

PETITIONER:

LALA RAGHURAJ SWARUP (DEAD) BY L.RS.

Vs.

RESPONDENT:

HARDWARI LAL AND ORS.

DATE OF JUDGMENT 21/08/1991

BENCH:

SAHAI, R.M. (J)

BENCH:

SAHAI, R.M. (J)

THOMMEN, T.K. (J)

CITATION:

1991 AIR 2072 1991 SCR (3) 672

1991 SCC (4) 391 JT 1991 (3) 486

1991 SCALE (2) 387

ACT:

United Provinces Tenancy Act, 1939: Ss. 3(22), 3(23), 31, 39, 45, 47, 48, 175, 180/Notification dated 23. 1. 1953.

Non-occupancy tenants--Grant of sub-lease to sub-tenant--Surrender of holding to land holder before expiry of sub-lease--Notice of ejectment by land holder to sub-tenant--Interest of sub-tenant--Whether extinguishes on extinction of tenants' interest--Status of subtenant--Whether he holds land otherwise than under law--Suit for ejectment of sub-tenant after expiry of sub-lease--Maintainability.

HEADNOTE:

The defendant-appellant was a sub-tenant in terms of a sub-lease granted to him by the non-occupancy tenants for a period of five years from 1.1.1950 expiring on 31.12.1954 in respect of the land in dispute of which the plaintiff-respondent was the proprietor. On 14.9.1954 the original tenants surrendered their interests in the holding to the proprietor who issued a notice dated 2.11.1954 to the sub-tenant demanding vacant possession of the land by 31.12.1954, the agreed date of expiry of the sub-lease, and, since the latter failed to comply with the notice, the proprietor filed a suit for ejectment under s. 180 of the United Provinces Tenancy Act, 1939.

The Trial Court as well as the first appellate court decided all the issues in favour of the plaintiff, but dismissed the suit as not maintainable holding that the defendant being a sub-tenant was liable to be ejected only in terms of s. 175 and not under s. 180 of the Act, and had the suit been brought under s. 175 it would have been stayed in terms of the Government Notification dated 23.1.1953.

In the second appeal by the plaintiff the High Court held that the suit was rightly brought under s. 180 and, finding the other issues in favour of the plaintiff, it decreed the suit. Aggrieved, the defendant filed the appeal by special leave to this Court.

It was contended on behalf of the defendant-appellant that his interest in the land was not extinguished on the extinction of the

tenants' interest but continued even after termination of the period of his sub-lease notwithstanding the plaintiffs' notice; that although the term of lease had expired, he was not in unlawful or unauthorised occupation but was in possession of the land by reason of his being a lessee, and, therefore, S. 175 of the United Provinces Tenancy Act, was applicable; and that he ceased to be a sub-tenant and was elevated to the position of a tenant on the extinction of the interests of the tenants on their surrender of the holding.

Dismissing the appeal, this Court,

HELD: (By the Court--Dr. T.K. Thommen & R.M. Sahai, JJ.)

(1) The interest of a non-occupancy sub-tenant, is liable to be extinguished consequent on the extinction of the interests of the nonoccupancy tenant, and he enjoys a legal right for a limited period in terms of the statute.

(2) A person who continues to remain in occupation of the land even after the expiry of the period of his lease, and despite the landlords' notice to quit the premises, can no longer be regarded as a tenant as referred to in clause (a) or clause (b) of s. 175 of the United Provinces Tenancy Act, 1939.

(3) The persons who are not, or are no longer, tenants at the time of the suit, and liable to ejectment, have to be proceeded against under s. 180 of the United Provinces Tenancy Act, 1939.

Per Dr. Thommen, J.

1.1 The extinguishment of the interest of a non-occupancy tenant would, as envisaged by s. 47(1) of the United Provinces Tenancy Act, 1939, extinguish the interest of his sub-tenant except as otherwise provided in sub-ss. (3) and (4). [685A-B]

1.2 Notwithstanding the extinction of the interest of the tenant by reason of his surrender or any other reason mentioned under subsection (4) of s. 47, a sub-tenant whose sub-tenancy had not expired, was protected for the remainder of the term of the sub-lease or for 5 years, whichever period be the shorter, but subject to the requirement of sub-section (5) about rent. [681G-H]

2.1 In the instant case, the interests of the tenants had become extinguished in terms of clause (c) of s. 45 of the United Provinces

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Tenancy Act by reason of surrender of their interests in the holding on 14.9.54 in favour of the proprietor-plaintiff. [679G-H]

Once the interest of the person under whom the defendant held the land was extinguished, the defendant was no longer a sub-tenant, but a person enjoying a legal right for a limited period in terms of the statute. [685B]

Birendra Pratap Singh & Anr. v. Gulwant Singh & Ors., [1968] 2 SCR 870, referred to.

Biswabani (P) Ltd. v. Santosh Kumar Dutta & Ors., [1980] 1 SCR 650, held inapplicable.

The interest of the defendant, being that of a non-occupancy subtenant, was, subject to the provisions of sub-ss.(4) and (5) of s. 47, liable to be extinguished consequent on the extinction of the interests of the non-occupancy tenants. [681 B-C]

2.2 The statutory right vested in the defendant remained in force only for the statutory limited period, for the purpose of removal of standing crops and other products of the earth, and he had an obligation to vacate the holding, as envisaged by s. 48. [681H; 682A]

2.3 The terms and conditions under which the defendant

held the sub-lease under the tenants continued to be binding and enforceable between the plaintiff and the defendant for the period from 14.9.1954, which was the date of surrender by the tenants, till 31.12.1954, which was the date on which the defendant's sub-lease expired. This was, however, subject to sub-s. (5) of s. 47 which provided that, if the rent payable by the sub-tenant was less than the rent that was payable by the tenant, the sub-tenant had the option of vacating the holding or continuing in possession for the period permitted by the statute on payment of rent at the higher rate which was applicable to the tenant. [681E-F]

3.1 Section 175 of the United Provinces Tenancy Act, dealing with a non-occupancy tenant, is confined to a person who is a tenant either in terms of an unexpired lease or by reason of his being allowed to continue in possession, after the expiry of the period of the lease. The section has no application to past tenants whose interests have become extinguished for the reasons stated in s. 45 or s. 47 or whose lease has been duly determined. [682F-G; 683E]

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3.2 There must be an existing or continuing legal relationship between the owner and the person in possession of the land. In the absence of any such relationship, either because no lease or any other interest or right was ever granted or because it was duly determined or extinguished, a person retaining possession of the land without the consent and contrary to the will of the landlord does not come within the purview of s. 175. [684A-B]

3.3 Persons who are not, or, who are no longer, tenants at the time of suit, and liable to ejectment, have to be proceeded against under s. 180. [682G-H]

3.4 S. 180 has no application to a present tenant. It is meant for ejectment of a person who has no present right to retain possession of land either because his occupation commenced without any such right or the right by which he commenced the occupation has since been duly extinguished or terminated in accordance with the law in force. [683B; 684B-C]

Bhinka & Ors. v. Charan Singh, [1959] Supp. 2 SCR 798, referred to.

4. The learned Judges of the High Court were correct in holding that insofar as the defendant continued to remain in occupation of the land even after the expiry of the period of his lease, and despite the landlord's notice to quit the premises, he could no longer be regarded as a tenant referred to in clause (a) or (b) of s. 175 and, therefore, that section had no application to him. The right section in terms of which a suit had to be brought against him, as the plaintiff did in the instant case, was section 180. [686G-H; 687A]

Per Sahai. J.:

1.1 Sub-tenant, literally or statutorily either in the Rent Control legislations or agricultural tenancies, normally is a person in possession holding from the tenant. His right or interest depends on provisions in the statute. [687C]

1.2 Under U.P. Tenancy Act, sub-tenant according to clause (22) of s. 3 holds land from a tenant, and even though he is included in the definition of tenant in clause (23) and is non-occupancy tenant under s. 31 of the Act, yet, he is inferior class of tenant as he is specifically precluded by s. 39 from subletting and has no security of tenure as he can be evicted under s. 175 of the Act and his interest in the holding

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extinguishes, statutorily, under s. 47 on extinction of interest of his tenant under s. 45 of the Act. [687C-D]

2.1 A combined reading of sub-sections (1) and (4) of s. 47 shows that the interest of a sub-tenant extinguishes on surrender by his tenant but this is deferred for the period mentioned in sub-section (4). The extinction is complete but its operation is postponed to a later date. The right created by sub-section (4) being limited in operation it cannot extend beyond the period mentioned in it. [689G-H; 690A-B]

2.2 Section 47 is wider in application and immediate in operation. It extends to every tenant holding under a tenant other than permanent tenure holder or fixed rate tenant. The interest of such tenant extinguishes, automatically and immediately by operation of law on extinction of interest of his chief tenant. No further requirement is contemplated. He becomes liable to ejection. If he continues in possession he is a trespasser unless he holds with consent of the landholder/landlord expressly or impliedly, and, as envisaged by s. 48, he is required to vacate the holding except for the standing crops and produce which he is permitted to remove as any other tenant ejected in accordance with the provisions of the Act. [689A-C]

Section 47(4) does not arrest extinction. It only postpones it. [690C-D]

Birendra Pratap v. Gulwant Singh and Others, AIR 1968 SC 1068 referred to.

2.3 The expression, 'Except as provided' in sub-section (1) of s. 47 does not carve out an exception to extinction of interest of Subtenant but to its immediate operation. That is interest in the holding is extinguished but from a future date namely expiry of the period of leases or five years whichever is shorter. This benefit or concession cannot be stretched to vest any fresh tenancy right in him after expiry of the period. [689F-G]

2.4 No new tenancy is created by sub-s. (4) of s. 47. What is made binding and enforceable is the old covenant existing between the tenant and sub-tenant for the remainder period of the sub-lease. Whatever right a sub-tenant acquires it ceases to operate after the expiry of period of lease or the period mentioned in the sub-section. No second extinction is visualised. [690E-F]

3.1 Status of a person in possession after expiry of the remainder

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period of lease or five years as provided in s. 47(4) can neither be of statutory tenant nor a tenant holding over as understood in common parlance. He is a person in possession without authority of law. [690G]

3.2 A sub-tenant whose extinction is postponed as a matter of concession because of the tenant's prejudicial acts cannot be placed any higher than other sub-tenants who are required to vacate their holding immediately under s. 48. Therefore, retention of possession by such person cannot be except otherwise than in accordance with the provisions of the Act for the time being in force. [690G-H; 691A]

4. The full Bench of the High Court was right in holding that the effect of extinction of sub-tenant's interest under s. 47(1) of the Act was not only that 'he could no longer be held to be in the capacity of subtenant' but even the 'new right' of continuance for the remainder period of lease which was created under s. 47(4) was limited and did not vest any right in such person to continue after that date nor any fresh right of sub-tenancy could be deemed to accrue; consequently, possession of such person after expiry of the extended period, was otherwise than in accordance

with the provision of law against whom a suit for ejectment under s. 180 of the Act was maintainable. [691A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 937 of 1977.

From the Judgment dated 24.3.1977 of the Allahabad High Court in Second Appeal No. 2746 of 1965.

Shanti Bhushan, J.P. Goyal, Satish Chandra, V.M. Tar-kunde. R.P. Singh, A.K. Shukla, J.M. Khanna, M.R. Bidsar, K.K. Gupta. Vijay Kumar Verma, Ms. Shefali Khanna, P.K. Chakraborty and R.C. Verma for the appearing parties.

The Judgment of the Court was delivered by

THOMMEN, J. This appeal by leave arises from the judgment. Of the Full Bench of the Allahabad High Court in Second Appeal No. 2746 of 1965, whereby the High Court, reversing the finding of the courts, below; held that the suit instituted by the present respondent was maintainable under section 180 of the United Provinces Tenancy Act, 1939 (the 'Act'). That is the only question which arises for consideration in this appeal brought by the defendant in the suit.

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The suit relates to 10 plots of land of which the plaintiff is the proprietor and situated in District Muzaffargarh. The suit was instituted for ejectment of the defendant-appellant Lala Raghuraj Swarup (now represented by his Legal Representatives and hereinafter referred to also as the 'sub-tenant'), who was granted a sub-lease in the suit properties by the original tenants, Raimal and Bhartu (the 'tenants') for a period of five years commencing from 1.1.1950 and expiring on 31.12. 1954. However, on 14.9.1954 the tenants surrendered their interest in the holding to the plaintiff. The plaintiff thereupon issued notice dated 2.11.1954 to the defendant calling upon him to deliver vacant possession of the land to the plaintiff on 31.12.1954 which was the agreed date of expiry of the sub-lease. Since the defendant failed to comply with that demand, the plaintiff instituted the suit for ejectment under section 180 of the Act.

Various contentions were, raised by the defendant in answer to the plaintiff's allegations and all of them, except the question whether the suit was maintainable under section 180 of the Act, were rejected by the trial court as well as by the first appellate court. Holding that the suit was not maintainable, they stated that, in view of the fact that the defendant was holding the land as a sub-tenant, he was liable to be ejected only in terms of section 175, and not section 180, and had the suit been brought under section 175, it would have been stayed in terms of the Government Notification dated January 23, 1953 stating that all suits, applications or proceedings under section 175 were stayed.

It is not disputed that had the suit been brought under section 175, it was liable to be stayed for the notification is still in force and has remained in force at all material times. On the other hand, if the suit was rightly brought under section 180, there was no stay and in that event, all the other issues having been found in favour of the plaintiff, the suit has to be, and ought to have been, decreed. The High Court has so held by the impugned judgment.

To examine this question, we shall presently refer to sections 175 and 180, but before we do so, it is necessary to refer to the provisions concerning the status of a sub-

tenant (vis-a-vix a tenant) whose rights are extinguished by operation of law.

The expression 'tenant' in sub-section (23) of section 3 of the Act includes a 'sub-tenant' as defined in sub-section (22) of that section. These sub-sections read:

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"3(22). 'sub-tenant' means a person who holds land from the tenant thereof other than a permanent tenure-holder, or from a grove-holder or from a rent-free grantee or from a grantee at a favourable rate of rent and by whom rent is, or but for a contract express or implied, would be payable;

3(23). 'tenant' means the person by whom rent is, or .but for a contract express or implied would be, payable and, except when the contrary intention appears, includes a subtenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a 'rent-free grantee, a grantee at a favourable rate of rent or, except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekadar;"

It is not disputed that the defendant at the material time was a 'sub-tenant' as defined under section 3(22) in terms of the sub-lease granted to him by Raimal and Bhartu, who were 'tenants' within the meaning of section 3(23). Nor is it disputed that the defendant and Raimal and Bhartu were non-occupancy tenants as defined under section 31 which reads:

"31. All tenants other than permanent tenure-holders, fixed-rate tenants, tenants holding on special terms in Oudh, ex-proprietary tenants, occupancy tenants and hereditary tenants are non-occupancy tenants."

Sections 45 to 48 speak of extinction of tenancies. Section 45, so far as it is material to the facts of this case, provides:

"45. The interest of a tenant shall be extinguished-

(c) by surrender, or by abandonment;

It is not disputed that, in respect of the two tenants, their interests had become extinguished in terms of clause (c) by reason of surrender of their interests in the holding on 14.9.1954 in favour of the proprietor-

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plaintiff. The effect of such surrender on the interest of the sub-tenant is dealt with in section 47. It is with reference to this section that the applicability of section 180 has to be considered.

It is important to remember that the material portions of section 47, namely, sub-sections (1), (4) and (5) dealing with the interests of sub-tenants on the extinction of the tenants' interests, are concerned only with tenants other than permanent tenure holders or fixed rate tenants. In other words, these sub-Sections (unlike sub-section (2) concerning a transferee from a permanent tenure holder or a fixed-rate tenant or sub-section (3) dealing with mortgages executed prior to January, 1902) deal with non-occupancy tenants, as in the present case, and not with any other class of tenants. Section 47, so far as it is material, reads:

"47. (1) Except as otherwise provided in sub-section (3) and sub-section (4) the extinction of the interest of a tenant, other than a permanent tenure-holder or a fixed rate tenant, shall operate .to extinguish the interest of any tenant holding under

him

(2) Subject to the provisions of section 16 of the Land Acquisition Act, 1894, the extinction of the interest of a permanent tenure-holder or a fixed rate tenant shall not of itself affect the rights of any transferee from such tenant under a valid transfer, but after the transfer all covenants binding and enforceable as between the landholder and the tenant shall be binding and enforceable as between the landholder. and the transferee.

(4) Where, at the time Of the extinction by surrender or abandonment, or by death without any heir entitled to inherit such interest, of the interest in a holding of a tenant other than a permanent tenUre-holder or fixed-rate tenant, there is in existence a valid sub-lease of the whole or of a portion of the holding, executed on or after the first day of January, 1902, all covenants, binding and enforceable as between the tenant and the sub-tenant shall, subject to the provisions of sub-section (5), be binding and enforceable as between the tenant's landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter..

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(5). In the cases referred to in sub-section (3) and sub-section (4), if the rent payable by the sub-tenant is less than that hitherto payable by the tenant, the sub-tenant shall have the option of vacating the holding, but shall, if he continues in possession, be liable to pay rent at the rate hitherto payable by the tenant "

Section 47(1) shows that in the case of all non-occupancy tenants, (as distinguished from permanent tenure holders or fixed-rate tenants with whom we are not concerned) the extinction of their interests as such tenants will, subject to the protection of sub-sections (3) and (4), operate to extinguish the interests of tenants holding under them. The interest of the defendant, being that of a, nonoccupancy sub-tenant, is thus liable to be extinguished consequent on the extinction of the interests of the non-occupancy tenants Raimal and Bhartu. This extinction of the defendant's interest is, however, subject to the provisions contained in the relevant sub-sections, which on the facts of this case, are sub-sections (4) and (5). Sub-section (4) shows that, in the event of the extinction of the interest of a nonoccupancy tenant by reason of his surrender or abandonment of such interest, or his death without any heir to inherit such interest, all covenants binding and enforceable as between the tenant and the subtenant, subject to the provisions of sub-section (5), will be binding and enforceable as between the tenants' landholder (proprietor) and the sub-tenant for the remainder Of the term of the sub-lease or for five years whichever period may be the shorter. This means that the terms and conditions under which the defendant held the sub-lease under Raimal and Bhartu continued to be binding and enforceable between the plaintiff and the defendant for the period from 14.9. 1954, which was the date of surrender by the tenants, till 31.12.1954, which was the date on which the defendants' sub-lease expired. This is, however, subject to sub-section (5) which provides that, if the rent payable

by the sub-tenant is less than the rent that was payable by the tenant, the sub-tenant has the Option of vacating the holding or continuing in possession for the period permitted by the statute on payment of rent at the higher rate which was applicable to the tenant.

These provisions show that, notwithstanding the extinction of the interest of the tenant by reason of his surrender or any other reason mentioned under sub-section (4), a sub-tenant whose subtenancy has not expired, is protected for the remainder of the term of the sub-lease or for 5 years, whichever period be the shorter, but subject to the requirement of sub-section (5) about rent. The statutory

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right vested in the defendant thus remained in force only for the statutorily limited period, and not any further. The limited right of the sub-tenant thereafter for the purpose of removal of standing crops and other products of the earth, and his obligation to vacate the holding are stated in section 48:

"48. When the interest of a sub-tenant is extinguished he shall vacate his holding but shall have in respect of the removal of standing crops and other products of the earth the same rights as the tenant would have upon ejectment in accordance with the provisions of this Act".

This section further emphasises the need to vacate the holding upon extinguishment of the interest, but without prejudice to the right of removal of the standing Crops etc.

We shall now consider the two provisions under which a suit can be brought. Section 175 (the operation of which now remains stayed) deals with the ejectment of a non-occupancy tenant, while section 180 deals with ejectment of a person in occupation of land without consent. We shall first read section 175, and then section 180, so far as they are material:

"175 a non-occupancy tenant shall also be liable to ejectment on the application of the landholder on any of the following grounds, namely:

(a) that he is a tenant holding from year to year;

(b) that he is a tenant holding under a lease for a period which has expired or will expire before the end of the current agricultural year."

Significantly, this section, dealing with a non-occupancy tenant, refers to a tenant falling under clause (a) or clause (b), i.e., a tenant having a present interest in terms of an unexpired lease or an expired lease under which he holds over. The section has no application to past tenants whose interests have become extinguished for the reasons stated in section 45 or section 47 or whose lease has been duly determined. On the other hand, persons who are not, or, who are no longer, tenants at the time of the suit, and liable to ejectment, have to be proceeded against under section 180:

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"180. (1) A person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable to ejectment under this section on the suit of the person

so entitled, and also to pay damages which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants.

Section 180 has no application to a present tenant. This section provides for ejectment of a person in occupation of land without a valid consent.. He is a person who has taken or retained possession of land without the consent of the landlord and contrary to law. He may have taken possession by trespass, or after being in lawful occupation, retained possession contrary to the will of the person entitled to admit him to occupy the land and without the support of law; in either event he is a person liable to be ejected under section 180. It makes no difference. for the purpose of this section that a person was in unauthorised occupation at all material times, or, the occupation was authorised at its commencement, but became unauthorised by reason of the authority to occupy having been extinguished by operation of law, or duly determined by the person entitled to give such authority.

Unlike section 175, which is, as seen above, confined to a person who is a tenant either in terms of an unexpired lease or by reason of his being allowed to continue in possession after the expiry of the period of the lease, section 180 concerns a person who was never, or who is no longer, a tenant. Apart from a mere trespasser, a person remaining in possession of the land, notwithstanding the extinguishment of his interest or determination of his lease, and without the consent of and contrary to the will of the landlord, and otherwise than as permitted by law, equally falls within the ambit of section 180. Any such person does not hold under a lease and is not a 'tenant' within the meaning of section 175. He has no present right of 'holding' or 'retaining possession' of the land. The expression 'holding' is defined under section 3(7) as :.

"a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure and in the case of a thekadar includes the theka area".

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This shows that there must be an existing or continuing legal relationship between the owner and' the person in possession of the land. In the absence of any such relationship, either 'because no lease or anyother interest or right was ever granted or because it was duly determined or extinguished, a person retaining possession of the land without the consent and contrary to the will of the landlord does not come within. the purview of section 175.

While the legislature provides for the ejectment of a nonoccupancy tenant on the grounds specified under section 175, section 180 is meant for ejectment of a person who has no present right to retain possession of land either because his occupation commenced without any such right or the right by which he commenced the occupation has since been duly extinguished or terminated in accordance - with the law in force.

Speaking of section 180, K. Subba Rao, J. (as he then was) in Bhinka & Ors v. Charan Singh, [1959] Supp. 2 SCR 798 at 808, observes:

" The word "taking" applies to a person taking possession of a land. otherwise than in accordance with the provisions of the law; while the word "retaining" to a person

taking possession in accordance with the provisions of the law but subsequently retaining the same illegally

So construed, it is section 180, and not section 175, which should apply 'to a person who is in unlawful or unauthorised occupation of land.

Mr. V.M. Tarkunde, counsel for the the appellant-defendant, however, submits that the defendant is not in unlawful or unauthorised or illegal occupation of the land, but he is in occupation by reason of his being a lessee, although the term of the lease has since expired. In the Case Of such a person, it is section 175 that applies. Mr. Tarkunde says that the interest of the defendant in the land continues even after termination of the period of his sub-lease and notwithstanding the plaintiffs notice calling upon him to quit. His interest in the land, counsel says, is not extinguished by reason of the extinction of the interests of the tenants. The defendant ceased to be a sub-tenant and was elevated to the position of a tenant upon the extinction of the interests of the tenants by reason of their surrender of the holding. This argument is urged by counsel on the basis of his construction of

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section 47 which, in our view, is not correct.

Section 47(1), as seen above, specifically says that, except as otherwise provided in sub-section (3) and sub-section (4), the extinguishment of the interest of a non-occupancy tenant will, extinguish the interest of his sub-tenant. Once the interest of the person under whom the defendant held the land was extinguished, the defendant was no longer a sub-tenant, but a person enjoying a legal right for a limited period in terms of the statute. As stated by this Court in *Birendra Pratap Singh & Anr. v. Gulwant Singh & Ors.*, [1968] 2 SCR 870, 878-879:

"..... The subsequent possession was, however, under a legal right and that right accrued to the appellants under sub-section (4) of section 47..... This sub-section does not lay down that the original sub-lease executed by the chief, tenant, who surrenders his rights, is to continue in force. What this provision does is to create a new right in the sub-tenant and that is the limited right to continue in possession for the remainder of the term of the sub-lease or for five years whichever period may be shorter....."

This shows that the sub-tenant was no longer a holder of any parcel of land once his right to hold was extinguished and his statutory right for the limited period had also expired in terms of section 47.-When that event has occurred, he has no further interest in the land and his continued occupation is, as pointed out by this Court in *Bhinka* (supra), only an unauthorised or illegal occupation.

Referring to sub-section (4) of section. 47, this Court, in *Birendra Pratap Singh* (supra) stated:

".... So far as the right granted by s. 47(4) is concerned, it is granted by the statute itself for 'a limited period and, once that period expires, it cannot be held that the right continues thereafter. There is no requirement in law that, after the expiry of that period, there must be eviction from the land in order to extinguish the right granted by s. 47(4). The possession subsequent to 30th

June, 1951 cannot, therefore, be held to be in pursuance of a right conferred on a sub-tenant referred to in s. 47(4) Of the Tenancy Act
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and, consequently, the land was not held by the appellants thereafter in the capacity mentioned in s. 19(vii) of the Act.....",,

This observation regarding section 47(4) of the Act was made by this Court with reference to section 19(vii) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (No. 1 of 1951). The construction placed on section 47(4) of the Act in that decision supports the view we have indicated on the point in issue, and that decision was rightly relied on by the High Court in coming to the conclusion which it did.

Mr. J.P. Goyal, supplementing the arguments of Mr. Tarkunde, places reliance on certain observations of this Court in *Biswabani (P) Ltd. v. Santosh Kumar Dutta & Ors.*, [1980] 1 SCR 650. That decision refers to the protection of a statutory tenant in terms of the West Bengal Premises Tenancy Act, 1956. This Court stated that, even after the expiry of the contractual tenancy, the tenant would continue as a statutory tenant, except where he has surrendered possession or has been evicted under the enabling provisions of the relevant Rent Restriction Act. That decision has no relevance to the facts of this case where the question relates to the construction of the relevant provisions of the Act under which separate and special provisions have been made to regulate the rights and liabilities of different categories of tenants, including non-occupancy tenants with whom alone we are concerned. Their liability to ejection, following the extinction of their interests and rights in the land, is regulated by statute.

The views expressed by the Full Bench of the High Court are correct. The learned Judges have rightly held that insofar as the defendant has continued to remain in occupation of the land even after the expiry of the period of his lease, and despite the landlord's notice to quit the premises, he can no longer be regarded as a tenant referred to in clause (a) or (b) of section 175 and, therefore, that section has no application to him. The right section in terms of which a suit has to be brought against him, as the plaintiff has done in the present case, is section 180. Accordingly there is no merit in this appeal.

R.M. SAHAI, J. While joining' in the opinion of brother Thommen, J., few words are being added, on nature of interest created

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under sub-section (4) of Section 47 of the U.P. Tenancy Act of 1939
(referred hereinafter as the Act).

Sub-tenant, literally or statutorily either in the Rent Control legislations or agricultural tenancies, normally, is a person in possession holding from the tenant. His right or interest depends on provisions in the Statute. Under U.P. Tenancy Act, sub-tenant according to clause (22) of section 3 holds land from a tenant. Even though he is included in the definition of tenant in clause (23) and is non-occupationally under Section 31 of the Act, yet, he is inferior class of tenant as he is specifically precluded by Section 39 from subletting and has no security of tenure as he can be evicted under Section 175 of the Act and his interest in the holding extinguishes, statutorily, under Section 47 on extinction of interest of his tenant under Section 45 of the Act. Similar provision for extinction of

tenancy existed in Agra Tenancy Act of 1926. Sub-section 3 and 4 are, in fact, identical with sub-section 2 and 3 of the 1926 Act. Even Section 28 of N.W.P. Tenancy Act 1901 (Act II of 1901) provided for extinction of interest of sub-tenant on ejectment of his tenant under Section 57 of that Act. And on extinction, for other reasons, the covenant binding and enforceable as between tenant and the sub-tenant became binding between tenant's land-holder and the sub-tenant and he was permitted, at his option, to continue, in possession for the remainder period of lease, on payment of the rent which was being paid by the tenant. Therefore, continuance of sub-tenant under the covenant between tenant and sub-tenant existed in Tenancy legislations right from 1901. But there existed a vital difference between 1901 Act on one hand and 1926 and 1939 Act on the other. In 1901 Act the sub-lessee could continue 'for the remainder period of the term of the sub-lease' whereas under 1926 and 1939 Acts the period was fixed depending on if the sub-tenancy was created before or after 1st January 1902. In the former case the sub-lessee could continue for, 'the remainder term of the sub-lease or for the lifetime of the tenant or for ten years', whichever period was the shortest and in latter 'for the remainder period of the lease or five years' whichever was shorter. Reason for fixation of period by latter enactments, namely 1926 and 1939 was to remove uncertainty about landholders' interest as the tenants, particularly widows, who had limited interest, only, at times created permanent sub-tenancy or subtenancies for long durations under 1901 Act. This resulted in mass of litigation and at times there was sharp divergence of opinion between Board of Revenue, the highest authority in the hierarchy of revenue courts dealing with agricultural holdings and the High Court. It was to put this controversy at end and to rationalise the law, in keeping with the.

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spirit of those times when tiller of the soil concept was still far, that the Legislature altered the law and provided for durational or limited interest. To appreciate its nature during subsistence of the covenant and thereafter it is necessary to extract relevant sub-sections of Section 47:

"47. (1) Except as otherwise provided in sub-section (3) and sub-section (4) the extinction of the interest of a tenant, other than a permanent tenure-holder or a fixed rate tenant, shall operate to extinguish the interest of any tenant holding under him.

(2)

(3)

(4) Where, at the time of the extinction by surrender or abandonment, or by death without any heir entitled to inherit such interest, of the interest in a holding of a tenant other than a permanent tenure-holder or fixed-rate tenant, there is in existence a valid sub-lease of the whole or of a portion of the holding, executed on or after the first day of January 1902, all covenants binding and enforceable as between the tenant and the sub-tenant shall, subject to the provisions of sub-section (5), be binding and enforceable as between the tenant's landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter.

(5) In the cases referred to in sub-section

(3) and subsection (4), if the rent payable by the sub-tenant is less than that hitherto payable by the tenant, the sub-tenant shall have the option of vacating the holding, but shall, if he continues in possession, be liable to pay rent at the rate hitherto payable by the tenant.

What is apparent, from a bare perusal of sub-section (1) of Section 47 is that it is wider in application and immediate in operation.

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It extends to every tenant holding under a tenant other than permanent tenure holder or fixed rate tenant. The interest of such tenant extinguishes, automatically and immediately by operation of law on extinction of interest of his chief tenant. No further requirement is contemplated. He becomes liable to ejection. If he continues in possession he is a trespasser unless he holds with consent of the landholder/landlord expressly or impliedly. For sub-tenants it has been made more explicit by Section 48 of the Act as he is required to vacate the holding except for the standing crops and produce which he is permitted to remove as any other tenant ejected in accordance with the provisions of the Act. Thus a tenant more so a Sub-tenant, continuing in possession after extinction, of his interest as provided by Section 47, cannot be considered to be in possession in any other capacity but as retaining possession otherwise than in accordance with the law for the time being in force.

Is the result any different for a sub-tenant who is permitted to continue for the remainder period of sub-lease by sub-section (4) of Section 47? Tenancy extinguishes under section 45 for various reasons. Consequence of it on right of a tenant holding under him is mentioned in Section 47. Since sub-tenant, is tenant and holds from the tenant his interest, too, extinguishes by operation of law. But the Legislature made an exception in favour of those sub-tenants whose interest came to an end either because the tenant surrendered or abandoned his holding or died without any heir to inherit his interest, obviously, to avoid any prejudice to a weaker class of tenant due to conduct of his tenant or for reasons beyond control of anyone. But the expression, 'Except as provided' in sub-section (1) does not carve out an exception to extinction of interest of sub-tenant but to its immediate operation. That is interest in the holding is extinguished but from a future date namely expiry of the period of leases or five years whichever is shorter. This benefit or concession cannot be stretched to vest any fresh tenancy right in him after expiry of the period. On a combined reading of sub-section (1) of Section 47 with sub-section (4) the plain and simple meaning that emerges is that the interest of a sub-tenant extinguishes on surrender by his tenant but this, is deferred for the period mentioned in this sub-section. The right created by sub-section (4) being limited in operation it cannot extend beyond the period mentioned in it. Otherwise the sub-section (4) and sub-section (1) of the Act would be on cross purpose with each other. Interpreting the Sub-section in any other manner would be against principle of construction, as sub-section (4) cannot be read in isolation. That is the consequence provided for in sub-section (1) do take place but in the

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manner provided by sub-section (4). To put it, simply, the extinction is complete but its operation is postponed to a later date..

Effort was made to distort the otherwise plain and simple construction by urging that since sub-section (5) enjoins paying of same rent, as the tenant who had surrendered, the right and interest of the sub-tenant stands enhanced, by operation of law and he stands substituted in place of his tenant with higher rights than he held. Natural follow up of it, added the learned counsel, is that new right or interest created under Section 47(4) cannot extinguish after expiry of the period except as provided under section 45 of the Act. The argument suffers from inherent fallacy, Section 47(4) does not arrest extinction. It only postpones it. In *Birendra Pratap v. Gulwant Singh and Others*, AIR 1968 SC 1068 this Court while construing sub-section (4) of Section 47 observed as under:

"So far as the right granted by Section 47(4) is concerned, it is granted by the statute itself for a limited period and, once that period expires, it cannot be held that the right continues thereafter."

No new tenancy is created. What is made binding and enforceable is the old covenant existing between the tenant and sub-tenant for the remainder period of the sub-lease. Thus whatever right a sub-tenant acquires under sub-section (4) it ceases to operate after the expiry of period of lease or the period mentioned in the sub-section. No second extinction is visualised. That would be not only doing violence to the language of the sub-sections but would also result in nullifying the effect of sub-section (1) completely.

Status of a person in possession after expiry of the remainder period of lease or five years as provided in Section 47(4) can neither be of statutory tenant nor a tenant holding over as understood in common parlance. He is a person in possession without authority of law. A sub-tenant whose extinction is postponed as a matter of concession because of the tenant's prejudicial acts cannot be placed any higher than other sub-tenants who are required to vacate their holding immediately under Section 48. Therefore retention of possession by such person cannot be except otherwise than in accordance with the provisions of the Act for the time being in force.

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The Full Bench therefore did not commit any error of law in applying the ratio laid down by this Court in *Birendra Pratap Singh v. Gulwant Singh and Others*, (supra) that the effect of extinction of sub-tenant's interest under Section 47(1) of the Act was not only that, 'he could no longer be held to be in the capacity of sub-tenant' but even the 'new right' of continuance for the remainder period of lease which was created under Section 47(4) was limited and did not vest any right in such person to continue after that date nor any fresh right of sub-tenancy could be deemed to accrue consequently possession of such person after expiry of the extended period, was otherwise than in accordance with the provision of law against whom a suit for ejectment under Section 180 of the Act was maintainable.

The appeal thus as held by brother Thommen, J., is devoid of any merit.

ORDER

For the reasons stated by us in our separate but concurring judgments dated August 21, 1991, we see no merit in this appeal and it is accordingly dismissed with costs throughout.

R.P.

Appeal dismissed.

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