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INDRA KUMAR KARNANI

v.

ATUL CHANDRA PATITUNDI AND ANR.

March 10, 1965

B [P. B. GAJENDRAGADKAR, C. J., M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (West Bengal Act 17 of 1050) ss. 12(1)(c), 13—Sub-letting—Permission, when necessary—Rights of sub-tenants in violation of agreement—If saved.

C Respondent No. 2 was a monthly tenant of the appellant on a condition that he would not sublet the premises of any portion thereof. Under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 the appellant filed a suit against respondent No. 2 for his eviction on the ground that the tenancy had been determined on account of default in payment of rent. While the suit was pending, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 came into force. The suit was decreed D and the appellant took out execution proceedings. The suit was resisted by respondent No. 1 who alleged that he had taken sub-tenancy from respondent No. 2. Respondent No. 1 also filed a suit impleading the appellant and respondent No. 2 and prayed for a declaration that on the termination of the tenancy of respondent No. 2, respondent No. 1 became a direct tenant of the appellant under s. 13(2) of the 1950 Act and he was not liable to be evicted E in the execution case. The suit was decreed by the trial court, which was affirmed by the appellate courts. In appeal by special leave:

HELD: The appeal must be dismissed. [334 F]

In the case of sub-letting by a tenant of the first degree no consent of the landlord to sub-letting is required as a condition precedent for acquisition by the sub-lessee of the tenant's rights, but F in the case of sub-letting by a tenant inferior to the tenant of the first degree the consent of the landlord and also of the tenant of the superior degree above him to the sub-letting is necessary if the sub-lessee is to acquire the rights of the tenant contemplated by s. 13(2). [332 H]

The clause "and the sub-lease is binding on the landlord of such last mentioned tenant" in s. 13(2) does not govern both classes of G tenancies, namely, sub-tenancies created by "tenant of first degree" and also by "a tenant inferior to the tenant of the first degree" as defined in s. 13(1). [333 B]

It is not correct to say that the rights mentioned in s. 13(2) are conferred upon the sub-lessee only in a case where sub-letting is not in violation of the agreement of lease. The right of sub-tenant H even in a case in which the landlord has brought a suit for eviction against the tenant under s. 12(1)(c) are saved and the rights and obligations of sub-tenants, would be governed by the provisions of s. 13. [334 A]

In enacting s. 13 of the Act the legislature has deliberately enlarged the class of sub-tenants to be protected from eviction by the landlords and the language of the section dealing with the sub-lessees has been deliberately changed and proper effect and interpretation must be given to the language of the new section. [334 E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 125 of 1963. A

Appeal by special leave from the judgment and decree dated June 2, 1959 of the Calcutta High Court in Appeal from Appellate Decree No. 536 of 1964.

S. Murthy and *B. P. Maheshwari*, for the appellant. *M. C. Chakraborthy* and *R. Gopalakrishnan*, for respondent No. 1. B

The Judgment of the Court was delivered by

Ramaswami, J. The sole question for determination in this appeal is whether respondent No. 2—Atul Chandra Patitundi is protected from being evicted by the landlord from the premises No. 90A, Harish Mukerjee Road situated in Bhawanipur, District 24-Parganas in view of the provisions enacted in s. 13(2) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (West Bengal Act XVII of 1950), hereinafter called the 1950 Act. C

Some time before 1948, respondent No. 2 was inducted as a monthly tenant under Rai Sahib Chandan Mal Inder Kumar, the predecessor-in-interest of the appellant. One of the conditions of the lease was that the tenant will not sub-let the premises or any portion thereof. As respondent No. 2 defaulted in the payment of rent the appellant made an application under s. 14 of the Calcutta Rent Ordinance, 1946 for permission to sue him for eviction. The application was granted by the Second Additional Rent Controller on September 10, 1948. On December 1, 1948, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 (West Bengal Act XXXVIII of 1948), hereinafter called the 1948 Act, came into force. On September 15, 1949 the appellant filed a Title Suit No. 171 of 1949 in the Court of the 1st Subordinate Judge, Alipore, 24-Parganas against respondent No. 2 for his eviction on the ground that the tenancy had been determined on account of default in payment of rent. While the suit was pending, the 1950 Act came into force on March 31, 1950. The suit was eventually decreed in favour of the appellant on February 25, 1951. The appellant took out execution proceedings being Title Execution Case No. 39 of 1951 of the Court of the First Sub-Judge, Alipore. The suit was resisted by respondent No. 1 who alleged that he had taken sub-tenancy from respondent No. 2. Respondent No. 1 also filed Title Suit No. 578 of 1951 in the Court of 4th Munsif at Alipore impleading the appellant and respondent No. 1 and praying for a declaration that on the termination of the tenancy of respondent No. 2, respondent No. 1 became a direct tenant of the appellant under s. 13(2) of the 1950 Act and that he was not liable to be evicted in the execution case. The suit was decreed in the Court of the Subordinate Judge and the decree was affirmed by the District Judge of 24-Parganas in Title Appeal No. 157 of 1953. A Second Appeal was also dismissed by the Calcutta High Court on June 2, 1959. D E F G H

A On behalf of the appellant the argument put forward was that the sub-lease granted by respondent No. 1 in favour of respondent No. 2 was contrary to the agreement of lease and not binding upon the appellant. It was, therefore, submitted that the sub-lessee did not acquire the status of a tenant under s. 13(2) of the 1950 Act and the sub-lessee could not be deemed to be B holding directly under the appellant within the meaning of that sub-section. The question at issue depends upon the proper interpretation of s. 13(2) of the 1950 Act which states:

> "13. (2) Where any premises or any part thereof have been or has been sub-let by 'a tenant of the first degree' or by 'a tenant inferior to a tenant of the first degree', as C defined in explanation to sub-section (1), and the sub-lease is binding on the landlord of such last mentioned tenant, if the tenancy of such tenant in either case is lawfully determined otherwise than by virtue of a decree in a suit obtained by the landlord by reason of any of the grounds specified in clause (h) of the proviso to sub- D section (1) of section 12, the sub-lessee shall be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord of the tenant whose tenancy has been determined, on terms and conditions on which the sub-lessee would have held under the tenant if the tenancy of the latter had not been so E determined :
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> Provided that it shall be competent for the landlord, or any person deemed under this section to be a tenant holding directly under the landlord, to make an application to the Controller for fixing rent of the premises or F part thereof in respect of which such person is so deemed to be a tenant and until the rent is fixed by the Controller on such application such person shall be liable to pay to the landlord the same rent as was payable by him in respect of the premises or part thereof, as the case may be, to the tenant before the tenancy of the tenant there- G in had been determined. The Controller in fixing the rent shall not determine such rent at the rate which is beyond the limit fixed by paragraph (4) of Schedule A. The rent so fixed shall be deemed to be the standard rent fixed under section 9".

Section 13(1) is also relevant in this connection and it states :

> H "13. (1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, if a tenant inferior to the tenant of the 1st degree sub-lets in whole or in part the premises let to him except with the consent of the landlord and of the tenant of a superior degree above him, such sub-lease shall not be binding on such non-consenting landlord, or on such non-consenting tenant.

Explanation—In this sub-section— A

(a) 'a tenant of the first degree' means a tenant who does not hold under any other tenant;

(b) 'a tenant inferior to the tenant of the first degree' means a tenant holding immediately or mediately under a tenant of the first degree; B

(c) 'landlord' means the landlord of a tenant of the first degree".

It is manifest that s. 13(1) makes a distinction between the two classes of sub-tenancies, namely, (1) sub-tenancy created by a tenant of the first degree, and (2) sub-tenancy created by "a tenant C inferior to the tenant of the first degree" by which is meant a tenant holding immediately or mediately under a tenant of the first degree. So far as the second class of sub-tenancy is concerned, the sub-section enacts that the sub-letting will not be binding upon the landlord or on the tenant of the superior degree unless each of them has consented to the transaction of sub-lease. There is D no express provision in s. 13(1) that a sub-lease of the 1st class requires previous consent of the landlord or that in the absence of such consent the sub-lease shall not be binding upon the non-consenting landlord. Section 13(2) refers to both the classes of sub-leases and states that if the sub-lease has been made by a tenant of the first degree, the sub-lessee shall be deemed to be a E tenant in respect of the premises demised to him if the tenancy of such tenant is lawfully determined under the provisions of the Act otherwise than by virtue of a decree in a suit obtained by the landlord by reason of any of the grounds specified in cl. (h) of the proviso to sub-section (1) of section 12. In the case of second class of sub-leases, i.e., sub-leases created by a tenant inferior to F the tenant of the 1st degree also the sub-lessee will acquire the status of a tenant as mentioned in the statute but in this class of sub-leases the rights of the tenant are conferred on the sub-lessee only if the sub-lease is binding upon the landlord. In enacting s. 13(1) and (2) of the 1950 Act the legislature has deliberately made a distinction between the two classes of sub-tenancies and G provided that in the case of sub-lease of the first class, namely, sub-leases created by a tenant of the first degree, the sub-lessee will acquire the status of the tenant in respect of the premises demised, though the sub-lease is not binding upon the landlord according to the agreement of lease. The legislature has further provided that in the case of sub-lease of the second class the H sub-lessee will acquire the status of a tenant of the premises only if the sub-lease is binding upon the "landlord" as defined in s. 13(1). It follows that in the case of sub-letting by a tenant of the first degree no consent of the landlord to sub-letting is required as a condition precedent for acquisition by the sub-lessee of the tenant's right but in the case of sub-letting by a tenant inferior to the tenant of the first degree the consent of the landlord and

A also of the tenant of the superior degree above him to the sub-letting is necessary if the sub-lessee is to acquire the rights of the tenant contemplated by s. 13(2). It was argued on behalf of the appellant that the clause "and the sub-lease is binding on the landlord of such last mentioned tenant" in s. 13(2) governs both classes of tenancies, namely, sub-tenancies created by "tenant of
B the first degree" and also by "a tenant inferior to the tenant of the first degree" as defined in s. 13(1). We do not consider that there is any justification for this argument. Having regard to the grammatical structure and context of the clause it is obvious that it imposes a qualification only upon sub-tenancies of the second class. It was also submitted on behalf of the appellant that if a
C sub-lease is granted by the tenant of the first degree against the terms of the contract of lease the landlord is entitled under s. 12(1)(c) of the 1950 Act to bring a suit for eviction of the tenant and that in such a suit the tenant and the sub-lessees are both liable to be evicted from the premises in question. It was submitted, therefore, that the rights mentioned in s. 13(2) are conferred upon
D the sub-lessee only in a case where sub-letting is not in violation of the agreement for lease. In our opinion, there is no substance in this argument. Section 12(1)(c) states:

> "12. (1) Notwithstanding anything to the contrary in any other Act or law, no order or decree for the recovery
E of possession of any premises shall be made by any court in favour of the landlord against a tenant, including a tenant whose lease has expired:
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> Provided that nothing in the sub-section shall apply to any suit for decree for such recovery of possession,—
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F .....
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> (c) against a tenant who has sub-let the whole or a major portion of the premises for more than seven consecutive months:
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> Provided that if a tenant who has sub-let major por-
G tion of the premises agree to possess as a tenant the portion of the premises not sub-let on payment of rent fixed by the Court, the Court shall pass a decree for ejectment from only a portion of the premises sub-let and fix proportionately fair rent for the portion kept in possession of such tenant, which portion shall thenceforth constitute
H premises under clause (8) of section 2 and the rent so fixed shall be deemed standard rent fixed under section 9, and the rights and obligations of the sub-tenants of the portion from which the tenant is ejected shall be the same as of sub-tenants under the provision of section 13;".

It is manifest that s. 12(1)(c) saves the right of sub-tenants even in a case in which the landlord has brought a suit for eviction against

the tenant under s. 12(1)(c) and the rights and obligations of sub-tenants would be governed by the provisions of s. 13. Counsel on behalf of the appellant also referred to the provisions of s. 11(3) of the 1948 Act which states: A

> "11.(3) Any person to whom any premises or any part thereof have been or has been lawfully sublet by a tenant shall, where the interest of the tenant in such premises or part is lawfully determined otherwise than by virtue of a decree or order obtained by the landlord on any of the grounds specified in clause (f) of the proviso to sub-section (1), be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord on the terms and conditions on which such person would have held under the tenant if the interest of the tenant had not been so determined: B C
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> * * * * "

It was pointed out that rights are conferred by the statute only upon sub-lessees to whom the premises have been "lawfully" sublet by a tenant. It was contended that though the 1948 Act was repealed and substituted by the 1950 Act, the provisions of s. 13(2) of the latter Act have to be construed in the context of the language of s. 11(3) of the 1948 Act. We are unable to accept this argument as correct. It is manifest that in enacting s. 13 of 1950 Act the legislature has deliberately enlarged the class of sub-tenants to be protected from eviction by the landlords and the language of the section dealing with the sub-lessees has been deliberately changed and proper effect and interpretation must be given to the language of the new section. D E

For the reasons expressed, we hold that the suit of respondent No. 1 has been rightly decreed and this appeal must be dismissed with costs. F

Appeal dismissed.