Supreme Court of India
Manphul Singh Sharma vs Ahmedi Begum on 9 August, 1994
Equivalent citations: 1994 SCC (5) 465, JT 1994 (5) 49
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
MANPHUL SINGH SHARMA

Vs.

RESPONDENT:
AHMEDI BEGUM

DATE OF JUDGMENT09/08/1994

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
AGRAWAL, S.C. (J)

CITATION:
1994 SCC (5) 465 JT 1994 (5) 49
1994 SCALE (3)712

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- The facts leading to the civil appeal are as under.

2. One Ahmedi Begum was the owner of 'Dharampur Lodge' situated near Clock Tower, Sabzi Mandi, Delhi. She leased out the entire property to one S. Sardul Singh Caveeshar. The lease was for a period of 5 years evidenced by registered lease deed dated 12-4-1948. On expiry of the said lease another lease dated 3-4-1953 was executed for a further period of 5 years which was also duly registered.

3.Both these lease deeds empowered the lessee S. Sardul Singh Caveeshar to sublet the whole or a part of the demise property. S. Sardul Singh Caveeshar sublet various portions of the property to several subtenants. One such subletting was in favour of the appellant, Manphul Singh Sharma in April 1948 and another portion to Yog Raj Goswami in August 1956.

4. On 1-9-1956 the tenant S. Sardul Singh Caveeshar by a registered lease deed sublet the entirety of the property in favour of Surinder Kumar Sharma. That, in turn, authorised Surinder Kumar Sharma to sublet. Thereafter S. Sardul Singh Caveeshar called upon all the subtenants to attorn in favour of Surinder Kumar Sharma. The appellant and Yog Raj Goswami started paying rents to Surinder Kumar Sharma.

5.Consequent to the failure of the head tenant S. Sardul Singh Caveeshar to pay the rent, in spite of the notice of payment by the landlady on 23-7-1957, the tenancy in his favour came to be terminated. Ahmedi Begum filed a suit for recovery of arrears of rent and ejectment, after obtaining the necessary permission under the Slum Areas Improvement and Clearance Act of 1926. That suit ended in a decree in favour of Ahmedi Begum. Those execution proceedings stood transferred to High Court. Surinder Kumar Sharma, the subtenant, filed objections to the effect that he was a lawful subtenant and became a direct tenant under the degree holder by virtue of Section 20 of the Delhi & Ajmer Rent Control Act, 1952 (hereinafter referred to as the 1952 Act). His claim as negatived both by the learned Single Judge and the Division Bench of the High Court.

6. The appellant and Yog Raj Goswami filed similar objections that the subletting in their favour was with the consent of the landlady and Section 20 of the 1952 Act would enure to their benefit. The objection was overruled by a learned Single Judge of the High Court. He reasoned that the appellant had attorned to Surinder Kumar Sharma under written direction of S. Sardul Singh Caveeshar. This would tantamount to surrender of tenancy under S. Sardul Singh Caveeshar and creation of tenancy in favour of Surinder Kumar Sharma. Therefore, he was not a lawful subtenant. Similar objection of Yog Raj Goswami was also dismissed. Aggrieved by this, appeals were preferred in EFA(OS) 7 of 1971 and 9 of 1972 by the appellant as well as Yog Raj Goswami.

7. Ahmedi Begum died in February 1980, pending appeal. One M.A. Khan claimed that Ahmedi Begum had created a wakf and he was the Mutawalli.

8. The Delhi Wakf Board further instituted a suit for declaration that M.A. Khan had nothing to do with the property nor was he a Mutawalli. On the contrary, the property stood vested in the Board as wakf. In the appeals filed by the appellant and Yog Raj Goswami both M.A. Khan as well as the Delhi Wakf Board came to be impleaded as legal representatives of Ahmedi Begum. The Appellate Bench held that there was no lawful surrender in favour of Surinder Kumar Sharma. Notwithstanding this finding, the appeals came to be dismissed by the impugned judgment dated 31-7- 1981, on the only ground that under Section 17 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 1958 Act), the appellant had not served notice on the owner Ahmedi Begum. That being so, the protection available under Section 18 of the 1958 Act, making a subtenant a statutory tenant was unavailable to him. Questioning the correctness of this judgment the present appeal has been preferred.

9. The only submission of Mr B.B. Sawhney, learned counsel for the appellant, which in our view merits acceptance, is the rights of the parties are governed by 1952 Act. Under the said Act, Section 25 enables a subtenant to become a tenant on determination of the tenancy. It matters very little whether the subletting took place before or after the commencement of the 1952 Act. As a matter of fact, the claim of the appellant was only based on this section. No doubt, pending these proceedings,

the 1958 Act came into force but the provisions thereunder, namely, Section 17 or Section 18 would not apply. The reason is no doubt, 'the 1952 Act has been repeated by Section 57 of the 1958 Act, however, notwithstanding such repeal, the proceedings under the 1952 Act could be continued, as if the 1958 Act had not been enacted. Therefore, the High Court went wrong in holding, consequent to the failure of the appellant to issue notice under Section 17, the benefit of Section 18 of the Delhi Rent Control Act, 1958 would be unavailable. Thus, it is prayed, the appeal may be allowed. Besides, it is somewhat strange the High Court should have impleaded both M.A. Khan as well as the Delhi Wakf Board as legal representatives of the deceased Ahmedi Begum.

10. In opposing these arguments, Mr M.C. Dhingra, learned counsel for the respondent would take the stand, if on the date of the decree, namely, 31-8-1959, the 1952 Act stood repealed, it is only the provisions of 1958 Act which should apply.

11. After the commencement of the said Act on 9-2-1959, the tenant was prohibited to sublet the premises. However, if there had been written consent of the landlord, they would become lawful subtenants. In view of Section 17 of the said Act a notice ought to have been served on the landlord regarding the creation of subtenancy. Only by reason of such notice the benefit of Section 18(1) of the said Act could be claimed. In the absence of notice the High Court is right in its conclusion.

12. It has already been seen that the decree for ejectment was passed on 31-8-1959 by valid proceedings taken under the 1952 Act. No doubt, that Act stood repealed on 9-2-1959, when 1958 Act came into force. The question, therefore, to be posed is which one of these two Acts is to govern, whether the 1952 Act or the 1958 Act? At this stage, we must pay due regard to Section 57 of the 1958 Act. That says:

> "57. Repeal and Saving.- (1) The Delhi & Ajmer Rent Control Act, 1952 (38 of 1952), insofar as it is applicable to the Union Territory of Delhi, is hereby repealed.
>
> (2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed :
>
> Provided that in any suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which Section 54 does not apply, the court or other authority shall have regard to the provisions of this Act :
>
> Provided further that the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposed of thereunder."

13.Under sub-section (1) of Section 57 of the 1958 Act, the 1952 Act was repealed. However, what is material for our purposes is sub-section (2) of Section 57 of the 1958 Act, which says: "Notwithstanding such repeal all suits and other proceedings under the 1952 Act should be continued as if the 1958 Act had not been enacted." Obviously, the first proviso has no application to

the facts of this case. This is the purpose and indentment of this sub-section. This follows the pattern as envisaged by Section 6 of the General Clauses Act, 1897.

14. What is the effect of repeal? When a repeal is accompanied by a fresh legislation on the same subject the provisions of the new Act will have to be looked into to determine whether and how far the new Act protects or keeps alive the old rights and liabilities. The proper enquiry is as laid down by this Court in State of Punjab v. Mohar Singh Pratap Singh1. At (AIR page 88) it is stated thus:

> "Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case."

Under identical circumstances the scope of Section 57 of the 1958 Act came to be considered by this Court in Karam Singh Sobti v. Pratap Chana2. At (AIR pages 1309-10) it was held thus:

> "Let us now consider Section 57 of the Control Act of 1958 against the background of the scheme of the two Control Acts, as stated above. The first sub-section of Section 57 repeals the Control Act of 1952 insofar as it is applicable to the Union Territory of Delhi.

If the repeal stood by itself the provisions of the General Clauses Act (X of 1897) would have applied with regard to the effect of the repeal and the repeal would not affect the previous operation of any enactment repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The provisions of the General Clauses Act will not, however, apply where a different intention appears from the repealing enactment. Such an intention is clear from sub-section (2) of Section 57 which contains the saving clause. It states in express terms that notwithstanding the repeal of the Control Act of 1952, all suits and proceedings under the Control Act of 1952 pending before any court or other authority at the commencement of the Control Act of 1958, shall be continued and disposed of in accordance with the provisions of the Control Act of 1952, as if the Control Act of 1952 had continued in AIR 1955 SC 84: (1955) 1 SCR 893 AIR 1964 SC 1305 : (1964) 4 SCR 647 force and the

Control Act of 1958 had not been passed. Nothing can be more emphatic in the matter of a saving clause than what is contained in sub-section (2) of Section 57. We had said earlier that had sub-section (2) of Section 57 stood by itself without the provisos, then the incontestable position would have been that the present case would be governed by the provisions of the Control Act of 1952. The question before us is, does the first proviso to sub-section (2) make a chang e in the position and if so, to what extent? The first proviso states inter alia that in the matter of eviction of a tenant from any premises to which Section 54 does not apply, the court or other authority shall have regard to the provisions of the Control Act of 1958. Section 54 need not be considered by us as it merely saves the operation of certain enactments which do not apply to the premises under our consideration. What is the meaning of the expression 'shall have regard to the provisions of this Act' (meaning the Control Act of 1958)? Does it mean that the proviso takes away what is given by sub-section (2), except in the matter of jurisdiction of the civil court to deal with an eviction matter which was pending before the Control Act of 1958 came into force? We are unable to agree that such is the meaning of the first proviso. We think that the first proviso must be read harmoniously with the substantive provision contained in subsection (2) and the only way of harmonising the two is to accept the view which the Punjab High Court has accepted, namely, that the words 'shall have regard to the provisions of this Act' merely mean that 'where the new Act has slightly modified or clarified the previous provisions, these modifications and clarifications should be applied'. We see no other way of harmonising sub-section (2) with the first proviso thereto."

On this line of reasoning the following conclusion was reached in the above extracted case, at page 1311:

> "For the reasons given above we have come to the conclusion that in the present case the respondent-landlord is entitled to the benefit of clause (c), sub-clause (i), of the proviso to Section 13(1) of the Control Act of 1952 and the first proviso to sub-section (2) of Section 57 of the Control Act of 1958 does not stand in his way. He is, therefore, entitled to succeed, as the appellant has failed to make out any acquiescence by the landlord to the subletting in question. Therefore, the High Court rightly allowed the petition in revision and restored the decree for possession made by the trial court. The appeal fails and is dismissed with costs."

15.In view of the factual finding rendered by the High Court that the appellant is a lawful subtenant he would be entitled to the protection of Section 20 of the 1952 Act. In such a case, Section 17, consequently, Section 18 of the 1958 Act will have no application whatsoever. The result is the appellant being a lawful subtenant had become a statutory tenant. Once this conclusion is reached the judgment of the High Court cannot be supported. It is accordomgly set aside. The appeal woll stand allowed. There shall be no order as to costs.