A

M/S. A. C. ESTATES

v.

M/S. SERAJUDDIN & CO. AND ANOTHER

May 7, 1965

B

[K. N. WANCHOO, J. C. SHAH AND J. R. MUDHOLKAR, JJ.]

West Bengal Premises Tenancy Act (12 *of* 1956), *s.* 16(3)—*Scope of.*

The appellant, the owner of certain premises in Calcutta, leased them out and the respondent was inducted as a sub-tenant by the tenant in June 1954. In July, 1954, the appellant issued notice to the tenant C determining the tenancy from the end of August 1954. In September 1954, the appellant filed a suit for ejectment of the tenant. While the suit was pending, the West Bengal Premises Tenancy Act, 1956, came into force on 31st March 1956. The respondent filed a petition under s. 16(3) of the Act, praying that the Controller may declare that the interest of the tenant had ceased, that the respondent had become a direct tenant under the appellant and for fixation of the rent. On 9th August 1956, the Controller made an order declaring the respondent as D a direct tenant and adjourned the proceedings for evidence regarding the rent payable. On 22nd August 1956, the ejectment suit was decreed and so, the appellant applied to the Controller praying that the respondent's petition under s. 16(3) may be dismissed. The Controller dismissed the respondent's application on the day fixed for determining the rent. The respondent's appeal to the Court of Small Causes was allowed. The appellant then filed a petition under Art. 227 of the Constitution to the E High Court, and it was dismissed except as to fixation of rent.

In his appeal to this Court, the appellant contended that: (i) the order of 9th August 1956 was not a final order and therefore the Controller could rescind it, and (ii) the respondent was not entitled to invoke s. 16(3), because the tenant had been ejected on 22nd August 1956.

HELD: (i) The High Court was right in holding that the Controller had no power to set aside the order that had been made on 9th August F 1956, for it was right when it was made. [242 C-D]

The word "tenant" is defined in s. 2(h) of the Act to include any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any decree or order for eviction had been made by a court of competent jurisdiction. There is nothing repugnant in the subject or context of s. 16(3) to take the view that the definition of "tenant" in s. 2(h) would not apply to a case under G s. 16(3). Therefore, the tenant continued to be a tenant up to 22nd August 1956, and the respondent, who became a sub-tenant in June 1954, continued to be sub-tenant after the coming into force of the Act. [240 E-G]

Under the first part of s. 16(3), the Controller has to declare by order that the tenant's interest in the premises sub-let has ceased and that the sub-tenant has become a direct tenant under the landlord; and under H the second part, the Controller has to fix the rents payable to the landlord, by the tenant and the sub-tenant. [240 H—241 B]

In the instant case after having made such a declaration under the first part of the section, in favour of the respondent, it was not open

to the Controller (while proceeding to fix rent under the second part) to rescind the order which had become final so far as the Controller was concerned, on some ground which supervened after the date of the order nor can the Controller's latter order be justified under s. 29(5) of the Act, which gives the Controller the powers under ss. 151 and 152 and the power of review under O.47, of the Civil Procedure Code. [241 G-H; 242 B-C]

(ii) There is nothing in the contention of the appellant that s. 16(3) would not apply to the respondent. [242 E]

In the present case, the benefit of the section was given to the respondent not after 22nd August 1956, when the tenant was evicted, but before that date, that is, on 9th August 1956. That order so far as it went was final and was not open to review or cancellation by the Controller who had thereafter only to fix the rent under the second part of the section. [242 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 258 of 1963.

Appeal by special leave from the judgment and order dated May 6, 1960 of the Calcutta High Court in Civil Rule No. 3579 of 1959.

S. C. Mazumdar, for the appellant.

D. N. Mukherjee, for the respondent No. 1.

The Judgment of the Court was delivered by

Wanchoo, J. This is an appeal by special leave against the judgment of the High Court of Calcutta. The appellant is the owner of premises bearing No. P-16, Bentinck Street, Calcutta. It had let out a suite on the second floor of the premises on a monthly rental of Rs. 66 to Gee Tsing Po. The exact date when the suite was let to Po is not on the record but it was sometime before June 1954. In June 1954, Po sub-let the entire suite to respondent No. 1, Messrs. Serajuddin and Company, which will hereafter be referred to as the respondent. In July 1954, the appellant gave notice to Po terminating his tenancy with the expiry of August 1954. In September 1954 the appellant filed a suit against Po praying for his ejectment on certain grounds under the West Bengal Premises Rent Control (Temporary Provisions) Act, No. XVII of 1950, which was then in force. That suit was still pending when the West Bengal Premises Tenancy Act, No. XII of 1956 (hereinafter referred to as the Act) came into force from March 31, 1956. Section 16 (3) of the Act gave certain rights to sub-tenants. As the appeal turns on the interpretation of that provision, it is necessary to set it out here :—

"16(1) . . . . . .

A (2) Where before the commencement of this Act, the tenant, with or without the consent of the landlord, has sublet any premises either in whole or in part, the tenant and every sub-tenant to whom the premises have been sublet shall give notice to the landlord of such sub-letting in the prescribed manner within six months of
B the commencement of the Act and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2) there is no consent in writing of the landlord and
C the landlord denies that he gave oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or the sub-tenant within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the sub-tenant, as the case may be, by
D order declare that the tenant's interest in so much of the premises as has been sub-let shall cease and that the sub-tenant shall become a tenant directly under the landlord from the date of the order. "The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from date of the order. Rents so fixed
E shall be deemed to be fair rent for purposes of this Act."

The respondent took action under s. 16(3) as apparently the sub-letting to him by Po was not with the consent of the landlord, and made an application thereunder to the Controller on June 4, 1956 and prayed that the Controller should declare that
F the interest of the tenant had ceased and the respondent had become the tenant directly under the landlord in respect of the suite in question. It was also prayed that fair rent of the premises should be fixed at Rs. 66 per mensem.

The application was opposed on behalf of the appellant and
G two main points were urged in that connection, namely,—(i) The tenancy of Po had been lawfully terminated at the end of August 1954 and the suit for his ejectment was pending in the Small Cause Court and therefore the respondent could not take advantage of the Act in 1956, for it never became a sub-tenant in law before the Act was passed; and (ii) the respondent was
H not in fact the tenant of Po from before March 31, 1956.

The matter came up before the Controller on August 9, 1956. The Controller accepted the respondent's case that it had become

the sub-tenant of Po in fact from June 9, 1954. The Controller further held that in view of this fact, the respondent became a sub-tenant under the appellant in law, for in any case, the tenancy of Po had not been determined till August 1954 even on the case put forward by the appellant. He therefore made the following order :—

> "The applicant (*i.e.* Serrajuddin & Co.) is therefore entitled to be declared to be a direct tenant under the O.P. No. 1. But this will not be sufficient to dispose of the present proceeding inasmuch as under section 16(3) of the Act of 1956 I am to fix the fair rent payable by the tenant and that of the sub-tenant."

He thereupon directed the Inspector to go to the locality and measure the accommodation of the disputed premises and other similar premises in the neighbourhood as might be shown by either or both parties. The Inspector was also directed to make note of advantages and amenities of all the premises measured by him and thereafter submit his report as to the fixation of fair rent. A date was fixed for the submission of the Inspector's report and thereafter the fair rent was to be fixed.

Before however the Inspector's report was received, the suit for ejectment of Po pending in the Court of Small Causes was decreed on August 22, 1956 and time was given to him to vacate the same by the end of October 1956. Therefore on September 11, 1956, the appellant filed what it called an additional written objection. In that the appellant informed the Controller that a decree for ejectment against Po had been passed. It was urged that in view of that decree, Po was no longer a tenant of the appellant and therefore the respondent could not be a sub-tenant. The appellant prayed that the application of the respondent was not maintainable in the circumstances and the Controller had no jurisdiction to entertain the application and so the application should be dismissed. The matter then came up before the Controller on January 29, 1957, on which date the appellant's additional objection as well as the Inspector's report was taken up for consideration. The Controller took some evidence on the question of fair rent and heard arguments on that day. On February 11, 1957, the Controller passed final orders in which he said that there was no tenant of the first degree on that date, namely, 11th February 1957. As the ejectment decree had been passed in accordance with the provisions of the 1950-Act, the sub-tenant had by operation of that law become a direct tenant.

A So according to the Controller there was no subsisting tenancy on February 11, 1957 and no order could be passed under s. 16(3) of the Act. He consequently dismissed the application under s. 16(3), but passed no order as to costs.

The respondent then went in appeal to the Court of Small B Causes, Calcutta, as provided in the Act. The Appeal Court held that the order of August 9, 1956 made by the Controller was final and further as the entire premises had been sublet there was no necessity for any further determination of rent as the sub-tenant would be liable to pay the rent payable by the tenant. The Appeal Court therefore set aside the order of the Controller dis- C missing the application of the respondent and declared the respondent as tenant at a rental of Rs. 66 per month.

The appellant then applied under Art. 227 of the Constitution to the High Court and two main points were urged on its behalf before the High Court, namely—

D

(i) The order of August 9, 1956 was not a final order for the purpose of s. 16(3) and therefore it was open to the Controller to rescind that order when the further fact of the ejectment decree of August 22, 1956 was brought to his E notice;

(ii) Section 16(3) applies only when the original tenancy also subsists up to the date of the final order which the Controller was proposing to make on January 29, 1957 and which he eventually refused to make because by that date the F tenancy of Po had come to an end by the ejectment decree of August 22, 1956.

The High Court held that s. 16(3) was in two parts : first relating to the declaration of the sub-tenant as a tenant in place of the tenant of the first degree, and second relating to the fixation G of fair rent for the part or whole of the premises in respect of which the declaration was made. It further held that the declaration of August 9, 1956 under the first part of s. 16(3) was final and the Controller had no jurisdiction after August 9, 1956 to rescind it. The High Court pointed out that as on August 9, 1956, when the order under the first part of s. 16(3) was passed, H the tenancy of the tenant of the first degree was subsisting, action could be taken under s. 16(3) in favour of the respondent. In this view of the matter, the revision application of the appellant

was dismissed except as to the fixation of rent. It is this order of the High Court which is being impugned before us by special leave. A

We are of opinion that the appeal must fail. There is a clear finding of the Controller that the respondent was inducted as a sub-tenant by Po in June 1954. At that time, the appellant had not even given notice to Po determining his tenancy. It was only in July 1954 that notice was given to Po determining the tenancy as from the end of August 1954. Therefore, the respondent became a sub-tenant of the tenancy which Po held under the appellant. B

C

The next question is whether the respondent was entitled to the benefit of the Act which came into force on March 31, 1956. On that date a suit was pending against Po based on the notice given to him in July 1954 determining his tenancy. The argument on behalf of the appellant is that as Po's tenancy had been determined by the end of August 1954 by virtue of the notice referred to above, the respondent was no longer sub-tenant on March 31, 1956 as the tenancy of the tenant of the first degree had itself come to an end. This in our opinion is not correct. The word "tenant" is defined in s. 2(h) of the Act to include any person continuing in possession after the termination of his tenancy but shall not include any person against whom any decree or order for eviction had been made by a court of competent jurisdiction. In view of this inclusive definition of the word "tenant" in the Act Po would continue to be a tenant under the Act though his tenancy had been determined by notice and he ceased to be a tenant only on August 22, 1956 when the decree for ejectment was passed against him. It is true that the definitions in s. 2 are subject to anything being repugnant in the subject or context. But we see nothing repugnant in the subject or context of s. 16(3) to persuade us to hold that the definition of tenant in s. 2(h) would not apply to a case under s. 16(3). The Act is a measure for the protection of tenants and sub-tenants and should not be so interpreted as to take away the protection which it intends to give to them. We are therefore of opinion that Po continued to be a tenant up to August 22, 1956 and therefore the respondent continued to be a sub-tenant after the coming into force of the Act. D E F G

This takes us to the order of August 9, 1956. We have already set out s. 16(3) and there is no doubt that it consists of two parts. Under the first part, the Controller has to declare by order that the tenant's interest in so much of the premises as has H

been sublet has ceased and the sub-tenant has become a tenant directly under the landlord from the date of the order. The second part gives power to the Controller to fix rents payable by the tenant and such sub-tenant to the landlord from the date of the order. It may be that both orders under the two parts may be passed on the same date; but it appears what usually happens is that the Controller first declares that the tenant's interest has ceased and the sub-tenant has become a tenant directly under the landlord, and thereafter proceeds to fix rent under the second part after taking such further evidence as he considers necessary. Even so, the order under the first part declaring that the tenant's interest has ceased and the sub-tenant has become a tenant directly under the landlord must be treated as final so far as the Controller is concerned and it cannot be a mere interlocutory order, which could be rescinded by the Controller while he is taking steps to fix the rent as provided in the second part of s. 16(3). In this connection our attention is drawn to the decision of the Calcutta High Court in *Anil Kumar Mukherjee* v. *Malin Kumar Mazumdar*(1), where it was held with reference to s. 29 of the Act that the words "final order" there mean the order making the declaration and fixing the rent under s. 16(3) or the order dismissing the application under s. 16(3). We do not propose to consider whether *Mukherjee's* case is correctly decided. Assuming it to be correct, what it lays down *inter alia* is that an order under the first part of s. 16(3) merely making a declaration without the further order fixing rent under the second part thereof is not appealable as a final order under s. 29. But what we are concerned with here is whether it was open to the Controller after he had made the order declaring the sub-tenant a direct tenant under the landlord to set aside that order subsequently while proceeding to fix rent on the basis of something which transpired after that order had been passed. We are of opinion that an order like that passed on August 9, 1956, must be taken to be final insofar as it declares the tenancy of the tenant of the first degree to have ceased and declares the sub-tenant to be the direct tenant of the landlord, so far as the Controller is concerned. After having made such a declaration it is not open to the Controller (while proceeding to fix rent under the second part of that section) on some ground which supervenes after the date of the order to rescind it. Our attention in this connection is drawn to s. 29(5) of the Act which gives power to the Controller to review his orders on the conditions laid down under Order XLVII of the Code of Civil Procedure. But this cannot be a case of review on the

(1) (1959-60) 64 C.W.N. 938.

ground of discovery of new and important matter, for such matter has to be something which existed at the date of the order and there can be no review of an order which was right when made on the ground of the happening of some subsequent event (see *Rajah Kotagiri Venkata Subbamma Rao* v. *Raja Vallanki Venkatrama Rao*(1). Section 29 (5) further gives power to the Controller to act under s. 151 or s. 152 of the Code of Civil Procedure. Section 152 has no application in the present case for there is no clerical or arithmetical mistake here. Nor can the Controller in our opinion set aside an order which was right when it was made, under s. 151 of the Code of Civil Procedure as there is no question in such circumstances of subserving the ends of justice or preventing the abuse of the process of the court. We are therefore of opinion that the Controller had no power to set aside the order that had been made on August 9, 1956 for it was right when it was made. The view taken by the High Court in this connection is correct.

It is equally clear that when the Controller passed the order on February 11, 1957 dismissing the application under s. 16(3) that order was appealable under s. 29(1), for it was undoubtedly a final order within the meaning of s. 29(1) and the respondent would be entitled to appeal therefrom.

Finally there is nothing in the contention of the appellant that s. 16(3) would not apply because the tenant had been ejected on August 22, 1956 and thereafter the sub-tenant could not claim the benefit of s. 16(3). In the present case the benefit of s. 16(3) was given to the sub-tenant not after August 22, 1956 but before that date *i.e.* on August 9, 1956. That order so far as it went was final and was not open to review or cancellation by the Controller who had thereafter only to fix the rent under the second part of s. 16(3). While going on with the proceeding for fixation of rent, the Controller could not set aside the order already made under the first part of s. 16(3) on August 9, 1956 and insofar as he did so, he acted without jurisdiction. The Appeal Court was therefore right in setting aside the order of the Controller and the High Court was equally right in dismissing the application by the appellant except as to fixation of rent.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

(1) L.R. (1899-1900) 27 I.A. 197.