A.S. SULOCHANA

v.

C. DHARMALINGAM

NOVEMBER 28, 1986

[M.P. THAKKAR AND B.C. RAY, JJ.]

Tamilnadu Buildings (Lease and Rent Control) Act 1960, s.10(2)(ii)(a)— Eviction on the ground of unlawful subletting—Such sub-letting must be by the tenant sought to be evicted and not by his predecessor.

The appellant-landlord instituted an eviction suit in 1970 against the respondent-tenant on the ground of unlawful subletting. The respondent had inherited the tenancy upon the death of his father in 1968. The subletting was created, in 1952 during the life time of appellant's father. Neither the appellant, nor the respondent had any personal knowledge about the terms and conditions of the lease originally granted by the father of the appellant in favour of the father of the respondent.

The High Court, while dismissing the appeal of the appellant-landlord, held that a tenant sought to be evicted on the ground of unlawful subletting under s.10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent control) Act, 1960 must himself have been guilty of the contravention and that the alleged contravention by his father when he was a tenant can be of no avail for evicting the tenant.

Dismissing the Appeal of the appellant-landlord, this Court;

HELD: 1(i) Section 10(2) of the Act opens with the words, "a landlord who seeks to evict his tenant" and provides that if the tenant has created a sub-tenancy without the written consent of the landlord, he will be liable to be evicted. When the statute says the tenant who is sought to be evicted must be guilty of the contravention, the Court cannot say, "guilt of his predecessor in interest" will suffice. [382C-D]

(ii) The flouting of the law, the sin under the Rent Act, must be the sin of the tenant sought to be evicted and not that of his father or predecessor in interest. It being a penal provision in the sense that it visits the violator with the punishment of eviction, it must be strictly construed, for it causes less misery to be sheltered in a jail, than to be shelterless without. [382E]

In the instant case, there is nothing on record to show that the subletting

which was made in 1952, 18 years before the institution of the eviction suit in 1970, was in violation of the relevant provisions of law. There is no evidence, direct or circumstantial, on the basis of which it can be said that the lease did not confer on the father of the respondent the right to create a sub-tenancy, or that it was done without the written consent of the then landlord, the father of the appellant. Under these circumstances, the appellant cannot successfully evict the respondent on the ground of having created an unlawful sub-tenancy within the meaning of S.10(2)(ii)(a) of the Act. [381G, 382A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1124 of 1973

From the Judgment and Order dated 29.11.1972 of the Madras High Court in C.R.P. No. 1066 of 1972.

K. Ramkumar for the Appellant.

The Judgment of the Court was delivered by

THAKKAR, J. The view taken by the High Court that a tenant sought to be evicted on the ground of unlawful subletting under Section 10(2)(ii)(a)[1] of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 must himself have been guilty of the contravention and that the alleged contravention by his father when he was a tenant can be of no avail for evicting him is assailed in this appeal by special leave. The High Court has so pronounced in the backdrop of the admitted fact that respondent had himself not created any sub-tenancy after he became the tenant in 1968 upon the death of his father. The plea raised by the appellant that the tenancy created in 1952 by the father of respondent rendered him liable to be evicted in the suit instituted by the appellant in 1970 was repelled. The unsuccessful landlord has now invoked this Court's jurisdiction under Article 136 of the Constitution of India.

Facts not in dispute are:—

1. The father of the appellant had granted a lease in favour of the

1. "10(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 application, is satisfied—

(i) xxx xxxx

(ii) that the tenant has after the 23rd October, 1945 without the written consent of the landlord—

(a) transferred his right under the lease or sub-let the entire building or any portion thereof, if the lease does not confer on him any right to do so, or

x x x x xxxxx"

father of respondent prior to 1952 (the exact date or year is not on record). A

2. The father of the appellant as also the father of respondent both have died.

3. Respondent was accepted as a tenant upon the death of his father in 1968. B

4. The suit for eviction giving rise to the present appeal was instituted for eviction on the ground of unlawful subletting in 1970 by the appellant who had inherited the property from her father. C

5. Admittedly, neither the appellant nor the respondent have any personal knowledge about the terms and conditions of the lease originally granted by the father of the appellant in favour of the father of respondent no. 1. D

6. So also neither the appellant nor the respondent have any personal knowledge in what circumstance the father of the respondent had created a sub-tenancy in favour of Kuppuswami Sah way back in 1952, eighteen years before the institution of the suit. E

7. Neither the appellant nor respondent has any personal knowledge as to whether or not the sub-tenancy was created with the written consent of the landlord eighteen years back in 1952.

And on these facts the prayer for eviction must be denied regardless of the F question of interpretation which will be presently tackled. The mere fact that for as many as 18 years no objection was raised, and no action for possession was instituted against the father of the appellant in his lifetime notwithstanding the fact that a sub-tenant was openly in occupation of a part of the rented premises, would give rise to an inference that it was never treated as unlawful sub-letting by the appellant or her father. There is nothing on record to show that the sub- G letting in question, which was made in 1952, 18 years before the institution of the suit in 1970, was in violation of the relevant provisions of law. The appellant cannot succeed unless the appellant establishes that Section 10(2)(ii)(a) has been violated and the tenant has incurred the liability to be evicted on the ground of unlawful sub-letting notwithstanding the fact that the lease did not confer on him any such right, and that such unlawful sub-tenancy was created without the H

written consent of the then landlord. There is no evidence, direct or circumstantial, on the basis of which it can be said that the lease did not confer on the father of the respondent the right to create a sub-tenancy. Or that it was done without the written consent of the then landlord, that is to say, the father of the appellant. Under the circumstances, in any view of the matter the appellant cannot successfully evict the respondent on the ground of having created an unlawful sub-tenancy within the meaning of Section 10(2)(ii)(a) of the Act.

Examining the profile of the view taken by the High Court that the offending sub-letting must be by the tenant sought to be evicted himself, and not by his predecessor, it appears to be blemishless. Section 10(2) opens with the words "A landlord who seeks to evict his tenant" and provides that if the tenant has created a sub-tenancy without the written consent of the landlord, he will be liable to be evicted. Pray who is the 'tenant' whom the landlord wants to evict? That tenant is the respondent. Did he violate Section 10(2)(ii)(a) and sub-let the rented premises? The answer is 'no'. It is of little use to give the answer, not he, but his predecessor, his late father, had sub-let the premises. When the statute says the tenant who is sought to be evicted must be guilty of the contravention, the Court cannot say, 'guilt of his predecessor in interest' will suffice. The flouting of the law, the sin under the Rent Act must be the sin of the tenant sought to be evicted, and not that of his father or predecessor in interest. Respondent inherited the tenancy, not the sin, if any, of his father. The law in its wisdom seeks to punish the guilty who commits the sin, and not his son who is innocent of the rent law offence. It being a penal provision in the sense that it visits the violator with the punishment of eviction, it must be strictly construed, for it causes less misery to be sheltered in a jail, than to be shelterless without. Be that as it may the conclusion recorded by the High Court is fault-free.

We, therefore, see no reason to interfere with the order of the High Court in exercise of our jurisdiction under Article 136 of the Constitution of India. The appeal accordingly fails and is dismissed. There will be no order as to costs.

M.L.A. Appeal dismissed.