

Supreme Court of India

Gurcharan Singh & Ors vs V. K. Kaushal on 21 August, 1980

Equivalent citations: 1980 AIR 1866, 1981 SCR (1) 490

Author: R Pathak

Bench: Pathak, R.S.

PETITIONER:

GURCHARAN SINGH & ORS.

Vs.

RESPONDENT:

V. K. KAUSHAL

DATE OF JUDGMENT 21/08/1980

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

GUPTA, A.C.

CITATION:

1980 AIR 1866                      1981 SCR (1) 490

1980 SCC (4) 244

CITATOR INFO :

R                      1987 SC 770 (4)

ACT:

Rent legislation-East Punjab Urban Rent Restriction Act, 1949-Section 13(2) (ii) (a) Scope of Rent Act extended to cantonments by virtue of power Conferred under Cantonments (Extension of Rent Control Laws) Act, 1957- By an amendment of the 1957 Act power conferred on Central Government to extend the Act both retrospectively and prospectively-Validity of.

HEADNOTE:

Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957 empowers the Central Government to extend by notification to any cantonment any enactment relating to the control of rent and regulation of house accommodation which was in force on the date of notification in the State in which the cantonment was situated. In exercise of this power the Central Government by a notification dated November 21, 1969 extended the East Punjab Urban Rent Restriction Act, 1949 to the cantonments in the States of Haryana and Punjab. By virtue of section 3(2) which was added in the 1957 Act in 1972, the Central Government enjoyed power to extend an enactment from a date earlier than the date of notification

or from a future date. In January, 1974 the Central Government issued a notification superseding the earlier notification dated November 21, 1969 and extended afresh the 1949 Act to cantonments in Haryana and Punjab.

Section 13(2)(ii)(a) of the 1949 Act provides for an order of eviction if the Controller is satisfied that the tenant has, after the commencement of this Act without the written consent of the landlord has sublet the entire building or a portion thereof.

The respondent-landlord in the instant case applied for possession of his premises in Ambala Cantonment under the occupation of the appellant-tenant on the ground that without his written consent the tenant had sub-let the shop. The appellant claimed that it was the joint Hindu family of which he was a member that was the tenant and therefore there was no question of the premises being sub-let by him to the joint family.

The Rent Controller ordered eviction. His order was affirmed by the appellate authority. The High Court dismissed the tenant's revision application.

Before this Court it was contended that (1) there was no evidence that the shop was sub-let; (2) since the 1949 Act was not in force in the Ambala Cantonment in 1967 when the sub-letting was alleged to have taken place, the landlord could not avail of the provisions of that Act and (3) the notification issued in 1974 was without statutory sanction and was invalid because once the Central Government had exercised the power in 1969 that power stood exhausted and the Government could not invoke it again in 1974.

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Dismissing the appeal,

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HELD: 1 The finding of the High Court and the Rent Controller that the tenant had sub-let the shop is unassailable. The shop, to begin with, was let out to the appellant alone and not to the joint Hindu family. The business carried on by him was later taken over by a partnership consisting of the father and brothers and he was no longer the proprietor of the business. [493 G & B]

2(a) The 1949 Act became law operating in the Ambala Cantonment with effect from November 21, 1969 when the Central Government extended that Act to the cantonments in Haryana and Punjab. The sub-letting having taken place in 1967 when the 1949 Act was not in force the landlord could not avail of the provisions of that Act. [494B-D]

(b) In the context of section 13(2)(ii)(a) of the 1949 Act the words "has sub-let" imply that the sub-letting must subsist on the date when the Act came into force. The words "has sub-let", if they are unqualified by any reference to the commencement of the Act, refer to a transaction of sub-letting entered into before or after commencement of the Act and in a case where sub-letting has been effected before the commencement of the Act the sub-lease must subsist, and the

rights under it continue to now, on the date of the commencement of the Act. In the present case, section 13(2)(ii)(a) confines its scope to sub-leases effected after the commencement of the Act, that is to say, transactions of sub-letting effected after the date when the Act came into force. For that reason, a sub-letting effected before the commencement of the Act cannot be brought within the mischief of the section even though it continues to subsist on or after the commencement of the Act. [494H; 495A-B]

Goppulal v. Thakurji Shriji Shriji Dwarkadheeshji & Anr. [1969] 3 S.C.R. 989 held inapplicable.

3(a) By virtue of the amendments made to the 1957 Act in 1972 the 1949 Act will be deemed to have come into force in the Ambala cantonment on January 26, 1950. Therefore, the sub-letting effected in 1967 must plainly be regarded as having been made after the commencement of that Act. [496D-E]

(b) In issuing the notification dated January 24, 1974 and thereby extending the 1949 Act to the Ambala Cantonment retrospectively with effect from January 26, 1950 the Central Government exercised a power not available to it when it issued the earlier notification of November 21, 1969. The contention that the notification of January, 1974 amounted to a further exercise of the same power conferred by section 3 of the 1957 Act is without force. [497 D-E]

The power under which the notification of January, 1974 had been issued is a separate and distinct power from that under which the earlier notification was made. The power now exercised passed into the 1957 Act when it was amended in 1972. In its nature and quality it is not identifiable with the power vested under the unamended Act. A power conferred by statute is distinguished by the character and content of its essential components. If one or more material components characterising the power cannot be identified with the material components of another, they are two different and distinct powers. The power under the unamended Act was a limited power

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which could operate prospectively only while the power after amendment was retrospective. It was a power whose reach and cover extended far beyond what the power under the unamended Act could achieve. [497 A-C]

(c) The words "this Act" occurring in the commencement of this Act" in clause (c) of the proviso to section 3(2) of the 1957 Act refer to the principal Act in which sub-section (2) was inserted in section 3 and not to the Amendment Act of 1972. By virtue of section 2(2) as amended it is the principal Act which must be deemed to have come into force on January 26, 1950 [497 G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 840 of 1978.

Appeal by Special Leave from the Judgment and order dated 14th December 1977 of the Punjab and Haryana High Court in Civil Revision No 613/74.

Govind Das, Mrs. Urmila Kapoor and Mrs. Shobha Dixit for the Appellant.

M.N. Phadke, N.C. Jain, S.K. Dhingra and S.L. Sethia for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave is directed against a judgment of the High Court of Punjab & Haryana dismissing a tenants' revision petition. under s. 15(5), East Punjab Urban Rent Restriction Act, 1949 arising out of eviction proceedings.

The respondent, as landlord, applied under s. 13(2)

(ii) (a) of the East Punjab Urban Rent Restriction Act, 1949 for the possession of a shop forming part of the premises No. 6283, Nicholson Road. Ambala Cantonment occupied by the appellants. He claimed that the shop had been let out to the first appellant, Gurcharan Singh but that he had without the written consent of the respondent, sublet the shop to his father, Gurdayal Singh and his brothers, Anoop Singh and Jagjit Singh. The appellants denied that the shop had been sub-let and pleaded that they, along with their father constituted a joint Hindu family, and that the joint Hindu family was the tenant of the shop. The Rent Controller found in favour of the respondent and passed an order of eviction, which was subsequently affirmed by the Appellate Authority. The appellants applied in revision, and the High Court has, by its judgment and order dated 14th December, 1977 dismissed the revision application.

The first contention of the appellant is that there is no evidence that the shop was sub-let, and the finding is misconceived in point of law.

It is sufficient to point out that the Rent Control Authorities and the High Court have concurrently found that the shop was let out to Gurcharan Singh and not to the joint Hindu family, and that Gurcharan Singh sub-let it in 1967 to a partnership firm consisting of his father and brother. The finding is supported by ample evidence on the record. The material shows that the shop was let out to Gurcharan Singh alone, and the business carried on by him was later taken over by a partnership consisting of his father and brothers. He was no longer proprietor of the business, and merely extended his assistance under a power of attorney enabling him to, act for the partnership. The execution of the power of attorney establishes that he was not a partner. It appears that Gurcharan Singh individually carried on some other business, but there is no evidence to show that business was lodged in the shop under consideration. The material before us demonstrates that the shop was occupied exclusively by the partnership firm and that Gurcharan Singh was left with no right to possession therein. The evidence is incompatible with the case, now set up before us, that the partnership was merely a licensee of Gurcharan Singh. Learned counsel for the appellants relies on Hira Singh & Ors. v. Banarsi Dass. That case, however, was one of a joint tenancy, and it was held that the mere circumstance that one of the co-tenants had ceased living in the premises for some

time could not lead to the inference that he had sub-let it to the other co-tenants. The evidence showed that all the co-tenants were carrying on business in partnership, although one of them was not disclosed was a partner.

Some reliance was placed on the circumstance that the licence for carrying on the business stood in the name of Gurcharan Singh. As the evidence plainly shows, the licence was issued to him when he was carrying on the business, and subsequently, although it continued to stand in his name, it was used by the partnership firm, and no inquiry was ever made by the licensing authority, when renewing it, to determine whether the original holder of the licence was still carrying on the business.

We are of opinion that the finding of the High Court and the Rent Control authorities that Gurcharan Singh had sub-let the shop is unassailable.

Learned counsel for the appellants contends next that the ground sub-letting taken under the East Punjab Urban Rent Restriction Act, 1949 is not available to the respondent because on the date when the sub-letting took place that Act was not in force in the Ambala Cantonment. Now, it appears that s. 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 empowered the Central Government to extend, by notification, to any cantonment with such restrictions and modifications as it thought fit, any enactment relating to the control of rent and regulation of house accommodation which was in force on the date of the notification in the State in which the cantonment was situated. In exercise of that power, the Central Government issued Notification No. SRO-7. dated 21st November, 1969 extending the East Punjab Urban Rent Restriction Act, 1949 to cantonments in the States of Haryana & Punjab. Consequently, with effect from 21st November, 1969 the East Punjab Urban Rent Restriction Act became a law operating in the cantonment. Section 13 (2)

(ii) (a) of the Act provides for an order of eviction if the Controller is satisfied "that the tenant has, after 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."

It is clear that the tenant falls within the mischief of this sub-clause only if he has effected the transfer or sub- letting after the commencement of the Act. The Act commenced to operate in the Ambala Cantonment on 21st November, 1969. In regard to that territory, it was not law before that date, but only on and from that date. It is clear that the sub-letting in the present case having been effected in 1967, was not made after the commencement of the Act. Learned counsel for the respondent urges that s. 13(2)(ii)(a) of the Act uses the words "has sub-let", and submits that sub-letting is a continuous process and that even though in the present case it may be said to have commenced before the Act came into force it continued in operation after the Act was brought into force. Now, when s. 13(2)(ii)(a) speaks of a tenant who "has sub-let", it refers to a tenant who has entered into a transaction of sub- letting. And the transaction of sub-letting is referable to a single point of time. It is the moment when the act effecting the sub-letting is completed. That transaction

is located at a fixed point. What happens then is that a flowing stream of rights and obligations issues from the sub letting. Those rights continue as long as the sub-lease subsists. but they have their source in the definitive transaction of sub-letting located in a single fixed point of time. We may add that in the context of s. 13(2)(ii)(a) of the Act. the words "has sub-let" imply that the sub-letting must subsist on the date when the Act comes into force. The reason is apparent from the object of the Act, which is to protect the personal occupation of the tenant. The protection is not extended to a tenant who has abandoned occupation of the premises and has passed possession to another, even though by way of a sub-tenancy.

The protection against eviction is not available for permitting a tenant to make a profit out of his tenancy rights by sub-letting the premises. Therefore, the words "has sub-let" unqualified by any reference to the commencement of the Act. refer to a transaction of sub-letting entered into before or after the commencement of the Act, and in the case where sub-letting has been effected before the commencement of the Act the sub-lease must subsist, and the rights under it continue to flow, on the date of the commencement of the Act. In the present case, however, s. 13(2)(ii)(a) of the Act confines its scope to sub-leases effected after the commencement of the Act, that is to say, transactions of sub-letting effected after the date when the Act came into force. For that reason, a sub-letting effected before the commencement of the Act cannot be brought within the mischief of s. 13(2)(ii)(a) even though it continues to subsist on or after the commencement of the Act. In *Goppulal v. Thakurji Shriji Shriji Dwarkadheeshji & Anr.* on which learned counsel for the respondent relies, the relevant provision did not include the words "after the commencement of this Act". and, therefore, took within its scope a sub-letting transacted before the coming into force of the relevant Act.

In our opinion, the respondent cannot avail of s. 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act on the basis that it was brought into operation in the Ambala Cantonment by the Notification of 1969.

We find, however, that the Cantonment (Extension of Rent Control Laws) Act, 1957 was amended by Act No. XXII of 1972. Upon amendment, s. 1(2) of the principal Act declared that the principal Act would be deemed to have come into force on 26th January, 1950. The words "on the date of the Notification" were omitted in s. 3(1) of the principal Act, and were deemed always to have been omitted, so that under s. 3 the Central Government must be deemed to have been empowered always to extend to a cantonment any enactment relating to the control of rent and regulation of house accommodation in force in the State even as it stood before the date of the Notification. This amendment was made in order to accord with the further amendment made by inserting sub-section (3) in s. 3 of the principal Act, which provided that where an enactment in force in any State relating to the control of rent and regulations of house accommodation was extended to a cantonment from a date earlier than the date of such extension was made, such enactment, as in force on such earlier date, would apply to such cantonment. Section 3(2) was added in the principal Act, and it provided:

"2. The extension of any enactment under sub-s. (1) may be made from such earlier or future date as the Central Government may think fit: Provided that no such

extension shall be made from a date earlier than-

- (a) the commencement of such enactment, or
- (b) the establishment of the cantonment, or
- (c) the commencement of this Act, whichever is later."

Subject to the proviso, the Central Government now enjoyed power to extend an enactment from a date earlier than the date of the notification or from a future date. Subsequently, the Central Government issued Notification No. SRO-55, dated 24th January, 1974 superseding the earlier Notification No. SRO-7, dated 21st November, 1969 and extending the East Punjab Urban Rent Restriction Act afresh to cantonments in the States of Haryana and Punjab. Section 1(3) of that Act was modified to read that, except for s. 19, it would be deemed to have come into force on 26th January, 1950. The result is that the East Punjab Urban Rent Restriction Act will be deemed to have come into force in the Ambala Cantonment on 26th January, 1950. And if that be so, the sub-letting effected in 1967 must plainly be regarded as having been made after the commencement of that Act.

Two points are raised on behalf of the appellants against that conclusion. The first is that the power under s. 3 of the Cantonments, (Extension of Rent Control Laws) Act, 1957 having been exercised once, that is to say, by the Notification dated 21st November, 1969, the power of extension stood exhausted and could not be availed of again, and therefore the Notification dated 24th January, 1974 was without statutory sanction and invalid. We are referred to Lachmi Narain etc., etc. v. Union of India & Ors. That was a case where this Court held that a Notification under s. 2 Part States (Laws) Act, 1950 having been issued in 1951 by the Central Government extending the Bengal Finance (Sales- Tax) Act, 1941 to the State of Delhi, the power given by s. 2 exhausted itself on the extension of the enactment and could not be exercised again to enable the issue of a fresh Notification modifying the terms in which the Bengal Act was extended. The case is clearly distinguishable. The power under which the Notification dated 24th January, 1974 has been issued is a separate and distinct power from that under which the Notification dated 21st November, 1969 was made. The power now exercised passed into the Cantonments (Extension of Rent Control Laws) Act, 1957 when it was amended in 1972. In its nature and quality it is not identifiable with the power vested under the unamended Act. A power conferred by statute is distinguished by the character and content of its essential components. If one or more material components characterising the power cannot be identified with the material components of another, they are two different and distinct powers. Although broadly the power envisaged in s. 3 of the amended Cantonments (Extension of Rent Control Laws) Act, 1957 is a power of extension even as it was under the unamended Act, there is a vital qualitative difference between the two. The power under the unamended Act was a limited power. It could operate prospectively only. There was no choice in the matter. After amendment, the Act provided for a power which could be exercised retrospectively. The power extended to giving retrospective effect to an enactment in force in the State in the form in which that enactment was in force on the date on which the extension was made. It was a power whose reach and cover extended far beyond what the power under the unamended Act could achieve.

We are of the view that in issuing the Notification dated 24th January, 1974 and thereby extending the East Punjab Urban Rent Restriction Act to the Ambala Cantonment retrospectively with effect from 26th January, 1950, the Central Government exercised a power not available to it when it issued the Notification dated 21st November, 1969. The contention that the issue of the Notification of 24th January, 1974 amounted to a further exercise of power conferred by s. 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, under which the earlier Notification was issued is without force and must be rejected.

The second point raised is that in clause (c) of the proviso to s. 3(2) of the Cantonments (Extension of Rent Control Laws) Act, 1957, which speaks of "the commencement of this Act", the words "this Act" refer to the Cantonments (Extension of Rent Control Laws) Amendment Act, 1972, which commenced to operate from 2nd June, 1972. The argument is founded in fallacy. The words "this Act" refer to the principal Act in which sub-section 3(2) is inserted by virtue of the amendment, and that Act, by virtue of s. 2(2) as amended, must be deemed to have come into force on 26th January, 1950.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

P. B. R.