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BRIJ KISHORE GUPTA

v.

VISHWAMITRA KAPUR

January 8, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO AND
B J. C. SHAH, JJ.]

Delhi & Ajmer Rent Control Act, 1952—*Construction of unauthorised structures—Suit for ejectment—Removal of structures—pending proceedings—Whether court could grant relief—Repeal of the* 1952 *Act by Delhi Rent Control Act,* 1958—*Sections* 57(2) & 14(1) *of new Act—Scope of.*

In each of the two appeals before the court, suits had been filed by
C landlords under the Delhi and Ajmer Rent Control Act, 1952, for ejectment on the ground that the tenants had erected certain structures without the authority of the landlords and in violation of the conditions of lease between the landlord and the concerned authorities. However, in both these cases the tenants had removed the offending structures during the pendency of the suits and the question for decision in both the cases was whether the tenant could still be ejected after he had removed the
D authorised structures and there was no further danger to the landlords' leases being forfeited.

It was contended on behalf of the landlords that once a breach had been committed by a tenant within the meaning of cl. (k) of the proviso to s. 13(1) of the 1952 Act, he was liable to be ejected even though the landlord may never have given him notice about the breach and may not even have required him to remove it; and that his liability to ejectment would continue even if he had removed the offending structure before
E the filing of the suit or while it was pending. Furthermore, by virtue of the provisions of s. 57(2) of the Delhi Rent Control Act, 1958, (which repealed the 1952 Act), these two appeals fell to be governed by cl. (k) of the proviso to s. 13(1) of the 1952 Act and not by cl. (k) of proviso to s 14(1) of 1958 Act or by s. 14(11) of that Act which made it possible for the Controller not to make an order of eviction if the tenant complied with any requirements specified by the Controller; this was so because the first proviso to s. 57(2) of the 1958 Act which required that in certain
F circumstances regard shall be had to the 1958 Act, was not applicable to these two cases,

HELD: (i) While considering the scope of the first proviso to s. 57(2), it was held in *Karam Singh* v. *Sri Pratap Chand,* A.I.R. 1964 S.C. 1305 that where, in the 1958 Act, there was a radical departure from the 1952 Act, the latter Act would continue to apply to pending proceedings; but where the 1958 Act had slightly modified or clarified
G the previous provisions, then these modifications or clarifications would apply. Section 14(11) of the 1958 Act did not provide a radical departure from the provisions of the 1952 Act. because when the latter Act was in force, it would have been possible for the court in a suit based on cl. (k) of the proviso to s. 13(1) to give relief against forfeiture in a proper case on the analogy of s. 114A of the Transfer of Property Act where the tenant has removed the offending structure before the suit was filed; or even where he had done so during the pendency of the suit if reasonable
H time was not allowed in the notice contemplated by cl. (k) of the proviso to s. 13(1). When s. 14(11) of the 1958 Act gave power to the Controller to give relief to the tenant under the conditions mentioned therein, it was in fact clarifying and slightly modifying what the court could

already do under the 1952 Act. Therefore, regard could be had to the provisions of s. 14(11) of the 1958 Act and relief granted to the tenants in both appeals. [710 E-F; 711 F-H; 712 C-E] A

(ii) Under the 1952 Act, the language of the proviso to s. 13(1) was imperative and laid down that nothing in the Act applied when various clauses of the proviso were satisfied. Although the language of the proviso to s. 14(1) of the 1958 Act is not so imperative, there is no difference in substance. Where the requirements of the proviso under the 1958 Act are satisfied, the Controller has to pass a decree for ejectment unless there is provision otherwise in s. 14. [709 G-H; 910 A-B] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 879 of 1962 etc.

Appeals by special leave from the judgment and decrees dated January 18, 1961, and December 13, 1960 of the Punjab High Court Circuit Bench at Delhi, in Civil Revision No. 13-D of 1958 and Civil Revision Case No. 592-D of 1957. C

M.S.K. Sastri and *M. S. Narasimhan,* for the appellant (in C.A. No. 121/63)

M. C. Setalvad, S. Murty and *B. P. Maheshwari,* for the appellants (in C.A. No. 879 of 1962) and respondents (in C.A. No. 121 of 1962) D

Raghbir Singh and *M. I. Khowaja,* for respondent (in C.A. No. 879 of 1962).

The Judgment of the Court was delivered by E

Wanchoo, J. These two appeals by special leave from two judgments of the Punjab High Court raise a common question with respect to the application of the first proviso to s. 57 (2) of the Delhi Rent Control Act, No. 59 of 1958, (hereinafter referred to as the present Act). They arise from decisions of two learned Single Judges in revision applications under the Delhi and Ajmer Rent Control Act, No. 38 of 1952 (hereinafter referred to as the 1952 Act.) In one of them (C.A. 879) the learned Judge has held that in view of the first proviso to s. 57 (2), a decree for ejectment against the tenant could not be passed. In the other appeal (No. 121), the other learned Judge has held that the tenant is liable to ejectment in spite of the first proviso to s. 57 (2) of the present Act. It will thus be seen that the two decisions are contradictory and raise the question as to when the first proviso to s. 57 (2) precisely applies to facts similar to the facts in the present two appeals which are more or less the same. F G H

Before we consider the question thus raised before us, we may briefly indicate the facts in the two appeals. In appeal No.

879 of 1962, the landlord sued for ejectment on the ground that the tenant had erected certain structures in the shape of closing an open verandah and erecting a partition therein. On account of this, notices were sent to the landlord as well as to the tenant by the authorities concerned to remove the unauthorised structures. As however the tenant did not do so, suit for ejectment was filed by the landlord under cl. (k) to the proviso to s. 13 (1) of the 1952 Act, which ran 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) :
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> 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—
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> . . . . . .
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> (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 lease in favour of the landlord by the Government provided that "the lessee will not without the previous consent in writing of the Chief Commissioner of Delhi or such officer or body as the lessor or the Chief Commissioner of Delhi may authorise in this behalf erect or suffer to be erected on any part of the said demised premises any buildings other than and except the buildings erected thereon at the date of these presents." The case of the landlord was that the tenant had made structures without authority which made him liable to ejectment under cl. (k). During the pendency of the suit, however, the tenant had removed the offending structures with the result that there was no longer any breach of the condition of the lease.

In C.A. 121 of 1963, also the facts were similar and the suit was filed on the basis of cl. (k) of proviso to s. 13 (1) of the 1952 Act. In this case also the tenant had closed the verandah without

the permission of the authorities concerned and notice was given to the landlord on that count by the authorities and the landlord in his turn asked the tenant to remove the unauthorised structure. When the tenant did not do so, the landlord filed the suit. It appears that during the trial of the suit, the tenant made certain changes in the structure and removed the glazing and instead he closed the verandah with wire-gauze net. It was stated by a witness from the office of the Land Development Officer that the fixing of wire-gauze net was not against the clause as to unauthorised construction which was the same in the case of this lease as in the case of the lease in the other appeal. It may be added that no further action has been taken by the Land Development Officer after removal of the glazing and after fixing of the wire-gauze net.

In the circumstances the question that arose for decision in both the cases was whether the tenant could still be ejected after he had removed the unauthorised structure and there was no further danger to the landlord's lease being forfeited, and in that connection the application of the first proviso to s. 57 (2) of the present Act arose. As we have already indicated, one of the learned Judges held that the tenant could be ejected while the other held that he could not.

In order to decide the point that has been raised before us it is necessary to set out the corresponding section in the present Act which is s. 14. The relevant part of this section is in these terms :—

> "14. (1). Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :
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> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :—
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> . . . . .
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> (k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;"

A "14 (11) No order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that B clause or pays to that authority such amount by way of compensation as the Controller may direct."

Section 57(1) repeals the 1952 Act. Section 57(2) which is material for our purpose reads thus :—

C "57(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 D passed;

"Provided that in any such 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. E

. . . . . .

It will be seen from a comparison of the 1952 Act and the present Act with respect to ejectment on the ground contained in cl. (k) of the first proviso that there are some differences in the language F of the proviso to s. 13(1) of the 1952 Act and of the proviso to s. 14(1) of the present Act. In the first place the proviso to s. 13(1) of the 1952 Act lays down that nothing in sub-section (1) shall apply to any suit or other proceeding for such recovery of possession while the proviso to s. 14 (1) lays down that the Controller may on an application made to him make an order for G the recovery of possession of the premises on one or more of the grounds specified. The first difference is that the forum is changed from the civil court to the Controller; but that is a question of jurisdiction which we need not consider here. The second difference is that while under the 1952 Act the language of the proviso was imperative and laid down that nothing in the Act applied H when the various clauses of the proviso were satisfied, the language of the proviso to s. 14 (1) of the present Act is not so imperative. Even so, we are of opinion that there is no difference in substance,

for where the requirements of the proviso are satisfied under the present Act the Controller has to pass a decree for ejectment unless there is provision otherwise in s. 14 which will be found with reference to various clauses in the proviso as for example s. 14(2), 14(10) and 14(11). Another difference for our purposes between s. 13 of the 1952 Act and s. 14 of the present Act is the introduction of sub-s. (11) of s. 14 in the present Act while there was nothing in the 1952 Act corresponding to it. The main argument on behalf of the landlords in the two cases is based on this difference between the two Acts and it is contended that the introduction of sub-s. (11) is a radical departure and therefore the language of the first proviso to s. 57(2) would not apply to the present situation.

Now the first proviso to s. 57(2) came up for interpretation before this Court in *Karam Singh* v. *Sri Pratap Chand*(1). In that case the majority held that the proviso must be read harmoniously with the substantive provision contained in sub-s. (2) and the only way of harmonising the two was to read the expression "shall have regard to the provisions of this Act" as merely meaning that where the new Act has slightly modified or clarified the previous provisions, these modifications and clarifications should be applied. It was further held that these words did not take away what was provided by sub-s. (2) and that ordinarily the old Act would apply to pending proceedings. In substance therefore *Karamsingh's case*(1) decided that where in the present Act there is a radical departure from the 1952 Act, the 1952 Act will continue to apply to pending proceedings, but where the present Act had slightly modified or clarified the previous provisions these modifications and clarifications should be applied.

The question that falls for consideration in the present appeals therefore is whether the addition of sub-s. (11) in s. 14 is a radical departure from what s. 13 (1) provided or whether it is a clarification and/or modification of the previous provision. Whether sub-s. (11) is a clarification and/or modification of the position as existed when the 1952 Act was in force would depend upon whether when that Act was in force it was open to a court to give relief to a tenant where the offending structure had been removed by him during the pendency of the suit. In this connection s. 114-A of the Transfer of Property Act (No. 4 of 1882) may be referred to. Section 114-A runs as follows :—

(1) 4 S.C. 1305.

A "114-A. *Relief against forfeiture in certain other cases.*—Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

B (a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from
C the date of the service of the notice, to remedy the breach, if it is capable of remedy.

"Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to
D an express condition relating to forfeiture in case of non-payment of rent."

. . . . . .

It will be seen that s. 114-A gives power to court to give relief to the tenant against forfeiture where it holds that the landlord did
E not give reasonable time to the tenant to remedy the breach. In such case it can dismiss the suit as not maintainable. It is true that s. 114-A would not in specific terms apply to cases like the present; but ejectment on the ground specified in cl. (k) to the proviso to s. 13 (1) of the 1952 Act was somewhat analogous to forfeiture on breach of an express condition of a lease for it also
F required previous notice to the tenant before the suit is filed. (see *Uma Kumari* v. *Jaswant Rai Chopra*)(1). We do not think that it can be said that the 1952 Act forbade the court from granting relief where the offending structures were removed by the tenant even during the pendency of the suit for ejectment. What is reasonable time within which the breach should be remedied is always a
G question of fact and we think it would have been possible for the court in a suit based on cl. (k) of the proviso to s. 13(1) to give relief against forfeiture in a proper case where the tenant had removed the offending structure before the suit was filed or even during the pendency of the suit if reasonable time was not allowed in the notice contemplated by cl. (k) of the proviso to s. 13 (1). On
H the interpretation pressed before us on behalf of the landlords in the two appeals it is argued that once the breach has been com-

(1) C.A. 246 of 1961, decided on 16-2-1962.

mitted by the tenant by making an unauthorised structure he is liable to ejectment even though the landlord may never have given him notice about the breach and may not even have required him to remove it and that his liability to ejectment would continue even if he had removed the offending structure before the filing of the suit. We do not think that such an interpretation can be given to the provisions of an ameliorating statute like the 1952 Act, when it is clear that even under s. 114-A of the Transfer of Property Act, the court has power to give relief against forfeiture in the circumstances mentioned above. We are therefore of opinion that even under the 1952 Act it would have been open to a court to give relief to the tenant who had remedied the breach either before the suit was filed or even after the suit had been filed depending upon what the court considered to be reasonable time. Therefore when sub-s. (11) gave power to the Controller to give relief to the tenant under conditions mentioned therein it was in fact clarifying what the court could do under the 1952 Act on the analogy of s. 114-A of the Transfer of Property Act and also modifying it slightly. Incidentally we may add that the addition of sub-ss. (10) and (11) may explain the change in the form of the language of the proviso to s. 14 (1) of the present Act to which we have already referred. We are therefore of opinion that the introduction of sub-s. (11) in s. 14 was clarificatory and slightly modificatory of the power of the court under the 1952 Act to relieve against forfeiture where the suit was brought without giving the tenant reasonable time in the notice contemplated in cl. (k) of the proviso to s. 13(1). In this view C.A. 879 of 1962 must fail and is hereby dismissed. C.A. 121 of 1963 succeeds and is hereby allowed and the plaintiff-respondents' suit is dismissed. As in both these cases the tenant has succeeded mainly on account of some change in law after the suit had been filed, we order parties to bear their own costs throughout in both the appeals.

Appeal No. 879 *dismissed and Appeal No.* 121 *allowed.*