

REVISIONAL CIVIL

Before Shamsheer Bahadur, J.

LAKHI RAM,—Petitioner.

versus

SAGAR CHAND AND ANOTHER,—Respondents.

Civil Revision No. 369 of 1962.

1963

May, 23rd.

East Punjab Urban Rent Restriction Act (III of 1949)
—S. 15—Appellate Authority—Whether can entertain an appeal from an order dismissing an application for setting aside an *ex parte* order of ejection.

Held, that in view of notification No. 1562-Cr.—47/9228 issued the powers conferred by sub-clause (a) of clause (1) of section 15 of the Punjab Urban Rent Restriction Act, 1947 the Appellate Authority can hear appeals against the orders of the Rent Controller made under sections 4, 10, 12 and 13 of the said Act. This Act was repealed by East Punjab Urban Rent Restriction Act, 1949, sections 4, 10, 12 and 13 of which are to the same effect as corresponding sections of the repealed Act. By virtue of section 22 of the Punjab General Clauses Act, 1898 this notification continues to be in force as there is nothing inconsistent in the notification with the provisions of the New Act nor has it been superseded by an order or notification under the new Act. The restrictions placed on the power of appeal under the notification continue to subsist under the Act of 1949 and the District Judges, as the Appellate Authority, cannot entertain an appeal from an order of the Rent Controller dismissing the application for setting aside an *ex parte* order of ejection.

Petition under Section 15(5) of Act III of 1949, as amended by Act, 29 of 1956 read with Article 227 of the Constitution of India, for revision of the order of Shri Manmohan Singh Gujral, Appellate Authority, Rohtak, dated the 22nd May, 1962, reversing that of Shri M. L. Jain, Senior Sub-Judge, Rohtak, with powers of Rent Controller, dated the 22nd December, 1961 and remanding the case to the trial Court for decision in accordance with law after giving

an opportunity to the parties to prove their case subject to the appellant's paying Rs. 100 as costs to the landlord on the first date of hearing before the trial Court.

H. L. SARIN, AND MANISABRAT JAIN, ADVOCATES, for the petitioner.

U. D. GAUR AND C. L. AGGARWAL, ADVOCATES, for the Respondent.

ORDER

SHAMSHER BAHADUR, J.—This is a petition of revision under sub-section (5) of section 15 of the East Punjab Urban Rent Restriction Act, 1949, directed against the appellate order of the learned District Judge, Rohtak.

Shamsher
Bahadur J.

The petitioner Lakhi Ram, who is a landlord of the suit premises, made an application for ejectment of the respondent-tenants and actually obtained an *ex parte* order in his favour on 14th of April, 1961, from the Rent Controller. The respondent-tenants moved an application for setting aside the order of ejectment on the ground that there had been some misunderstanding about the case having been adjourned to 24th of April, 1961, and not 14th of April, 1961, as in fact was the case. The Rent Controller, after framing the appropriate issues and hearing the evidence, reached the conclusion that there were no sufficient grounds for setting aside the *ex parte* order and dismissed the application of the tenants on 22nd of December, 1961. Aggrieved by this order the tenants preferred an appeal which was allowed by the learned District Judge, Rohtak, on 22nd of May, 1962.

In the landlord's revision petition, it has been urged by Mr. Sarin that the District Judge, as Appellate Authority, did not have any jurisdiction to entertain the appeal from an order dismissing an application for setting aside an *ex parte* order of ejectment.

Lakhi Ram
v.
Sagar Chand
and another

Shamsher
Bahadur, J.

In support of this contention, it is pointed out by Mr. Sarin, that the right of appeal provided by section 15 of the Act is restricted as under its clause (a) of subsection (1), the State Government is empowered "by a general or special order, by notification" to confer "on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order". There is notification No. 1562-Cr.-47/9228 to this effect:—

"In exercise of the powers conferred by sub-clause (a) of clause (1) of section 15 of the Punjab Urban Rent Restriction Act, 1947, the Governor of the Punjab is pleased to confer on all District and Sessions Judges in the Punjab in respect of urban areas in their respective existing jurisdiction, the powers of appellate authorities for the purposes of the said Act, with regard to orders made by Rent Controllers under sections 4, 10, 12 and 13 of the said Act."

Now, section 4 deals with the determination of fair rent, section 10 lays an embargo on the landlord to interfere with the amenities enjoyed by the tenant, section 12 empowers the Controller to make an order, for necessary repairs on the failure of the landlord to do so, while section 13 deals with the eviction of tenants. Appeals apparently are provided only in these four contingencies. The notification no doubt was passed under the Punjab Urban Rent Restriction Act, 1947, which was repealed by section 21 of the East Punjab Urban Rent Restriction Act, 1949. It is, however, well to observe that sections 4, 10, 12 and 13 of the repealed Act dealt with identical situations in the corresponding provisions of the Act which is now in

force. Under section 22 of the Punjab General Clauses Act, 1898, "where any Punjab Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealed Act, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted." Neither is there anything inconsistent in the notification made in the repealed Act with the provisions of the enactment which has taken its place, nor has it been superseded by an order or notification under the subsisting Act. In this situation there is no escape from the conclusion that the restrictions placed on the power of appeal under the notification continued to subsist under the Act of 1949 and the District Judge, as the Appellate Authority, could not entertain the appeal which was preferred before him from the order of the Rent Controller.

It has been pressed upon me by the learned counsel for the respondents that the High Court has ample power under sub-section (5) of section 15 of the Act to examine the record of any case to test its legality or propriety and the order of the Rent Controller could be set aside under this provision of law. After examining the finding of the Rent Controller, which in my view is based on evidence recorded by him, I do not think that there is any question of legality or propriety involved to justify interference of this Court in favour of the tenants. There is ample justification on the other hand to set aside the order of the learned District Judge on the ground that it was passed in the exercise of jurisdiction which clearly did not vest in him.

Lakhi Ram
v.
Sagar Chand
and another

Shamsher,
Bahadur, J.

Lakhi Ram
 v.
 Sagar Chand
 and another
 —————
 Shamsher,
 Bahadur, J.

In my opinion, this petition must succeed and the order of the District Judge set aside. The petition will be allowed and the order of the Rent Controller restored. In the circumstances, there would be no order as to costs.

B.R.T.

APPELLATE CRIMINAL

Before Mehar Singh and Gurdev Singh, JJ.

THE STATE,—Appellant.

versus

GAINDA RAM,—Respondent.

Criminal Appeal No. 416 of 1962.

1963
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 May, 30th.

Public Gambling Act (V of 1867) as amended by Punjab Public Gambling Acts (I of 1929 and IX of 1960)—Ss. 1 and 13—"Gaming"—Whether includes betting on numbers called dara or dara-satta.

Held, that in the Public Gambling Act, 1867, there is no definition of the term 'gaming' but Punjab Act 1 of 1929 in section 1 did give an inclusive definition of this term but at that time it did not include wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed. The definition of the term was amended by section 2 of the Punjab Act 9 of 1960 and the definition now includes in the term 'gaming', 'wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed'. In the same Act by section 4, section 13-A has been inserted in the main Act providing for enhanced punishment for an offence under section 13, which deals with persons found gaming in public street, place or thoroughfare within the limits provided in the Act, for gaming on any figures or numbers or dates to be subsequently ascertained. It is thus clear that now betting on numbers called *dara* or *dara-satta* amounts to gaming and the person indulging therein is guilty of an offence under section 13 of the Act.