

UNITED BANK OF INDIA

v.

COOKS AND KELVEY PROPERTIES (P) LTD.

MAY 12, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Tenancy Law : The West Bengal Premises Tenancy Act, 1956 :

Section 13(1) (a)—Eviction of tenant—Protection against—Tenant Bank inducting its employees' trade union into suit premises to carry on trade union activities—Bank receiving no monetary consideration and retaining its power to call upon union to vacate premises at any time, as also maintaining premises and paying electricity bills, thereof—Held, existence of consideration, an ingredient of sub-letting not present—Tenant had been retaining legal possession of premises—There is no transfer of right to enjoy premises by trade union exclusively, for consideration.

Transfer of Property Act, 1882 : Section 105—Lease—A tenant who transfers or assigns his right, in tenancy held by him, for consideration, creates sub-tenancy.

The respondent-landlord filed a suit in the High Court for ejectment of the appellant-Bank, *inter alia*, on the ground that the appellant, after taking the demised premises on rent, sub-let it to the Association of Bank's Employees, a trade Union, without landlord's consent and thereby contravened s.13(1)(b) of the West Bengal Premises Tenancy Act, 1956. The Single Judge dismissed the suit, but on appeal, the Division Bench decreed the suit. The tenant-Bank filed the appeal by special leave.

It was contended on behalf of the appellant that the legal possession of the demised premises was with the Bank which had control over the trade union and had reserved the right to ask the trade union at any time to deliver the possession back to it; that the appellant had been taking care of the maintenance of the premises at its own expenses, and paying the municipal taxes in respect thereof, but had not been collecting any rent from the trade union. It was also contended that s.13(1)(a) has no application to the non-residential buildings.

On behalf of the respondent, it was contended that the trade union

A admittedly being in exclusive possession of the premises for its trade union activities which has no connection with the bank's activities, the only inference that could be drawn was that the appellant had parted with the possession of the demised premises in favour of the trade union and for consideration, and the subletting, was therefore, established.

B Allowing the appeal, this Court

HELD : 1.1. It cannot be said that the appellant had sub-let the demised premises so as to make it liable for eviction under s.13(1) (a) of the West Bengal Premises Tenancy Act, 1956. [62-D]

C 1.2. From the evidence it is clear that though the appellant had inducted the trade union into the suit premises for carrying on the trade union activities, it has not received any monetary consideration from the trade union. Thus, the Existence of consideration, an ingredient of sub-letting, has not been proved. [61-G]

D 1.3. The President of the trade union, in his cross-examination, stated that the Bank had retained its power to call upon the Union to vacate the premises at any time and the Union has given such an undertaking. It is also stated that the Bank has been maintaining the premises at its own expenses and also paying the electricity charges. Thus, the appellant had retained its legal control of the possession of the premises and let the trade union to occupy it for trade union activities. Though the trade union was in possession of the premises, the possession must be deemed to be constructive possession held by it on behalf of the Bank. The Bank retains its control over the trade union whose membership is confined to the employees of the Bank. In the circumstances, there is no transfer of right to enjoy the premises by the trade union exclusively for consideration.

[61-H, 62-A-C]

Deepak Banerjee v. Smt. Lilabati Chakraborty, [1987] 3 SCR 680; *Jagan Nath (deceased) through Lrs. v. Chander Bhan & Ors.*, [1988] 1 Suppl. SCR 325; *Gopal Saran v. Satyanarayana*, [1989] 1 SCR 767 and *Delhi Stationers & Printers v. Rajendra Kumar*, [1990] 2 SCC 331, relied on.

Smt. Rajbir Kaur & Anr. v. M/s Chokesiri & Co., [1989] 1 SCC 19 and *Bhairab Chandra Nandan v. Ranadhir Chandra*, [1988] 1 SCC 383, referred to.

H 2. The provision of s.13(1)(a) of the West Bengal Premises Tenancy

Act, 1956 applies to the residential as well as non-residential premises governed by the provisions of the Act. [59-D] A

3. The meaning of transfer of a right to enjoy the property for consideration envisaged under s.105 of the Transfer of Property Act, which postulates that a tenant who transfers or assigns his right in the tenancy or any part thereof in whole or in part held by him is a sub-tenancy without the previous consent in writing. [61-E] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2972 of 1992.

From the Judgment and decree dated the 4th October, 1991 of the High Court of Calcutta in Appeal No. 309 of 1984 arising out of Suit No. 840 of 1979. C

Altaf Ahmad, A.S.G., Dr. S. Bhardwaj, Ms. Mridula Bhardwaj, Ms. Rakhi Verma and S. Roy for the Appellant. D

Dr. Shankar Ghosh, L.K. Poddar and Vivek Gambhir for the Respondent.

The following order of the Court was delivered :

The respondent filed a suit. O.S. No. 840/79 on the original side of Calcutta High Court for ejectment of the appellant from 4th floor of premises No. 20. Old Court House Street, Calcutta on diverse grounds under the West Bengal Premises Tenancy Act. 1956, for short 'the Tenancy Act'. That suit was dismissed by a learned single Judge but on appeal, Appeal No. 309 of 1984 filed by the respondent before the Division Bench, was allowed, judgment and decree of learned single Judge set aside, and the suit was decreed on the ground of subletting under section 13(1)(a) of the Tenancy Act. Thus, this appeal by special leave from appellate judgment and decree dated October 4, 1991. E F

The respondent's case is, that the appellant after taking demised premises on rent of Rs.2,250 per mensem, has inducted the United Bank of India Employees' Association Central Committee, a registered trade union into the demised premises and allowed it to have its exclusive possession and use of the same for its trade union activities without its (landlord's) written consent and that thereby it has contravened section 13(1)(a) of the Tenancy Act. The Division Bench upheld that case finding G H

- A that the landlord had succeeded in proving that the bank had parted with the possession of the demised premises in favour of the union which was in complete and exclusive possession of the 4th floor of the premises No. 20. Old Court House Street, Calcutta, and hence there was subletting and/or transfer of tenancy interest in favour of the third person without the consent of the landlord and as such the tenant was not entitled to any protection under the Tenancy Act. The contention of the appellant is that though the trade union was in possession of the demised premises, it is a part of the appellant's trading activity and the appellant had control over the trade union. The trade union is bound to vacate the demised premises when appellant needs and it is the appellant which has been taking care of the maintenance of the premises at its own expenses. It has been paying the municipal taxes, in charge of management and also has reserved its right to ask the trade union at any time to deliver possession back to it. It has not been collecting any rent from the trade union. Under those circumstances, the legal position remained with the bank and thereby it had not sublet the premises to the trade union in terms of section 13(1)(a) of the Act..
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- On the other hand, the contention of the respondent was that in view of the admitted fact that the working hours between the bank and the Trade Union activities are different and the trade union is having been in exclusive possession of the premises for its trade union activities which has no connection with the bank's activities of the appellant, the only inference that could be drawn is that the appellant had parted with the possession of the demised premises in favour of the trade union and for consideration. The subletting, was therefore, established by the respondent. Accordingly, the Division Bench had considered the problem, and granted the decree. Hence, there is no illegality in the decree granted by the Division Bench.
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- The crucial question that requires our consideration is , whether the appellant had sub-let the premises within the meaning of section 13(1)(a) of the Tenancy Act, which postulates that notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds namely :
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- (a) Where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord
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transfers, assigns or sub-lets in whole or in part the premises held by him : A

The contention that the above provision has no application to the non-residential building, although appears to be plausible *ex facie* on a closer scrutiny, it becomes clear that the provision makes no difference between the residential and non-residential, in its application. It would appear that the provision is intended to apply to any premises defined under the Tenancy Act, and enable a landlord to get back possession of the premises from the tenant on the ground envisaged thereunder. That ground says, that if the tenant, without the previous consent in writing of the landlord, transfers, assigns or sub-lets in whole or in part the premises held by him, would give a cause of action to the landlord to seek eviction of the tenant from the demised premises. The position becomes clear when we read clauses b, c, d, e and other related provisions vis-a-vis section 14 of the Tenancy Act. Thus, it is clear that the provision applies to the residential as well as non-residential premises governed by the provisions of the Tenancy Act. B C D

The next question is whether subletting has been established. This Court on a consideration of the entire case law on the topic of proof of passing of the consideration held in *Smt. Rajbir Kaur & Anr. v. M/s. Chokesiri & Co.*, [1989] 1 SCC 19 at page 43 in paragraph 59 thus : E

"If exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the subtenant and there cannot be direct evidence got. It is not, un often, a matter for legitimate inference. The burden of making good a case of subletting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of F G H

- A proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial. In the circumstance of the case, we think, that, appellants having been forced by the courts below to have established exclusive possession of the ice-cream vendor
- B of a part of the demised premises and the explanation of the transaction offered by the respondent having been found by the courts below to be unsatisfactory and unacceptable. It was not impermissible for the courts to draw an inference, having regard to the ordinary course of human conduct, that the transaction must
- C have been entered into for monetary considerations. There is no explanation forthcoming from the respondent appropriate to the situation as found."

- D In *Dipak Banerjee v. Smt. Lilabati Chakraborty*, [1987] 3 SCR 680 at page 684, this Court held that the question whether the alleged sub-tenant was in exclusive possession of the part of the premisesthe essential ingredient necessary for a finding, is that the sub-tenancy must be in exclusive possession and for consideration.

- E This was reiterated in *Jagan Nath (deceased) through L.R's. v. Chander Bhan & Ors.*, [1988] 1 Suppl. SCR 325.

In *Gopal Saran v. Satyanarayana*, [1989] 1 SCR 767 at page 789, this Court held that :

- F "Having regard to the quality, nature and degree of the occupation of the transferee and the facts found, it cannot be said that either there was any assignment or sub-letting or parting with possession to such a degree by permitting the boarding that the tenant had lost interest. He was using this premises for his benefit. Unless the tenant has infringed the Prohibition Act, he is not liable to be
- G evicted. The case rests on the express provisions of the Act and there is no scope to explore the latent purpose of the Act".

- H Considering all these cases in *Delhi Stationers & Printers v. Rajendra Kumar*, [1990] 2 SCC 331 at page 333, in paragraph 5, this Court reiterated that.

"Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either sub-tenancy or parting with possession". A

In *Bhairab Chandra Nandan v. Ranadhir Chandra*, [1988] 1 SCC 383 at page 387 relied upon by Dr. Shankar Ghose, the question was, whether one brother who had taken the premises on lease but admittedly residing in another premises, parted with possession in favour of his other brother Manadhir who was in occupation of the premises, was a sub-tenant or not. This Court on consideration of the said facts, held that the lease and licence pleaded by the tenant was not right. It was a case of subletting without the consent of the landlord and that, therefore, the decree of eviction was upheld. The question, as stated earlier, is whether the appellant had sublet the premises? It is seen that under section 105 of the Transfer of Property Act, the lease has been defined as the transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Section 13(1)(a) does not define the word 'transfer', Section 14 of the Tenancy Act provides for penalty for subletting. The meaning of transfer of a right to enjoy the property for consideration envisaged under section 105 of the Transfer of Property Act, which postulates that a tenant who transfers or assigns his right in the tenancy or any part thereof in whole or in part held by him is a sub-tenancy without the previous consent in writing. When the sub-tenancy was created, the sub-tenant is liable for prosecution under Section 14 read with section 13(3) of the Tenancy Act. When it is a penalty as provided under section 14 for transfer or assignment of the right in the tenancy in whole or in part of the premises held by the tenant in favour of the sub-tenant, the sub-lease envisaged under section 105 of the Transfer of Property Act would equally apply. B C D E F

From the evidence, it is clear that though the appellant had inducted the trade union into the premises for carrying on the trade union activities, the bank has not received any monetary consideration from the trade union, which was permitted to use and enjoy it for its trade union activities. It is elicited in the cross-examination of the President of the trade union that the bank had retained its power to a call upon the union to vacate the H

- A premises at any time and they had undertaken to vacate the premises. It is also elicited in the cross-examination that the bank has been maintaining the premises at its own expenses and also paying the electricity charges consumed by the trade union for using the demised premises. Under these circumstances, the inference that could be drawn is that the appellant had retained its legal control of the possession and let the trade union to occupy the premises for its trade union activities. Therefore, the only conclusion that could be reached is that though exclusive possession of the demised premises was given to the trade union, the possession must be deemed to be constructive possession held by it on behalf of the bank for using the premises for trade union activities so-long as the union used the premises for trade union activities. The Bank retains its control over the trade union whose membership is only confined to the employees of the bank. Under these circumstances, the inevitable conclusion is, that there is no transfer of right to enjoy the premises by the trade union exclusively, for consideration. Thereby, the existence of consideration an ingredient of the subletting has not been present to hold that the respondent had sublet as would make it liable for eviction under section 13(1)(a) of the Tenancy Act. The appeal is accordingly allowed. The judgment and decree of the Appellate Court is set aside, trial court judgment is confirmed, but in the circumstances, the parties are directed to bear their own costs throughout.
- D

R.P.

Appeal allowed.