

SUPREME COURT.

MRS. D. M. SINGER (APPLICANT)

v.

THE CONTROLLER OF RENTS AND THREE
OTHERS (RESPONDENTS).*† S.C.
1949

July 12.

Urban Rent Control Act, s. 2 (g), s. 11 and s. 16 (a)—Meaning of the word "tenant"—The Urban Rent Control Act whether retrospective so as to affect substantive rights—When Supreme Court will interfere by writ of certiorari.

Held: That the following classes of persons are termed tenants within the meaning of the Act:

- (a) A person who takes a lease of any premises and occupies them himself;
- (b) A person who is permitted under s. 12 of the Urban Rent Control Act to occupy;
- (c) A legal representative of either of the above two;
- (d) A sub-tenant; and
- (e) A tenant-holding-over.

Held further: When a person has been occupying a house before the Urban Rent Control Act came into operation and claims that the house was rented for her by a third party and she has been paying the rent though in the name of another person, the Rent Controller could not reject her application for review without enquiring into the facts alleged by her.

That the Rent Controller under the Urban Rent Control Act exercises functions of quasi-judicial nature and was therefore amenable within the jurisdiction of the Supreme Court. As the Rent Controller failed to exercise the jurisdiction in making the enquiry the Supreme Court will issue certiorari to quash the proceedings.

Tai Chuan & Co. v. Chan Seng Cheong, B.L.R. (1949) (S.C.) 86; *U Htwu (a) A. E. Madari v. U Tun Ohn and one*, (1948) B.L.R. (S.C.) p. 541 followed.

C. C. Khoo for the applicant.

Ba Sein (Government Advocate) for the respondents.

* Civil Misc. Application No. 24 of 1949.

† Present: SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

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The judgment of the Court was delivered by the Chief Justice of the Union

SIR BA U.—Two questions arise on this application, namely, whether the applicant, Mrs. D. M. Singer, is a tenant within the meaning of the Urban Rent Control Act and, if she is, whether the Controller of Rents has jurisdiction to evict her from the flat which she now occupies.

Mrs. D. M. Singer occupies a flat known as No. 59, 49th Street, Rangoon. The lease of the flat was taken in the name of one Mr. R. A. Phillips from the owners, R. E. Shansuddin and M. S. Abdur Rahman. On the 3rd January 1949 Phillips sent a note to the owners, saying that he had vacated the flat with effect from the 1st January 1949. He also sent intimation to that effect to the Controller of Rents and the said officer sent a notice on the 2nd February to the house owners, calling upon them to submit particulars as required by section 16AA, Urban Rent Control Act. On the same day the owners submitted particulars, as directed, and said that Mrs. D. M. Singer resided in the aforesaid flat without their consent and knowledge. On the 4th February the Controller of Rents, sitting with the members of the Advisory Board, allotted the aforesaid flat to U Ba Tu, an Advocate of the High Court. On the 15th February Mrs. Singer was served with a notice to deliver possession of the flat to U Ba Tu immediately, failing which she would be summarily evicted, as provided by section 16BB of the Urban Rent Control Act. On the following day, that is on the 16th February, Mrs. Singer put in a statement which she called "written objection," saying that she obtained the lease of the flat through Messrs. The Bombay Burma Trading Corporation Limited but the rents were paid in the name of

Mr. Phillips. On this the Controller of Rents passed an order in the course of which he observed : "possibly the statement may be true but when Mr. Phillips actually vacated the premises on the 1st January 1949 she must be treated as an unauthorized occupier of the premises since 1st January 1949."

Mrs. Singer thereupon applied for a review of the said order as allowed by section 21A of the Urban Rent Control Act, 1948. In support of the application she filed an affidavit in the course of which she said :

" 1. That I am the tenant of the premises known as No. 59, 49th Street, Rangoon.

2. That I have been in occupation of the said premises for over two years in the past and the rent has been paid by Mr. Phillips on my account in his name.

3. That I say that the present premises were obtained for me by the Bombay Burma Trading Corporation Limited and the arrangement of payment of rent in the name of Mr. Phillips was made by the Bombay Burma Trading Corporation Limited as Mr. Phillips was also a B.B.T.C.L. employee.

4. I say that I interviewed the Controller of Rents in the month of December 1948 when Mr. Phillips was on bad terms with me regarding the tenancy and payment of rent of the suit premises and I was advised by the Controller to continue payment of rent as usual in the name of Mr. Phillips."

The application was considered at a meeting of the Advisory Board but was rejected. Mrs. Singer was however offered a flat first in one place and then in another place in exchange for the flat No. 59, 49th Street. She was at first inclined to take one of those two flats offered to her but subsequently she changed her mind and said that as she was not an unauthorized occupier of the flat in question she would not give up possession thereof. Thereupon the Controller requested the Deputy Commissioner of Police to remove her from the flat by force, if necessary.

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In *Tia Chuan & Co. v. Chan Seng Cheong* (1) this Court pointed out that a tenant cannot be ejected from the premises which he occupies unless he has committed one of the mischiefs mentioned in section 11 of the Urban Rent Control Act or unless the premises are required for any of the purposes mentioned therein and even then it is not the Controller but a Court that has power to do it.

The term "tenant" as defined in the Urban Rent Control Act is a very wide and comprehensive term. The definition runs as follows: "'Tenant' means any person by whom or on whose account rent is payable for any premises, and includes a legal representative as defined in the Code of Civil Procedure and every person from time to time deriving title under a tenant and also every person remaining in possession of the premises let to him after the termination of the tenancy or lease with or without the assent of the landlord." Paraphrase this and we get the following classes of persons who are termed "tenants" within the meaning of the Act:

- (a) Any person by whom rent is payable;
- (b) Any person on whose account rent is payable;
- (c) A legal representative, as defined in the Code of Civil Procedure, of any of the above-mentioned two classes of persons;
- (d) Every person who derives title from time to time from a tenant; and
- (e) Every person remaining in possession of the premises let to him after the termination of the tenancy or lease, with or without the assent of the landlord.

Now, what is really meant by "any person by whom rent is payable"? Taking it literally as it stands, it may mean a person who takes a lease of any premises, whether he occupies the said premises

(1) B.L.R. (1949) (S.C.) 86.

or not, is the person who is liable to pay. If that is the sense in which the clause is to be interpreted, it means defeating the object of the Urban Rent Control Act, which is to afford relief and give protection to people who have no houses of their own to live in. Having regard therefore to the object of the Act what clause (a) really means is that a person who takes a lease of any premises and who occupies them is the person who is liable to pay rent and who is in consequence to be termed a "tenant."

Clause (b) is equally not free from ambiguity. What is meant by "any person on whose account rent is payable"? It may mean a person as explained in clause (a) or it may mean a person who occupies any premises, though the lease of which is not taken by him. Having regard to the object of the Act, it, in our opinion, can only mean the class of persons mentioned in section 12 of the Act. *i.e.* a person permitted to occupy under that section.

Clause (c) is simple enough to understand, as it stands. It may give rise to difficulties only when the question as to who is a legal representative, as defined in the Code of Civil Procedure, arises. But for the purpose of this case it is not necessary to consider the question.

Clauses (d) and (e) are simple and free from ambiguity. Clause (d) deals with the case of persons who take sub-leases from persons described in clause (a) and clause (e) deals with the case of persons described in clause (a) who continue to stay on after the expiration of the lease.

Now we know who is a "tenant" within the meaning of the Urban Rent Control Act. A tenant means and includes—

- (a) a person who takes a lease of any premises and occupies them himself ;

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- (b) a person who is permitted under section 12 of the Urban Rent Control Act to occupy ;
- (c) a legal representative of either of the above two ;
- (d) a sub-tenant, and
- (e) a tenant-holding-over.

Is Mrs. Singer a tenant within the meaning of the terms as explained above ? If the flat in question was taken by the Bombay Burma Trading Corporation Limited for her in the name of Phillips and the rent was first paid by the Corporation on her behalf and later by herself as alleged by her, both in her affidavit in support of the review application and in the application filed in this Court, Mrs., Singer is undoubtedly a sub-tenant. Even if she is a sub-tenant but if she took the sub-lease of the flat after the enactment of the present Urban Rent Control Act without the permission of the Controller of Rents as required by section 16A of the Act she would undoubtedly be an unauthorized occupier. She would thereby bring herself within the ambit of section 16AA, sub-section (4) (d). So far the law is quite clear but some questions may arise under section 16AA and they are these :

(1) Whether a landlord can terminate a tenancy in view of section 11 of the Urban Rent Control Act ; and

(2) If the landlord does terminate a tenancy and gives information thereafter to the Controller of Rents who, in consequence thereof and acting on the advice of the Advisory Board directs the landlord to let the premises to a person mentioned in the direction and the landlord lets the premises to the said person but the former tenant, who may be termed "a tenant-holding-over " refuses to give up possession, whether

the said tenant-holding-over brings himself within the ambit of section 16AA, sub-section (4) (d), of the Act.

These questions do not however arise for the purposes of this case if Mrs. Singer's allegation that she occupied the flat about two years ago is correct. The right to occupy is a substantive right and Mrs. Singer's right to occupy accrued, as alleged by her, long before the enactment of the present Urban Rent Control Act. It is a well settled principle of law that an Act never operates retrospectively to affect a substantive right unless the Act expressly says so. But the present Urban Rent Control Act does not do so.

In the case of *U Htwe (a) A. E. Madari v. U Tun Ohn and one* (1) this Court observed :

"Under section 133 of the Constitution justice throughout the Union shall be administered in Courts established by the Constitution or by law and by Judges appointed in accordance therewith. The proviso to this is section 150 of the Constitution. Under section 150, any person or a body of persons, though not a Judge or a Court in the strict sense of the term, can be invested with power to exercise limited functions of a judicial nature. When so invested, that person or body of persons, when determining questions affecting the rights of the citizens of the Union, must do so as provided by section 16, according to law. If it did not, it would at once render itself amenable to the jurisdiction of this Court, as provided in section 25."

Having regard to the provisions of sections 19A, 20 and 21 of the Urban Rent Control Act, there is no doubt that the functions which the Controller has to discharge under the Act are of a quasi-judicial nature. Therefore it was clearly his duty to hold an enquiry as to how and under what circumstances Mrs. Singer came to occupy the flat in question. It was the more incumbent on the Controller to do so when Mrs. Singer urged in her affidavit filed in support of her application

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for review that the flat was taken by the Bombay Burma Trading Corporation Limited for her though in the name of Phillips and the rent was first paid on her account by the Corporation and subsequently by herself.

In passing an order of eviction without holding an enquiry as required by the Act, the Controller has undoubtedly exceeded his jurisdiction and consequently he is amenable to the jurisdiction of this Court.

For all these reasons we set aside the order of eviction passed by the Controller of Rents and quash the proceedings. The Controller can, if he thinks fit, open fresh proceedings and hold an enquiry in the manner laid down in the Urban Rent Control Act.

In the circumstances of the case we make no order as to costs.