

was made. It would be a matter for consideration at the appropriate time whether there can be any exception to this general rule that the entire property sold must be pre-empted by the pre-emptor in his suit.

I would therefore rest my decision on the facts that the sale of the lease-hold interest in land is not pre-emptible and that the super-structure of the house is also not pre-emptible and that therefore the plaintiff-pre-emptor cannot pre-empt the sale of the property sold. I therefore agree that the appeal be allowed, the decrees of the Subordinate Judge and the High Court be set aside and that of the trial Court be restored and that the appellants would have their costs throughout.

*Appeal allowed.*

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RAJ KISHORE TEWARI

v.

GOVINDARAM BHANSALI

1963

October 10

(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N. WANCHOO, J.C. SHAH AND RAGHUBAR DAYAL JJ.)

*West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (Act 17 of 1950), s. 13 (2).—Determination of sub tenancy—Whether tenancy starts from the date of ejection of the tenant of the first degree—Effect of s. 13 (2).*

The appellant was a sub-tenant of S on a monthly basis commencing from April 1, 1954. S was the tenant of the Respondent from September 15, 1943 on a monthly rental. On June 16, 1955, the respondent obtained a decree of ejection against S. In view of sub-s(2) of s. 13 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the appellant became the tenant of the respondent after the determination of the tenancy of S. The respondent gave a notice to the appellant asking him to deliver possession of the premises on the expiry of the last day of April

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1957, since he being a statutory tenant had not paid rent since June 16, 1955. The respondent instituted a suit for ejection, which was decreed, and an appeal to the High Court by the appellant was unsuccessful. On appeal by special leave, it was contended that the notice was invalid for under the law the notice must be to require the appellant to deliver possession on the expiry of the month of tenancy, that the tenancy was from the 16th of a month as the decree for ejection against S was passed on June 16, 1955 and that this notice required the delivery of possession on the expiry of the last day of April.

*Held:* The contention was untenable and rightly rejected by the High Court.

The provisions of Sub-s. (2) of s. 13 of the West Bengal Rent Control (Temporary Provisions) Act, 1950 only lay down that the sub-tenant would become the tenant of the landlord if the tenancy in-chief is determined, on the same terms and conditions on which the sub-lessee would have held under the tenant if the tenancy of the tenant had not been determined. This means that the terms and conditions of the tenancy between the erstwhile sub-tenant and the landlord continue to be the same which were the terms and conditions of the sub-tenancy. The period of monthly tenancy commencing from the first of the month and expiring on the last day of the month, was in no way affected by the provisions of Sub-s. (2) of s. (13) whose effect was simply that the sub-tenant instead of being sub-tenant of the tenant who had been ejected, got a direct connection with the landlord and became his tenant-in-chief.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 150 of 1963.

Appeal by special leave from the judgment and decree dated January 9, 1962 of the Calcutta High Court in Appeal from Original Decree No. 48 of 1961.

*N.C. Chatterjee, R.K. Garg, S.C. Agarwal, M.K. Ramamurthi and D.P. Singh*, for the appellant.

*M.C. Setalvad and B.P. Maheshwari*, for the respondent.

October 10, 1963. The Judgment of the Court was delivered by

Raghubar Dayal  
J.

RAGHUBAR DAYAL J.—Raj Kishore Tewari, appellant in this appeal by special leave, was occupying certain premises as sub-tenant of Susil Chandra Banerjee, under a registered lease dated April 10, 1954. His tenancy commenced from April 1, 1954. The rent fixed was Rs. 220 per mensem. Subsequent-

ly it was reduced to Rs. 205 by an agreement dated June 9, 1954. The tenancy was monthly.

Susil Chandra Banerjee was the tenant of Govindaram Bhansali from September 15, 1943, at a monthly rental of Rs. 153 plus certain other charges. On June 16, 1955, the landlord obtained a decree of ejectment against Susil Chandra Banerjee. In view of sub-s. (2) of s. 13 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (Act XVII of 1950), hereinafter called the Act, the appellant became the tenant of the landlord after the determination of the tenancy of Susil Chandra Banerjee.

On March 19, 1957, the land-lord respondent gave a notice to the appellant asking him to deliver possession of the premises on the expiry of the last day of April 1957, on the ground that he, being the statutory tenant, had not paid rents to him since June 16, 1955, and, as such, was not entitled to any protection under the West Bengal Premises Tenancy Act, 1956 (Act XII of 1956). Subsequently, on June 10, 1957, the respondent instituted the suit for ejectment of the appellant from the premises. The suit was resisted by the appellant on various grounds. His defence was however struck off due to certain default. Ultimately, the suit was decreed on December 15, 1959. An appeal to the High Court was unsuccessful. The High Court refused to give leave to appeal to this Court. Thereafter, the appellant obtained special leave from this Court and filed the appeal.

The only point urged for the appellant is that the notice of ejectment dated March 19, 1957, was invalid in view of the fact that under the law the notice must be to require the appellant to deliver possession on the expiry of the month of tenancy, that the tenancy was from the 16th of a month as the decree for ejectment against the tenant of the first degree was passed on June 16, 1955, and that this notice required the delivery of possession on the expiry of the last day of April. We may say that this point was not raised in the written statement. It was however allowed to be raised in the appellate Court but was repelled.

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The only point to determine in this appeal is the date from which the tenancy of the appellant *vis-a-vis* the respondent commenced. The relevant portion of sub-s.(2) of s. 13 of the Act is:

“(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 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-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 determined.”

There is nothing in these provisions which should persuade us to hold, as urged for the appellant, that the sub-tenant becomes a tenant of the landlord from the date on which the tenancy of the tenant against whom a decree for ejectment is passed is determined. The provisions only lay down that the sub-tenant would become the tenant of the landlord if the tenancy-in-chief is determined lawfully. On the other hand, this sub-section lays down that the sub-tenant would be tenant on the terms and conditions on which the sub-lessee would have held under the tenant if the tenancy of the tenant had not been determined. This means that the terms and conditions of the tenancy between the erstwhile sub-tenant and the landlord continue to be the same which were the terms and conditions of the sub-tenancy. Such terms and conditions of the tenancy in the case of the appellant were that he was to be a monthly tenant on the payment of a certain rent and that his tenancy was to

commence from the first day of April 1954. It is clear therefore that his tenancy was by the calendar month. It commenced on the first day of the month and expired on the last day of the month. This period of monthly tenancy was in no way affected by the provisions of sub-s. (2) of s. 13 whose effect was simply this that the sub-tenant instead of being sub-tenant of the tenant who had been ejected, got a direct connection with the landlord and became his tenant-in-chief or, as the Act describes, tenant in the first degree. The statutory provision just brought about a change in the landlord of the sub-tenant. The proprietor-landlord took the place of the tenant-in-chief from whom the sub-tenant had secured the tenancy.

We are therefore of opinion that the High Court was right in rejecting the contention of the appellant with respect to the invalidity of the notice for ejection dated March 19, 1957. The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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THE GENERAL ASSURANCE SOCIETY LTD.

v.

THE LIFE INSURANCE CORPORATION OF  
INDIA

(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N.  
WANCHOO, J.C. SHAH AND RAGHUBAR DAYAL JJ.)

*Life Insurance Corporation Act, 1956 (31 of 1956), s. 7(1). If amounts representing dividends declared fall within "assets and liabilities" of controlled business—Compensation and paid up capital allocable for controlled business—Tribunals Jurisdiction to set off—Life Insurance Corporation Rules, 1956, r. 12A (iv) and (vi)—Insurance Act, 1938 (4 of 1938)—Whether precludes challenge of certified balance sheets—Interest on compensation.*

On the enactment of the Life Insurance Corporation Act, providing for the nationalisation of life insurance business, the

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v.

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