant and landlady's husband who also happens to hold the power of attorney of the landlady. He has argued that rendering of the tape-recorded conversation can be legal evidence by way of corroborating the statement of a person who deposes that the other speaker and he carried out that conversation or even of the statement of a person who deposes that he over- heard the conversation between the two persons and what they actually stated, had been tape-recorded. It is his argument that tape-recorded conversation may be used only as a corroborative evidence of such conversation deposed to by any of the parties to the conversation and in the instant case in the absence of any such evidence the tape-recorded conversation is indeed no evidence and cannot be relied upon. Mr. Tarkunde, in support of this argument has relied on the decision of this Court in the case of *S. Pratap Singh v. The State of Punjab*. Mr. Tarkunde has further argued that even if reliance is to be placed on the tape-recorded conversation, it must then be held on the basis of the evidence recorded therein that the contractual tenancy had continued beyond the period of the month of April. According to Mr. Tarkunde, in the present case the landlady had not merely accepted the rent which the landlady had in fact done, on the expiry of the contractual period of tenancy, but the tape-recorded conversation clearly indicates that the tenancy was treated as continuing between the parties, notwithstanding the expiry of the period and the tenant was recognised as tenant with lawful authority to sub-let even after the expiry of the month of April, 1974.

Mr. Tarkunde on the basis of the aforesaid contention has submitted that the order of eviction against the tenant on the ground of subletting in the instant case is erroneous and should be set aside.

Mr. Mehta, learned counsel appearing on behalf of the landlady, has submitted that the tenancy, in the instant case was created only for the month of April, 1974. He submits that on the expiry of April, 1974, the tenancy by efflux of time stands determined and the agreement between the parties comes to an end. He has argued that though under the terms of tenancy, the tenant had been given the necessary permission and authority to sub-let, such consent or authority would remain valid only for the month of April and there could lawfully be any sub-tenants only for the month of April. He contends that on the expiry of the month of April when the contractual tenancy comes to an end, the possession of any sub-tenant of any portion of the said premises would be unauthorised and illegal. It is his contention that it is not open to the tenant to create by way of sub-tenancy or otherwise any interest in any other person larger than the interest which the tenant himself enjoys. According to Mr. Mehta, the tenant on the terms and conditions of the tenancy enjoyed the right of a tenant only for the month of April and the tenant could only, therefore, induct any subtenant on the basis of the terms and conditions of the tenancy only for the month of April; and the enjoyment or possession of any portion of the said premises by any sub-tenant after the month of April would necessarily be a case of wrongful and illegal subletting without any written consent as the consent must necessarily be considered to have stood revoked on the expiry of the month of April. Mr. Mehta has drawn our attention to clauses 1 and 14 of the rent note and has argued that; the said clauses clearly indicate that the contract of tenancy was valid only for the month of April and the authority of subletting was also only valid for the said month and on expiry of the said month the tenant was to make over vacant possession to the owner of the premises in the original condition. It is his argument that the contract of tenancy clearly contemplates that there will be no sub-tenants in the premises on the expiry of the month of April. Mr. Mehta submits that existence of any sub-tenants in the premises after the month of April, whether sub-tenants were inducted in the month of April or thereafter, brings the case within the mischief of S.13 (2) (ii) (a) and renders the tenant liable to eviction on the ground of illegal sub-letting. It is his submission that if there be any sub-tenants in occupation or possession of any portion of the said premises after the contractual tenancy had come to an end the subletting must be held to be without the written consent of the landlord and as such wrongful and illegal to enable the landlord to evict the tenant on the ground of such subletting. Mr. Mehta has submitted that this view which has been consistently held by the High Court of Punjab and Haryana, has also been followed by the High Court in the instant case. In support of this submission Mr. Mehta has referred to the decision in the case of Kartar Singh and others v. Tarlok Singh and others which has been referred by the learned Judge in the judgment under appeal. Mr. Mehta has also relied on the decisions of the Punjab and Haryana High Court in the case of Shri Kidar Nath v. Smt. Kartar Kumar, and also in the case of Gurdas Ram v. Hans Raj. According to Mr. Mehta, this view has held the field in Punjab and Haryana all these years and this is the settled law in the State. Mr. Mehta further submits that as sub-tenants have continued to remain in possession after the month of April, the subletting must be held to be without any written consent and illegal to furnish a valid ground for the eviction of the tenant and all the courts including the High Court have properly ordered the eviction of the tenant.

Mr. Mehta has next contended that in the instant case subletting of a bed room in the flat portion and also of the barsati portion had been done by the tenant in the month of May, 1974 as found by the Rent Controller after the remand of the issue by this Court to the Rent Controller. Mr. Mehta submits that the Rent Controller had correctly come to the conclusion on the evidence on record

after allowing the parties opportunity of adducing further evidence. Mr. Mehta has argued that as the tenant had sub-let in the month of May after the expiry of the period of tenancy, the subletting must be held to be illegal and wrongful as the consent in writing by the landlady contained in the rent note was only for the month of April.

Mr. Mehta argues that on the expiry of the month of April when the contractual tenancy comes to an end and the tenant continues to remain in possession by virtue of the provisions of the Act, the tenant does not enjoy any power or authority to sub-let, even if such authority had been granted to the tenant to sublet during the period of contractual tenancy. It is the argument of Mr. Mehta that on the expiry of the contractual tenancy, the terms and conditions on the basis of which the tenancy had been created, come to an end and the statutory tenant who may enjoy protection against eviction by virtue of the statute does not have any authority to induct any sub-tenant. In support of this contention Mr. Mehta has referred to the decision of this Court in the case of Anand Nivas (P) Ltd. v. Anandji Kalyanji Pedhi & ors and he has relied on the following observations at pp. 917:

"A statutory tenant is, as we have already observed, a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays the standard rent and permitted increases. His personal right of occupation is incapable of being transferred or assigned and he having no interest in the property there is no estate on which subletting may operate."

Mr. Mehta has commented that this decision of this Court was not considered by this Court in the case of Damadi Lal and ors v. Parasram and ors.(supra).

Mr. Mehta has further argued that it is well settled that mere acceptance of rent on the determination of the contractual tenancy by efflux of time or otherwise does not in the absence of something more have the effect of creating a fresh tenancy or continuing the contractual tenancy already determined; and it is his argument that it cannot be said that a fresh tenancy was created or the tenancy was allowed to continue on the expiry of the month of April merely because the landlady had accepted the rent from the tenant on the expiry of the period of the tenancy after the month of April.

Mr. Mehta, therefore, submits that in the instant case the order for eviction has been rightly passed and this appeal should be dismissed.

Before we proceed to consider the main question involved in this appeal, namely, whether the existence of sub-tenants in the premises after the expiry of the term of contractual tenancy, necessarily renders the subletting illegal and furnishes a ground for eviction within the meaning of S. 13(2) (ii) (a) of the Act, we propose to dispose of the other question as to whether there was any subletting by the tenant in the month of May. On a careful consideration of the report of the Rent Controller on the issue remitted to him by this Court, we are of the opinion that the finding of the Rent Controller that the tenant had sub-let one bed room in the flat portion and the barsati portion in the month of May, 1974 is not justified, as there was no proper evidence or material before the

Rent Controller to come to the said finding. This finding of the Rent Controller is based essentially on the tape-recorded conversation between the tenant the husband of the landlady. Tape recorded conversation can only be relied upon as corroborative evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape recorded conversation is indeed no proper evidence and cannot be relied upon. In the instant case, there was no evidence of any such conversation between the tenant and the husband of the landlady; and in the absence of any such conversation, the tape-recorded conversation could be no proper evidence. We may further add that the tape-recorded conversation, even if the same could be relied upon, would be of no particular help to the landlady, as the tape-recorded conversation clearly indicates that the landlady on the expiry of the term of tenancy had not merely accepted the rent but had manifested the intention of continuing the tenancy, notwithstanding the expiry of the terms; and the tape recorded conversation goes to show that the husband of the landlady was asking the tenant to induct suitable persons as sub-tenants under him.

As there is no proper evidence to show that any sub-tenant was inducted after the expiry of the contractual period of tenancy, it does not become necessary for us to consider whether the tenant who, on the determination of the contractual tenancy, continues to remain in possession by virtue of the provisions of the statute as statutory tenant, is entitled to sub-let and he continues to remain in possession on the same terms and conditions on which he became a tenant. The crux of the question, therefore, is whether the subletting by the tenant with the written consent of landlord during the currency of the tenancy becomes unlawful and illegal on the determination of the tenancy and furnishes a ground for eviction within the meaning of S. 13(2) (ii) (a) of the Act.

S. 13(2) (ii) (a) which we have earlier set out lays down that if a tenant after the commencement of the Act has without written consent of the landlord transferred his right under the lease or sublet the entire building or any portion thereof, the tenant shall be liable to be evicted on the ground of such subletting. The requirement of the section, therefore, is that after the commencement of 'the Act there has to be subletting by the tenant without the written consent of the landlord to enable the landlord to recover possession of the premises on the ground of subletting. It, therefore, necessarily follows that if after the commencement of the Act, the tenant has sublet with the written consent of the landlord, such subletting will not furnish any ground or clause of action for the eviction of the tenant by the landlord. It is to be noted that after the tenant has lawfully sublet with the written consent of the landlord, sub-tenant becomes a lawful sub-tenant; and as such he becomes a 'tenant' within the meaning of the Act under the tenant as his landlord and continues to enjoy all the protection available to a 'tenant' under the Act and the tenant who inducts such sub-tenant is not entitled to evict him as landlord of the sub-tenant except in accordance with provisions of the Act. As the tenant enjoys protection against eviction in terms of the provisions of the Act and is not liable to be evicted except in accordance with the provisions of the Act notwithstanding determination of his tenancy by the landlord, the sub-tenant lawfully inducted equally enjoys the same protection against eviction afforded to a tenant by the Act; and the sub-tenant can only be evicted in accordance with the provisions of the Act in the same way as a tenant can be evicted. In spite of the sub-tenancy being determined by the tenant as his landlord, the subtenant by virtue of the protection against eviction afforded to him by the Act is entitled to continue in possession of the portion let out to him by the tenant as his landlord; and it is just not possible for the tenant as

landlord to get rid of any sub-tenant at his will.

In the instant case, the tenant had the authority to sublet and the written consent, as required by the statute, had been given by the landlady. In terms of the authority granted to the tenant and with the consent in writing of the landlady, the tenant had inducted sub-tenants in the month of April, when the contractual tenancy admittedly subsisting. The subletting by the tenant in the instant case could, therefore, afford no ground to the landlady or furnish any cause of action for her to evict the tenant on the ground of subletting on the basis of the provisions contained in S. 13 (2) (ii) (a) of the Act. The sub-tenants lawfully inducted came to be in lawful possession of the portions let out to them by the tenant with the authority and consent in writing of the landlady and such subletting afforded a complete safeguard to the tenant against eviction and would not come within the mischief of sec. 13 (2) (ii)

(a) of the Act. We have already held that the creation of any sub-tenancy in the month of May is not borne out by any proper evidence on record. The case of the landlady that there was any sub-letting on the expiry of the month of April without the written consent of the landlady has not been established. In the instant case, the tenant has sublet with the written consent of the landlady in the P month of April and has not sublet any portion on the expiry of the month of April. The argument of the learned counsel for the landlady that on the expiry of the month of April, the consent of the landlady in writing stands withdrawn is of no consequences. In the instant case, the tenant has sublet in the month of April, 1974, when admittedly the written consent of the landlady was there. The continuance in possession of such subtenants in the portions lawfully let out to them on the expiry of the month of April does not amount to or have the effect of any fresh sub-letting by the tenant on the expiry of the month of April; and, it cannot be said that the tenant "has sublet" afresh on the expiry of the month of April. The right of possession that the sub-tenants enjoy on the basis of lawful induc-

tion as sub-tenants is assured to the sub-tenants as a "tenant" within the meaning of the Act. As a tenant, in spite of the determination of his tenancy continues the right to remain in possession as a statutory tenant and enjoys the protection against eviction by virtue of the provisions contained in the statute, a sub-tenant who is lawfully inducted, is also recognised by the statute to be a "tenant" within the meaning of the Act and he must necessarily enjoy the protection against eviction afforded to a tenant by the Act. A lawful sub-letting on the basis of the provisions of the Act does not become unlawful merely because the contractual tenancy of the tenant comes to an end. A tenant incurs the liability to be evicted, if the tenant after the commencement of the Act sub-lets without the written consent of the landlord; and the tenant who has lawfully sub-let with the written consent of the landlord must necessarily enjoy immunity from the process of eviction on that ground. Subletting lawfully done with the written consent of the landlord does not become unlawful merely on the ground that the contractual tenancy has come to an end. Sub-letting to constitute a valid ground for eviction must be without the consent in writing of the landlord at the time when the tenant sub-lets any portion to the subtenant.

A sub-letting by the tenant with the consent in writing of the landlord does not become unlawful on the expiry of the contractual tenancy of the tenant, unless there is any fresh sub-letting by the tenant

without the written consent of the landlord. Mere continuance in possession of a sub-tenant lawfully inducted does not amount to any fresh or further sub-letting. We are, therefore, satisfied that in the instant case the tenant has not sub-let any portion without the written consent of the landlady after the commencement of the Act. As the tenant has not sub-let any portion after the commencement of the Act without the written consent of the landlady, the landlady does not have any proper ground for the eviction of the tenant on the ground of sub-letting within the meaning of S. 13 (2) (ii)

(a). Mere continuance of possession by the sub-tenants lawfully inducted by the tenant with the written consent of the landlady contained in rent note does not afford any ground to the landlady for eviction of the tenant on the ground of sub-letting, as the tenant has not sub-let after the commencement of the Act any portion without the consent in writing of the landlady.

The appeal, therefore, succeeds. The Judgment of the High A Court affirming the decision of the lower courts and the order of eviction, are hereby set aside. The appeal is, therefore, allowed with costs.

P.B.R. Appeal allowed.