Associated Hotels Of India Ltd., Delhi vs S. B. Sardar Ranjit Singh on 7 December, 1967

Equivalent citations: 1968 AIR 933, 1968 SCR (2) 548, AIR 1968 SUPREME COURT 933

Author: R.S. Bachawat

Bench: R.S. Bachawat, G.K. Mitter

PETITIONER:
ASSOCIATED HOTELS OF INDIA LTD., DELHI

Vs.

RESPONDENT:
S. B. SARDAR RANJIT SINGH

DATE OF JUDGMENT:
07/12/1967

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
MITTER, G.K.

CITATION:
1968 AIR 933 1968 SCR (2) 548
CITATOR INFO :
F 1974 SC 280 (6)
R 1987 SC2055 (6)
R 1989 SC1141 (19)

ACT:
Delhi and Ajmer Rent Control Act (38 of 1952), s. 13(1) proviso (b), (c) and (k)-Hotel premises Constituents of sub-letting-Knowledge of sub-letting, if waiver.

HEADNOTE:
The respondent-landlord of a hotel filed a suit for eviction of his tenant-appellant under s. 13(1) proviso (b) and (c) of the Delhi and Ajmer Rent Control Act, 1952 on the allegation that the appellant had sub-let several rooms. These occupants were doing business, which were not confined to the residents of the hotel. The occupants were given ex-

clusive possession of the rooms occupied by them. The appellant did not retain any control and dominion over these rooms. It was not a condition of the grants that the keys would be left at the reception counter, or that the keys would be retained by the appellant. The occupants were at liberty to take away the keys if they liked. The occupants availed themselves of the services of the hotel sweeper for their own convenience. The appellant retained control of the corridor, but the entrance to the corridor was open day and night. The occupants paid monthly sums to the appellant as the consideration of the sub-leases. The appellanttenant denied the allegations and pleaded that the respondent-landlord had waived the breaches, if any. The suit was decreed which the High Court, in appeal maintained

HELD : The landlord was entitled to the decree for eviction. [558 B]

On the question whether the occupier of a separate apartment in a premises is a licensee or a tenant, the test is has the landlord retained control over, the apartment Normally, an occupier of an apartment in a hotel is in the position of licensee as the hotel-keeper retains the general control of the hotel including the apartment. But it is not a necessary inference of law that the occupier of an apartment in a hotel is not a tenant. A hotel-keeper may run a first class hotel without sub-letting any part of it. Where as in this case, the hotel-keeper retained no control over the apartment, the occupier was in the position of a tenant. The onus to prove sub-letting was on the respondent. The respondent discharged the onus by leading evidence showing that the occupants were in exclusive possession of the apartments for valuable consideration. The appellant chose not to rebut this prima facie evidence by proving and exhibiting the relevant agreements. [553 D; 554 C-D, F-H; 555 C; 556 E]

Under s. 2(g) "premises" does not include " a room in a hotel or lodging house". The sub-lessee of a room in a hotel is, therefore, not a tenant and cannot claim protection under s. 13 from eviction, nor can he ask for fixation of standard rent. But, because a room in a hotel is not premises, it does not follow that the room is not a part of the hotel premises or that a sub-letting of the room is not a contravention of cls. (b) and (c) of the proviso to s. 13(1). [555 F-G 556 A]

Associated Hotels of India Ltd. v. R. N. Kapoor, [1960]1 S.C.R. 368, followed.

Addiscombe Garden Estates Ltd. & Anr. v. Grabbe and Ors. [1958] 1

QB. 513 and Helman v. Horsham Assessment Committee, [1949] 2 K.B.

335,referred to.

549

A waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the

waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. Assuming that the landlord can waive the requirement as to consent, it was not shown that the respondent waived it. It is said that the respondent knew of the sub-lettings as be frequently visited the hotel up to 1953 and he must have known of the occupation of some of the occupants. But he came to know of the other lettings in 1958 only. Moreover, the precise nature of the grant was -never communicated to the respondent. [557 B-D]
Dhanukdhari Singh v. Nathima Sahu, [1907] 11 C.W.N. 852, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1249 of 1967.

Appeal from the judgment and decree dated July 21, 1967 of the Delhi High Court in Regular First Appeal No. 166-D of 1965.

A.K. Sen, Rameshwar Nath, P. L. Vohra and Mahinder Narain, for the appellant.

Bishan Narain, Radhey Mohan Lal and Harbans Singh, for the respondent.

The Judgment of the Court was delivered by Bachawat, J. This appeal arises out of a suit for ejectment instituted by a landlord against a tenant. It is common case that the suit is governed by the provisions of' the Delhi and Ajmer Rent Control Act, 1952 (Act No. 38 of 1952) hereinafter referred to as the Act. The material provisions of s. 13(1) of the, Act are as follows :

> "13. (1) Notwithstanding anything to the contrary contained. in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated) :
>
> Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied-
>
> (b)that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act,-
>
> (i)sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises; or
>
> (ii) used the premises for a purpose other than that for which they were let; or,

> (c) that the tenant without obtaining the consent of the landlord has before the commencement of this Act,-
>
> (i)sub-let, assigned or otherwise parted with the possession of, the whole or any part of the premises;, or
>
> (ii)used the premises for a purpose other than that for which they were let; or
>
> (k)that the tenant has, whether before or after the commencement of this Act, caused or permitted to be ,caused substantial damage to the premises, or notwithstanding previous notice has used or dealt 'with the premises in a manner contrary to any condition imposed on the landlord by the Government, or the Delhi Improvement Trust while giving him a lease of the land on which the premises are situated;"

The respondent constructed the building known as the Hotel Imperial, New Delhi, on land leased to him by the Secretary of State for India in Council under a perpetual lease deed dated July 9, 1937. By a deed dated August 18, 1939, he leased to the appellant the hotel premises together with fittings and furniture for a term of 20 years commencing on September 15, 1939. On January 28, 1958, the respondent instituted the present suit alleging that in breach of the express conditions of the lease dated August .18, 1939, the appellant sub-let portions of the premises and made unauthorised additions and alterations in the premises, that on such breaches he was entitled to determine the lease and he did so, by notice in writing dated January 6, 1958. He claimed eviction of the appellant on the grounds mentioned in cls. (b), (c) and (k) of the proviso to s. 13(1) of the Act. The appellant filed its written statement on April 3, 1958 denying most of the material allegations in the plaint. The appellant also pleaded that the respondent had waived the breaches, if any, of the conditions of the lease by accepting rents with knowledge of such breaches and particularly by accepting rent on or about January 3, 1958. On April 24, 1958, Sri P. L. Vohra, counsel for the appellant, made the following statement before the trial Court :

> "The plaintiff can seek ejectment of the defendant only under section 13 of Act 38 of 1952. In case the plaintiff succeeds in establishing the liability of, the defendant for ejectment on any of the grounds given in .section 13 of the Rent Act, the defendant would not seek any protection under the terms of the lease deed dated 18th August, 1939 executed between the parties, as regards the period of lease fixed therein. . ."

Having regard to the pleadings and statement of counsel, the Court settled the following issues on May 12, 1958 :

> "1. Whether the defendant had sublet, assigned or otherwise parted with possession, of any part of the suit premises before the commencement of Act 38 of 1952 ?
>
> 2. If so, was the same done with express or implied consent of the plaintiff ?

3. Whether the defendant had sublet, assigned or otherwise parted with possession of any part of the suit premises after the commencement of Act 38 of 1952 ?

4.If so, was the same done with the prior consent in writing of the plaintiff ?

5.Whether the defendant has used the tenancy premises for a purpose other than that for which they were let ?

6. Whether the defendant has caused substantial damage to the tenancy premises ?

7. Whether the defendant notwithstanding previous notice has been. using and dealing with the tenancy premises in a manner contrary to the conditions imposed on the plaintiff by, the Government while giving him lease of the site of the tenancy premises ?

8. Is the defendant entitled to special cost ?

9. Whether the plaintiff is estopped or has waived his right to seek ejectment of the defendant on any of the grounds mentioned above ? If so, what and to what effect ?

10.Whether the defendant is entitled to sublet any part of the hotel premises even when there was a clause to the contra in the lease dated the 18th August, 1939. and in face of statutory provisions under the Rent Control Act (for reasons given in para 16 of the amended written statement) ?"

A tenant holding premises under a subsisting lease is pro- tected by the lease and needs no protection under the Rent Act. It was open to the appellant to contend that it was protected by the terms of the lease dated August 18, 1939, that the breaches, if any, of the conditions of the lease had been waived by the respondent and that the lease had not determined. But the appellant deliberately elected to seek protection under s. 13 of the Act only. The appellant's counsel made a' formal statement in the trial Court that the appellant would not seek any protection under the terms of the lease deed as regards the period of the lease fixed therein. The Court accordingly settled the ten issues. Issue No. 8 was not pressed. All the other issues relate to thegrounds of eviction mentioned in cls. (b), (c) and

(k) raises the question- of waiver of the respondent's right to seek ejectment on those grounds. Thus, the only questions in issue between the parties was whether the appellant was entitled to protection from eviction under s. 13 and whether any ground for eviction under the Act was made out. The case was tried and decided on this footing. We have come to this conclusion after a close examination of the 'pleadings, particulars, statement of counsel, issues and the judgment of the trial Court. No issue was raised on the question whether the breaches of the express conditions of the lease had been waived by the respondent, and whether the lease was still subsisting. The appellant sought to raise this plea in the High Court and also in this Court Having regard to the deliberate stand taken by the appellant in the trial Court, the appellant cannot be allowed to raise the plea at a later stage. The

lease determined by efflux of time on September 15, 1959. Had the appellant taken the plea that the lease had not determined by forfeiture on the date of the institution of the suit, it is possible that the respondent might have filed another suit for ejectment of the appellant immediately after September 15, 1959. Because of the stand taken by the appellant, it was not necessary for the respondent to file another suit. This appeal must be decided on the footing that the lease had determined by forfeiture on the date of the institution of the present suit. The respondent is entitled to a decree for eviction if any of the grounds mentioned in cls. (b), (c) and (k) of the proviso to s. 13(1) is made out.

The trial Court answered issue No. 5 in the negative. With regard to all the other issues, the trial Court found in favour of the respondent, and held that the grounds of eviction mentioned in cls. (b)(1), (c)(i) and (k) were proved. With regard to the ground of eviction mentioned in cl. (k), the trial Court held that the appellant was entitled to relief on certain conditions. The trial Court, however, held that the respondent was entitled to an unconditional decree, for eviction on the ground of sub-letting mentioned in cls. (b)(i) and (c)(i). The appellant preferred an, appeal to the High Court. The High Court agreed with all the findings of the trial Court, and dismissed the appeal.

The two Courts- concurrently found that the appellant had sub-let several rooms, counters, showcases -and garages. The two Courts found that the appellant had sub-let rooms to (1) Pan American World Airways, (2) Mercury Travels, India (Private) Ltd., travel agents, (3) Indian Art Emporium, dealers in curios and jewellery, (4) Shanti Vijay and Co., dealers in jewellery, (5) Roy and James, hairdressers, (6) Sita World Travels, travel agents and (7) Ranee Silk Shop, dealers in saris and curios. The businesses of the sub- lessees were not confined to the residents of the hotel. The letting to Pan American World Airways and Indian Art Emporium were before the commencement of the Act and the lettings to Mercury Travels, Shanti Vijay and Co., and Roy and James were after the commencement of the Act. Sita Travels and Ranee Silk Shop were inducted as tenants after the institution of, the suit. The entrances to the rooms were in ,the main corridor of the hotel on the ground floor. The concurrent finding is that the occupants were given exclusive possession of the rooms occupied by them. The appellant did not retain any control and dominion over the rooms. It is possible that the keys of the apartments were sometimes left at the reception counter, but the evidence on this point was not convincing. It was not a condition Of the grants that the keys would be left at the reception counter, or that the duplicate keys would be retained by the appellant. The occupants were at liberty to take away the keys if they liked'. The occupants availed themselves of the services of the hotel sweeper for, their own convenience. The appellant retained control of the corridor, but it is common case before us that the entrance to the corridor was open day and night. The occupants paid monthly sums to the appellant as the consideration of the sub-leases. The consideration though described as license fee was in reality rent. The portion occupied by Roy and James has an interesting history. It was formerly sub-let to R. N., Kapoor. In Associated Hotels of India Ltd. v. R. N. Kapoor(1), this Court held by a majority on a construction of the grant to R. N. Kapoor that he was a lessee and not a licensee. Roy and James began to occupy this portion of the premises from February, 1955. According to the appellant, the agreements with Roy and James, Mercury Travels and Shanti Vijay and Co., were in writing. The appellant produced several documents in Court at an early stage of the suit. The appellant's case was that these documents were the relevant agreements. According to the respondent, the documents were not

genuine and the real agree-

(1) [196] 1 S.C.R. 36F meats were being withheld. The stamp auditor noted on the documents the deficiency-in stamps and penalty leviable on them on the footing that they were lease deeds. The appellant did not contest this note nor paid the penalty and deficiency as directed by the trial Court. -The surprising feature of the case is that the appellant did not attempt to prove any of the documents. Where the agreement is in writing, it is a question of construction of the agreement whether the grant is a lease or a license. It was for the appellant to prove the written agreements, and the Court could then construe them. The appellant has not brought before the Court the best and the primary evidence of the terms on which the apartments were being occupied. The onus to prove sub-letting was on the respondent. The respondent discharged the onus by leading evidence showing that the occupants were in exclusive possession of the apartments for valuable consideration. The appellant chose not to rebut this prime facie evidence by proving and exhibiting the relevant agreements. The documents formed part of the appellant's case. The appellant bad no right to withhold them from the scrutiny of the Court. In the absence of the best evidence of the grants, the Courts below properly inferred sub-lettings from the other materials on the record.

The test of exclusive possession, though not conclusive, is a very important indication in favour of tenancy, see Addiscombe Garden Estates Ltd. and Anr. v. Crabbe and Ors.(1) The argument is that as the landlord is living in the premises, that fact raises the presumption that he intends to retain the control of the whole of the premises and that the occupation of the other parts is that of a lodger or inmate and not that of a tenant, and reliance was placed on Helman v. Horsham Assessment Committee(2) and the cases referred to therein. Those cases consider what constitute rateable occupation. In the case last cited, Denning, L. J. said that a person who is regarded as a lodger for rating purposes need not necessarily be a lodger for the purposes of the Rent Restriction Acts, while Evershed L.J. seems to have expressed a contrary opinion. Normally, an occupier of an apartment in a hotel is in the position of a licensee as the hotel-keeper retains the general control of the hotel including the apartment. But it is not a necessary inference of law that the occupier of an apartment in a hotel is not a tenant. Where, as in this case, the hotel-keeper retains no control over the apartment, the occupier is in the position of a tenant. In Halsbury's Laws of England, Vol. 23, Art. 1028, p. 433, the law is accurately summarised thus "A lodger who has no separate apartment is only a licensee, and, even though he has a separate apart-

(1) [1958] 1 Q.B. 513, 525.

(2) [1949] 2 K.B. 335.

ment, he has not in law an exclusive occupation, and is therefore in the position of a licensee, if the landlord retains the general control and dominion of the house, including the part occupied by the lodger; but, if in fact the landlord exercises no control over that part, the occupier is a tenant. The occupier does not, however, become a lodger merely by reason of the fact that the landlord resides on the premises and retains control of the passages and staircases and other parts used in common." On the question whether the occupier of a separate apartment in a premises is a licensee or a tenant, the test is-has the landlord retained control over the apartment ? The fact that the apartment is a

room in a hotel may lead to the inference that the hotel-keeper retains the general dominion of the en-tire hotel including the apartment and that the occupier is in the position of a lodger or inmate. But the inference is not a necessary inference of law. Where, as in this case, the best evidence of the -rant was withheld from the scrutiny of the Court, the inference was rightly drawn that the occupiers were tenants.

At the hearing of this appeal, the appellant moved an appli- cation for reception of the documents as additional evidence. The genuineness of the documents was disputed by the respondent. In the Courts below, the appellant made no attempt to prove these documents. We found no ground for directing a new trial. Having regard to all these facts, we dismissed the application.

The hotel building constitutes premises within the meaning of s. 2(g) of the Act.' It is because the hotel building constitutes Premises that the appellant can claim protection from eviction under the Act. A room in a hotel is a part of the hotel premises. A sub-letting of a room in a hotel in contravention of cls. (b) and (c) of the proviso to s. 13(1) is a ground for eviction under the Act. Section 2(g) provides that 'premises' does not include " a room in a hotel or lodging house." The sub-lessee of a room in a hotel is, therefore, not a tenant and cannot claim protection under s. 13 from eviction, nor can he ask for fixation of standard rent. see Associated Hotels of India Ltd. v. R. N. Kapoor(1). If the interest of the tenant of the hotel premises is determined, the sub-tenant to whom a room in the hotel has been lawfully sublet becomes under s, 20 a direct tenant of the landlord, It may be that when the sub-tenant of a room in a hotel becomes a direct tenant under s. 20 he enjoys the protection of the Act because the room is no, longer a room in a hotel. But that point does not arise and need not be decided. Because a room in a hotel is not (1) [1960] 1 S.C.R. 368.

premises, it does not follow that the room is not a part of the hotel premises or that a sub-letting of the room is not a contravention of cls. (b) and (c) of the proviso to s. 13(1).

The Courts below concurrently found that the sub-lettings after the commencement of the Act were made without obtaining the consent of the landlord in writing, and the sub-lettings before the commencement of the Act were made without obtaining the consent of the landlord either orally or in writing. We are not inclined to interfere with this concurrent finding.

It is said that by the lease deed dated August 18, 1939 the respondent impliedly consented to this sub-letting. Clauses 21 .and 22 of the lease are in these terms "21. That the lessee shall not be entitled to either transfer or sub-lease the premises or any part thereof to any other party without the written consent of the lessor and on such transfer, both the transferee and the lessee shall be liable for the payment of rent to the lessor and responsible to deliver,possession of the building and equipments in the same condition as when taken.

22.That the lessee will use the premises only for the purpose of running a first class hotel."

It is -,aid that for the purpose of running a first class hotel it was necessary to sub-let the apartments. It is impossible to accept the contention. A hotel-keeper may run a first class hotel

without sub-letting any part of it. Clause 21-clearly provided that the lessee shall not sub- lease the hotel premises or any part thereof. In the teeth of cl. 21, it is impossible to read in cl. 22 an implied consent to sub-letting.

Reliance is placed on the correspondence passed between the Land Development Officer, New Delhi and the respondent bet- ween April 1948 and February 1949 for establishing that the respondent gave written consent to the sub-lettings. The Land and Development Officer was then complaining of the occupation of portions of the premises by Pan American World Airways and other persons. By his letters dated November 4, 1948 and February 23, 1949, the respondent requested the Land and Development Officer to regularise the matter adding that in an first class hotels counters of air-lines and show-rooms of jewellery and curios were always provided. These letter,.; do not amount to a consent in writing to sub-lettings of portions of the hotel to the persons mentioned therein. Moreover, the consent, if any, 'was to the sub-lettings made before 1949 and not to the sub- lettings made thereafter. It is not possible to infer from these letters a general consent to all sub-lettings.

It is argued that the respondent waived the requirement of consent to the sub-letting. Any subletting in breach of the provisions of cl. (b) of the proviso to S. 13 (1) is an offence punish-able under s. 44. Assuming that the landlord can waive the requirement as to consent, it is not shown that the respondent waived it. A waiver is an intentional relinquishment of a known right., There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. See Dhanukdhari Singh v. Nathima Sahu(1). It is said that the respondent knew of the sub-lettings as he frequently visited the hotel. It appears that he visited the hotel up to 1953 and he must have known of the occupation of R. N. Kapoor, Indian Art Emporium and Pan American World Airways. But he came to know of the other lettings in January 1958 only. Moreover, the precise nature of the grant was never communicated ,to the respondent. The Courts below rightly held that the respondent did not waive his right to evict the appellant on the ,-rounds mentioned in cls. (b) and (c) of the proviso to s. 13 (1).

We are therefore satisfied that the respondent is entitled to evict the appellant on the ground of sub-letting of the rooms. The Courts below held that the appellant had also sublet several counters, show-cases and garages to various persons. We express no opinion on the question whether there was any sub-letting of the counters, show-cases and garages. The sublettings of the rooms are sufficient grounds of eviction tinder cls. (b) and (c) of the proviso to s. 13(1).

Clause 2(v) of the head lease granted by the Government to the respondent provided that the respondent would not, without the previous consent in writing of the Chief Commissioner.. Delhi or a duly authorised officer, erect or suffer to be erected on any part of the demised premises any building other than the buildings erected there on the date of the lease. The appellant had due notice of the conditions of the head lease. Notwithstanding such previous notice, the appellant dealt with the premises in a manner contrary to the conditions imposed by cl. 2 (v). The Courts below found that contrary to this condition, the appellant made several unauthorised constructions without obtaining the requisite consent. To give one illustration, the appellant admittedly constructed a room 16 ft. 6 in X 19 ft. 6 in. with R.C.C. slab and brick masonry walls. This newly constructed room

was -let to Shanti Vijay and Co. On the ground of unauthorised construction of this room alone it must-be held that the appellant in contravention of cl. (k) of the proviso to s. 13 (1), notwithstanding previous notice, dealt with the premises in a manner contrary to (1) (1907) 11 C.W.N. 848, 852.

a condition imposed on the respondent by the Government while ,giving him a lease of the land on which the premises are situated. The notice of the conditions imposed by the head lease was sufficient notice for the purposes of cl.

(k). The ground of eviction under cl. (k) was thus made out. The Courts below also held that the appellant caused substantial damage to the premises. We express no opinion on it, and this question is left open.

It follows that the respondent is entitled to evict the appellant on the grounds mentioned in cls. (b) (i), (c) (i) and (k) of the proviso to s. 13(1).

In the result, the appeal is dismissed with costs. The execution of the decree is stayed for a period of six months from today. The appellant through Mr. A. K. Sen gives an undertaking that the appellant will hand over to the respondent, on the expiry of six months, vacant possession of the entire hotel premises except the portion in the possession of sub-lessees.

Y.P. Appeal dismissed.