M/s Aggarwal Wool & Thread Co., and another *versus* Sales-Tax Officer and Assessing Authority and Commissioner of Sales-Tax, Delhi

Grover, J.

of the Madras General Sales Tax Act according to which upon publication of the rules they would have the same effect as if enacted in the Act. It is true that a statutory rule, if validly promulgated, has the same force as the provisions of the principal Act under which it has been made but all that is being pointed out by me is that there are points of distinction between the Madras case and the present cases. I would, therefore, hold that even in exercise of rule-making power, the Chief Commissioner in the present cases could not promulgate a rule which by having retrospective operation could have the effect of validating quasi-judicial orders which were altogether null and void when made.

For these reasons, the petitions are allowed and the impugned orders are hereby quashed. It would be open to the respondents to initiate or take fresh proceedings for re-assessment in accordance with law. In the circumstances I make no order as to costs.

B. R. T.

APPELLATE CIVIL

Before Hans Raj Khanna, J.

SURAJ PRAKASH SAWHNEY,—*Appellant*

versus

BHAGAT RAM AND ANOTHER,—*Respondents.*

S.A.O. 328-D of 1964

1966

January 20th.

Delhi Rent Control Act (LIX of 1958)—S. 14(1) Proviso, clause (i)—"Substantial damage"—Meaning of—Demolition of wall separating two shops and supporting the roof—Whether amounts to substantial damage—S. 14(10)—Rent Controller—Whether bound to give option to the tenant to repair the damage or pay the compensation.

Held, that damage in its ordinary sense conveys the idea of an act which has the effect of diminishing or impairing the utility and value of something or endangering its safety or shortening the period of its utility and where the damage is considerable and not of a minor or paltry nature, the damage would be considered to be substantial.

Held, that the demolition of a wall, which not only separates two shops but also gives support to the roof, results in endangering the entire structure of the building and thus amounts to substantial damage to the demised premises.

Held, that section 14(10) of the Delhi Rent Control Act has been introduced as a corollary to clause (j) of the proviso to sub-section (1) and has been enacted to grant relief to the tenant causing substantial damage to the demised premises in case he is prepared to undo the damage caused by him. Sub-section (10), however, does not make it imperative for the Controller to give a choice to the tenant either to repair the damage or to pay the compensation. It would depend upon the circumstances of each case for the Controller to decide as to whether he should make an order calling upon the tenant to repair the damages or to pay an amount by way of compensation and to mould his directions accordingly. The Controller is vested with a discretion in the matter which must be exercised judicially, looking to the facts of each case, and it is for the Controller to decide as to what type of order contemplated by sub-section (10) should be made by him.

Second Appeal from the order of Shri Pritam Singh, Rent Control Tribunal, Delhi, dated 24th October, 1964, affirming that of Shri B. K. Agnihotri, 1st Additional Rent Controller, Delhi, dated 5th August, 1964, passing an order for eviction in favour of the petitioners against the respondent with the condition that if the respondent rebuilds the wall as it existed and as it is shown in plans A-1 and A-2, within the period of 3 months, the decree shall stand satisfied.

H. HARDY AND S. S. CHADHA, ADVOCATES, for the Appellant.

ANUP SINGH, ADVOCATE, for the Respondents.

JUDGMENT.

KHANNA, J.—This judgment would dispose of three second appeals No. 328-D of 1964, filed by Suraj Prakash Sawhney and Nos. 7-D and 9-D of 1965, filed by Bhagat Ram and Brij Mohan, all of which are directed against the orders to the Rent Control Tribunal, Delhi. These appeals have arisen in the following circumstances:— Khanna, J.

Suraj Prakash Sawhney is occupying two adjoining shops bearing Nos. 3852 and 3853 which are part of Metro Building, Mori Gate, Delhi, as tenant of Bhagat Ram and Brij Mohan. Shop No. 3852 was taken by Suraj Prakash Sawhney on rent in June, 1961, while the other shop was

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taken on rent from an earlier date. The two landlords filed an application for ejectment of Suraj Prakash Sawhney, tenant from shop No. 3852 on the allegation that it had been let out to the tenant for running a *muniari* shop (shop for sale of general merchandise) and that the same was being used for running a hotel. Another ground on which the ejectment was sought was that the tenant had caused substantial damage to the shop by removing the wall intervening between shops Nos. 3852 and 3853. Another application was filed by the landlords for ejectment of the tenant from shop No. 3853 on the ground that the tenant had caused substantial damage to the shop by removing the wall intervening between shops Nos. 3852 and 3853.

Both the applications were resisted by the tenant.

The Additional Rent Controller found that shop No. 3852 had been given for running a *muniari* shop and the tenant had been guilty of misuser by using that shop for his hotel business. It was further held that by demolishing the intervening wall between the two shops a substantial damage had been caused to the premises in dispute. Order for eviction of the tenant from shop No. 3852 was accordingly made. Conditional order for eviction of the tenant from shop No. 3853 was also made under section 14(10) of the Delhi Rent Control Act (No. 59 of 1958) (hereinafter referred to as the Act), and he was given the option of building the wall as it previously existed within a period of three months.

On appeal the learned Tribunal held that the tenant was not liable to ejectment from shop No. 3852 on the ground that he was not carrying on *muniari* business in that shop and was running a hotel there. The appeal of the tenant against the order for ejectment from shop No. 3852 was accepted and the landlords' application for ejectment in respect of that shop was dismissed. As regards shop No. 3853 it was held that the tenant had caused substantial damage to the shop by removing the intervening wall. The order for ejectment from shop No. 3853 was, accordingly, maintained in favour of the landlords against the tenant, and it was held that in case the tenant constructed the intervening wall within three months, the order for ejectment would stand satisfied and the ejectment petition of the landlords would stand dismissed.

Appeal No. 328-D of 1964 has been filed by the tenant in so far as the order has been made against him in respect of shop No. 3853. As against that, appeal No. 7-D of 1965 has been filed by the landlords in respect of shop No. 3852, and appeal No. 9-D of 1965 has been filed by the landlords in respect of shop No. 3853.

In appeal No. 328-D of 1964 it has been argued on behalf of the tenant by his learned counsel, Mr. Hardy that the tenant cannot be deemed to have caused substantial damage to the premises in dispute by demolishing the wall intervening between shops Nos. 3852 and 3853, and as such to have incurred a liability to be ejected under clause (j) of the proviso to sub-section (1) of section 14 of the Act according to which a tenant is liable to be ejected on the ground "that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises". In my opinion there is no force in the above contention. The order of the Tribunal shows that the width of the two shops is 14½ feet. The roof of the shops is not of lintel and by the removal of the intervening wall the support to the roof has been removed and there is a danger of a damage being caused to the roof at any time. In the face of these findings, which are purely on questions of facts, it can hardly be denied that the demolition of the intervening wall amounts to causing substantial damage to the shops in question. Damage in its ordinary sense conveys the idea of an act which has the effect of diminishing or impairing the utility and value of something or endangering its safety or shortening the period of its utility and where the damage is considerable and not of a minor or paltry nature the damage would be considered to be substantial. Viewed in this light, the act of the tenant in demolishing the wall, which not only separated the two shops but also gave a support to the roof and thus resulted in endangering the entire structure of the building, must be regarded as an act of causing substantial damage to the demised premises. Mr. Hardy has referred to the case of *Shrimati Savitri Devi* v. *U. S. Bajpai and another* (1), but that case can hardly be of any assistance to him because that was not a case of a wall which supported the roof but of the pulling down of a portion of a compound wall. Another

(1) A.I.R. 1956 Nagpur 60.

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case cited by Mr. Hardy is *Espir and others* v. *Basil Street Hotel, Ltd.* (2), but this case only related to the quantum of damage which is not the point at issue before this Court. I, therefore, hold that the tenant by demolishing the wall intervening between the two shops caused substantial damage to the premises in dispute and as such he was liable to ejectment under clause (j) of the proviso to sub-section (1) of section 14 of the Act reproduced above.

Mr. Hardy has then referred to sub-section (10) of section 14 of the Act which reads as under:—

> "No order for the recovery of possession of any premises shall be made on the ground specified in clause (j) of the proviso to sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, carries out repairs to the damage caused to the satisfaction of the Controller or pays to the landlord such amount by way of compensation as the Controller may direct."

According to Mr. Hardy, the above sub-section contemplates that when the Controller makes an order under it he must give an option to the tenant either to carry out the repairs or to pay the damages. It is urged that an order, as in the present case, only for carrying out the repairs is not warranted by the language of the above provision of law, because it has not the element of option to the tenant of doing one of the two things mentioned in sub-section (10). In my opinion, this contention is not well founded. Sub-section (10) has been introduced as a corollary to clause (j) of the proviso to sub-section (1), and it is provided that in cases where the tenant caused a substantial damage to the demised premises the Controller may direct the tenant to carry out repairs to the damage caused to his (the Controller's) satisfaction or to pay such amount by way of compensation as the Controller may direct. The sub-section has been enacted to grant relief to the tenant causing substantial damage to the demised premises in case he is prepared to undo the damage caused by him. Sub-section (10), however, does not make it imperative for the Controller to give a choice to the tenant

(2) (1936)3 A.E.L.R. 91.

either to repair the damage or to pay the compensation. It would, in my view, depend upon the circumstances of each case for the Controller to decide as to whether he should make an order calling upon the tenant to repair the damages or to pay an amount by way of compensation and to mould his directions accordingly. The Controller is vested with a discretion in the matter which must be exercised judicially looking to the facts of each case, and it is for the Controler to decide as to what type of order contemplated by sub-section (10) should be made by him. In a case like the present if the order were not for the construction of the intervening wall but only for payment of a paltry compensation of Rs. 200 which would, according to Mr. Hardy, be the cost of constructing the wall, there would always be a danger of the entire building falling down because of the demolition of the wall which was supporting the roof. The payment of compensation in a case like the present would hardly be the proper relief and as such the Additional Controller and the Tribunal were, in my opinion, fully justified in directing the tenant to construct the intervening wall in case he wanted to avoid his eviction. Appeal No. 328-D of 1964 is consequently dismissed.

So far as the two appeals filed by the landlords are concerned, appeal No. 9-D of 1965 with respect to shop No. 3853 has not been pressed. As regards appeal No. 7-D concerning shop No. 3852, it is urged that the demolition of the intervening wall has caused as much substantial damage to this shop as it did to the other shop and the Tribunal was not, consistently with his order in respect of the other shop, justified in dismissing the application for ejectment from shop No. 3852. This contention is obviously well-founded and Mr. Hardy on behalf of the tenant has nothing to urge against it. I would, therefore, accept appeal No. 7-D of 1965 and pass an order for ejectment of Suraj Prakash Sawhney from shop No. 3852 in favour of Bhagat Ram and Brij Mohan landlords. It is, however, directed that in case the tenant constructs the wall intervening between shops Nos. 3852 and 3853 within three months from today as ordered by the Tribunal, the order of eviction shall stand satisfied and the eviction petition of the landlords shall stand dismissed. As there was a stay order in appeal No. 328-D of 1964, the tenant shall have three months' time from today for complying

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with the order made by the Tribunal for construction of the intervening wall in order to escape eviction from shop No. 3853. The parties, in the circumstances, shall bear their own costs of the three appeals.

Khanna, J.

K. S. K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

NAND LAL NIRULA,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2318 of 1964

1966

January 20th.

Punjab State Aid to Industries Act (V of 1935)—Ss. 23, 24, 25 and 35—Industries Department—Whether can take proceedings under section 23, 24 and 25 for recovery of money—Whether can also take resort to section 35—Prescribed rate of interest of 10 per cent in case of default—Whether penal and can be recovered by the State Government—Contract Act (IX of 1872)—S. 74—Principles of—Whether applicable.

Held, that the word "notwithstanding" used in section 35 of the Punjab State Aid to Industries Act, 1935, means "In spite of", "despite" or "without prevention or obstruction from or by". Construed in this sense, section 35 would mean that despite or in spite of anything contained in sections 23, 24 and 25, the State Government would be entitled to recover the amount payable to it under the Act as arrears of land revenue. In other words, nothing contained in sections 23, 24 and 25 of the Act would prevent or obstruct the exercise of the power conferred on the State Government by section 35. To put it still more plainly, it would seem to connote that the provisions of sections 23, 24 and 25 would not serve as an impediment to the method of recovery as contained in section 35. The statutory object and purpose suggests that the power conferred by section 35 has been deliberately reserved to the State Government for realising the loan advanced by it to a citizen in the form of aid for industrial purposes and to decline this power would be supportable neither on consideration of justice and equity nor on any sound principle of law.

Held, that in enacting section 74 of the Contract Act the Indian Legislature has departed from the English Common Law and that it