

RAM SARAN
v.
PYARE LAL AND ANR.

JANUARY 16, 1996

[G. RAY AND G.T. NANAVATI, JJ.]

H.P. Urban Rent Control Act, 1971 - Section 14.

Sub-letting—Shop let out to tenant in personal capacity—Tenant carrying on family business—Subsequently tenant forming a registered society comprising of himself and family members—Society carrying on diverse activities but not family business of tenant—Rent paid by Society through President—Held in the circumstances tenant surrendered his right of tenancy and possession in favour of society—Held acceptance of rent tendered by tenant in the name of Society does not create a new tenancy—Landlord held entitled to eviction order on the ground of sub-letting.

Tenant—Unilateral action of surrendering tenancy in favour of third party by delivering possession—Held does not create a new tenancy—Landlord not bound by such a tenancy.

Estoppel—Not applicable against statute.

The appellant-landlord filed an application under section 14 of the Himachal Pradesh Urban Rent Control Act, 1971 for eviction of the respondent-tenant and his sub-tenant. His case was that he let out his shop room to respondent No. 1 who had been carrying on business of soap in the name and style of Ashoka Jain Industry. However, without appellant's written consent the tenant created sub-tenancy in favour of respondent No. 2 viz. Mahavir Gram Udyog Samiti in violation of Section 14 of the Act. The tenant contested the case by stating that he was still carrying on the soap business in the said premises but had only changed the nomenclature of the firm from Ashoka Jain Industry to Mahavir Gram Udyog Samiti by forming a registered society comprising of himself and his family members. Being fully aware of the said fact the landlord had been accepting rent from the said Samiti and therefore he was estopped from seeking eviction.

The Rent Controller passed an eviction order against the respondent-

A ents holding that : (i) the tenant had no exclusive control of the suit
premises as he had parted with possession of the same in favour of the
Samiti which was a distinct legal entity not representing Ashoka Jain
Industry; (ii) in terms of the Memorandum of Association of the said
B society the samiti could not only include new members but also could
remove from membership any existing member as a result of which
respondent no. 1, who was then a member of the said registered society,
could also be removed from the said society; and (iii) the rent was paid
by tenant from the funds of the society in his capacity as President and
not on his behalf or on behalf of Ashoka Jain Industry.

C The Appellate Authority reversed the decision of Rent Controller
and dismissed the landlord's suit holding that although the society had
been carrying on its business activities in the suit premises it could not be
held that the tenant had lost control and possession over the premises in
question. Hence, the case of sub-letting could not be accepted. A Revision
D petition filed by the land lord was dismissed by the High Court.

In appeal to this court it was contended for the appellant-landlord
that : (i) the Appellate Authority and the High Court erred in proceeding
on the footing that the tenant himself being President of the society was
controlling the affairs of the society and hence he had not parted with
E possession of the shop room; (ii) the very fact that a distinct entity had
been possessing the shop room and carrying on its activities in the said
shop room makes it abundantly clear that the tenant had parted with
possession of the suit shop in favour of the society; and (iii) not only
possession of the suit shop had been handed over to the said registered
F society but also the rent was paid by respondent No. 1 in his capacity as
President from out of the funds of the society.

Allowing the appeal and setting aside the impugned order of the
High Court, this Court

G HELD : 1. The eviction order passed by the Rent Controller is af-
firmed. The Rent Controller has rightly indicated that from the Memorandum
of Association of the said registered society, which has been exhibited
in the eviction case, it clearly transpires that any member may be removed
and new members may be taken in the society by decision of 2/3rd majority
of members. It is, therefore, not unlikely that in course of time, respondent
H No. 1 or their family members may not be members of the said registered

society and such society may be run by a completely different group of persons. It is, therefore, immaterial whether at the time of trial of the eviction proceedings, respondent no. 1 had been controlling the affairs of the said registered society in his capacity as its President. [514-D-F]

2. Respondent No. 1 has clearly stated in the written statement that the firm Ashoka Jain Industries was changed to a registered society and the said registered society is carrying on its activities in the shop room by asserting its status as a tenant. The activities of the registered society cannot be held to be personal activities of respondent No. 1 or the alleged partnership business of the firm Ashoka Jain Industries. Even if it is assumed on the face value of the assertion of respondent no. 1 that he is also carrying on his soap business in the disputed premises, in the context of the written statement of respondent no. 1, it only follows that the said registered society is possessing the tenanted premises by asserting its independent status as tenant by tendering rent in its name through its President and the said society in a portion of the tenanted premises for carrying on his personal business of soap. In any event, it is quite evident from the case made out by respondent no. 1 in the written statement that he had surrendered his right of tenancy in favour of the registered society and had delivered exclusive possession of the tenanted premises in favour of the said registered society which was occupying the same by asserting a right of tenancy. Hence, a case of lease without the written consent of landlord as required under Section 14 of the Rent Act for creating a valid assignment of sub-tenancy has been clearly established. Unfortunately, such position in law which is apparent from the case made out by respondent no. 1 has been lost sight of both by the Appellate Authority and by the High Court. [515-C-G]

Roop Chand v. Gopi Chand Thela, [1989] 2 SCC 383; *M/s Shalimar Tar Products Ltd. v. H.C. Sharma*, AIR (1988) SC 145; *A.S. Sulochana v. G. Dharmalingam*, (1987) 1 RCC 213 and *Dipak Banerjee v. Lilabati Chakraborty*, [1987] 1 SCC 161, referred to.

Madras Bangalore Transport Co. v. Inder Sen, [1986] 3 SCC 62 and *Vishwanath v. Chaman Lal*, AIR (1975) Delhi 117, held inapplicable.

3. By a unilateral action of the tenant in surrendering his right of tenancy in favour of third party by delivering possession of the tenanted premises to the said third party, no new tenancy is created which may

A legally bind the landlord. By mere acceptance of rent of the tenanted premises tendered by the tenant in the name of the registered society, neither a new tenancy nor a valid sub-tenancy in favour of the said registered society has been created. In this case the tenancy of respondent no. 1 had not been surrendered and such surrender of tenancy has not been accepted by the landlord. [516-B-C]

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E 4. The Rent Act is a special statute governing and regulating tenancy and sub-tenancy. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy. Under Section 14 of the Rent Act, mere knowledge of the landlord about occupation of the tenanted premises by the said registered society and acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, will not create a sub-tenancy unless induction of a sub-tenant is made with the written consent of the landlord. It is nobody's case that the landlord had given any written consent for induction of sub-tenant. There is no estoppel against statute. Hence, even if the landlord has accepted payment of rent of the disputed premises from the said society, such acceptance of rent will not constitute legal and valid sub tenancy in favour of the registered society. Consequently, landlord will not be estopped from claiming eviction of unauthorised sub-tenant along with the tenant for indulging in inducing sub-tenant without lawful authority. [516-F-H; 517-A]

Hiralal Kapur v. Prabhu Choudhury, [1988] 2 SCC 172, referred on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2028 of 1996.

F From the Judgment and Order dated 23.6.92 of the Himachal Pradesh High Court in C.R. No. 134 of 1990.

Ashwani Kumar, Ms. Ruchi Gaur and R.N. Keshwani for the appellant.

G Gopal Narayan Agarwal, Ms. Aiysha Khatri and Mr. Pramod Dayal for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J. Leave granted. Heard learned counsel for the parties.

H This appeal is directed against the judgment dated 23.6.1992 passed by a Single Bench of the Himachal Pradesh High Court in C.R. No. 134 of 1992

arising out of judgment dated 16.5.1990 passed by the Appellate Authority (II), Solan in Rent Appeal No. 5 NL/14 of 1990/1988 reversing the order of eviction dated 30.9.1988 passed by the Rent Controller, Nalagarh in Case No. 6/2 of 1986.

The relevant facts concerning this appeal may be stated as hereunder. The shop room appertaining to Khewat-Khatanni No. Min. 354/498, Khasra No. 734, in Main Bazar, Nalagarh town is owned by the appellant landlord. The appellant let out the said shop room to respondent No. 1 on 15.7.1973 for a monthly rental at Rs. 140 excluding water and electric charges. The said respondent No. 1 had been carrying on business of soap in the name of style of Ashoka Jain Industry. The landlord filed an application under Section 14 of the Himachal Pradesh Urban Rent Control Act (hereinafter referred to as the Rent Act) for eviction of respondent No. 1 and his sub-tenant respondent No. 2 Mahavir Gram Udyog Samiti, a society registered under the Societies Registration Act in 1977 on the grounds of arrears of rent and for sub letting the said premises to respondent No. 2 without consent of the landlord. It was also contended that the landlord required the suit premises for carrying out business with the help of landlord's son.

The respondent tenant denied the material allegations of the landlord. According to respondent tenant, the shop room had not been sublet. But the name of the firm Ashoka Jain Industry had been changed to Mahavir Gram Udyog Samiti. Such Samiti is a registered society, registered on 10.2. 1977 comprising the tenant and his family members. There had not been any change in the business which the tenant had been carrying in the name of Ashoka Jain Industry. The landlord being fully aware of the said fact had been accepting rent from the said Mahavir Gram Udyog Samiti. Accordingly, the landlord was estopped from seeking eviction on the ground of subletting. The other grounds for eviction were also denied by the tenant respondent.

The learned Rent Controller, Nalagarh in Rent Case No. 6/2 of 1986 *inter alia* came to the finding that the tenant respondent No. 1 had parted with the possession of the said shop room in favour of the said registered society namely Mahavir Gram Udyog Samiti and the said samiti was a distinct legal entity which could sue and be sued in its own name. The learned Rent Controller had also indicated that on scrutiny of the memorandum of association of the said society (Ext. 1/A), it was revealed that the samiti could include new members and any existing member could be removed from the member-

A ship of the society by 2/3rd of the majority of general members. Accordingly, the respondent No. 1 who was then a member of the said registered society could also be removed from the said society. The learned Rent Controller further held that the tenant respondent No. 1 had no exclusive control and possession of the suit premises which was being occupied by the said registered society.

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E The tenant respondent No. 1 was also not in a position to recover possession of the said shop room from the said registered society. The said registered society being a distinct legal entity did not represent the Ashoka Jain Industries belonging exclusively to the Respondent No. 1 and his son stated to be a partner of the said firm. The Rent Controller had also found that the tenant respondent No. 1 had also not been paying rent on his behalf or on behalf of Ashoka Jain Industries but on his own admission, he was paying rent from the funds of registered society in his capacity as President of the said registered society. As no lawful sub-tenancy could be created under Section 14 of the Rent Act without written consent of the landlord, the payment of rent by respondent No. 1 as President of the said registered society had not created any legal subtenancy in favour of the said registered society. The learned Rent Controller, therefore, on a finding that the tenant respondent No. 1 having sublet the said shop room in favour of a distinct legal entity which had been carrying on its business activities in the said premises, was liable not be evicted, passed the order of eviction against the defendants. The other grounds for eviction were, however, answered in the negative by the learned Rent Controller.

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H The tenant respondent No. 1 preferred an appeal before the Appellate Authority at Solan against the decision of the Rent Controller. The learned appellate Authority however reversed the decision of the learned Rent Controller and dismissed the eviction suit on the finding that the respondent No. 1 tenant, in order to serve villagers by promoting village industries, Khadi, basic education, agriculture, breeding of cows and bulls village sanitation etc. had constituted the said society namely Gram Udyog Samiti in which he was member of the governing body of the society and also its President along with other members of his family as the members of the said society. The case of the said tenant was that he was carrying on the business of soap in the suit premises. In the said facts, even if the said samiti was carrying on its various activities in the said premises the original tenant being in effective control of the affairs of the said samiti, it could not be held that he had let out the

premises in favour of the said society. Hence, decree for eviction on the ground of sub-letting was not justified.

The landlord appellant thereafter moved the Himachal Pradesh High Court under Section 21(5) of the Rent Act. The High Court by impugned judgment has dismissed the revisional application. The Single Bench of the High Court has indicated that the Appellate Authority held that in order to serve villagers of Nalagarh area, the tenant had constituted a registered society with himself and his family members as the members of the said registered society and the tenant had retained control over the functioning of the said society in which he was President. In the aforesaid facts, although the said society had been carrying on its business activities in the said premises it could not be held that the tenant had lost control and possession over the premises in question. Hence, the case of sub-letting by the tenant respondent No. 1 in favour of the said registered society cannot be accepted. Being aggrieved by the decision of the High Court the landlord appellant moved this Court by filing a special leave petition.

The learned counsel for the appellant landlord has contended that it is an admitted position that the disputed shop room was let out to respondent No. 1 tenant in 1972. In the said shop room he was running business of soap in the name and style of Ashoka Jain Industries. According to respondent no. 1 himself the said business in the name of Ashoka Jain Industries is being run by him with the help of one of his son as a partner. It is also an admitted position that in 1977 a society, in the name of Mahavir Gram Udyog Samiti, was formed and the said samiti was registered under the Societies Registration Act, 1977. The said registered society, according to respondent No. 1 was formed for various beneficial activities of the rural people in the locality namely for promoting Khadi activities, village industries, basic education, agriculture., breeding of cows and bulls. The said registered samiti is comprised of a number of members and the respondent No. 1 is also a member of the registered society. It is also an admitted position that the said registered society has been carrying on its various activities from the shop room. It has also transpired from the deposition of respondent No. 1 that he happens to be the President of the said registered society and that he is paying rent of the shop room in his capacity as President of the Samiti and such payment of rent of the shop room is being made from the fund of the samiti. As a matter of fact, the respondent No. 1 has sought to raise a plea of estoppel against the landlord by contending that as the landlord accepted payment of

A rent by the said samiti through its President, the landlord is estopped from seeking eviction on the score of unauthorised sub-letting of the shop room.

B The learned counsel for the appellant has submitted that the Memorandum of Association of the said registered society has been exhibited in the eviction proceedings and the learned Rent Controller on scrutiny of the said Memorandum has come to a specific finding that in terms of the Memorandum, any member of the society may be removed by 2/3rd majority of the members of the society. Such society can also admit other members in the society. Noticing such facts, the learned Rent Controller has rightly held that C the registered society is not only a distinct legal entity which can sue and be sued but the said distinct legal entity is in possession of the shop room and carrying on its activities therefrom. The learned counsel has submitted that it is immaterial whether the tenant respondent No. 1 happens to be its President D at the moment and the members of the said society are members of his family. The president and members of the registered society are not owners of the said firm Ashoka Jain Industries. The assets of the said registered society, under the law do not also belong to its President or the members of the society. It is quite possible that the President and the other members may be removed and new members may be admitted in the said registered society. In such facts, the Appellate Authority and the High Court erred in proceeding on the footing that E the respondent No. 1 himself being President of the said registered society was controlling the affairs of the society and hence he had not parted with possession of the shop room.

F The learned counsel for the appellant has further contended that the Respondent No. 1 has sought to make out a case as pleaded in the written statement that the name of Ashoka Jain Industries has been changed to Mahavir Gram Udyog Samiti and the said Samiti with more members of the family are carrying on the old business of Ashoka Jain Industries. Such case of the Respondent No. 1 has been established to be false because Mahavir Gram Udyog Samiti is a different legal entity and on the face of the admission G of the tenant respondent No. 1, the said registered society is connected with diverse activities for the alleged welfare of rural population and the same is not carrying the personal business of the respondent No. 1.

H The learned counsel has submitted that the very fact that a distinct legal entity has been possessing the shop room and carrying on its activities in the said shop room makes it abundantly clear that the respondent No. 1 has parted

with possession of the said shop room in favour of the said registered society. It has been submitted by the learned counsel for the appellant that not only such possession of the shop room has been handed over to the said registered society but the respondent No. 1, on his own admission, is not paying rent for the shop room but the sub-lessee is paying rent through its President. Hence, a case of sub-lease which is admittedly without written consent of the landlord, has been clearly established.

In this connection, the learned counsel for the appellant has referred to the decision of this Court in *Roop Chand v. Gopi Chand Thela*, [1989] 2 SCC 383. In the said case, a club registered under the Companies Act had been in possession of the substantial portion of the shop room and had been carrying on its activities. The tenant was also in possession of a part of the said premises. The Courts below held that the tenant was not in exclusive possession of the said premises but had parted with possession in respect of a substantial portion of the same in favour of the club. Hence, even if sub-lease on payment of rent could not be established, such parting of exclusive possession would amount sub-lease within the meaning of section 13(1)(e) of Rajasthan Premises (Control of Rent and Eviction) Act. This Court has upheld such finding of the courts below by indicating that clause (e) of Section 13(1) of the said Act provides that a tenant would render himself liable for eviction if he has assigned, sub-let or otherwise parted with the possession of the whole or any part of the premises without the permission of the landlord.

The learned counsel has also referred to another decision of this Court in *M/s Shalimar Tar Products Ltd. v. H.C. Sharma*, AIR (1988) SC 145. In that case question of sub-letting under Delhi Rent Control Act came up for consideration. In that case, the tenant allowed a club registered under the Companies Act to carry on its activities in a major portion of the tenanted premises. The tenant himself was also a member of the said club and according to tenant he has also carried on his business from a portion of the tenanted premises. The courts below held that by parting with possession exclusively in favour of the said club in a major portion of the said premises, a sub-lease was constituted in favour of the club. Accordingly, decree of eviction was passed. The High Court also upheld such finding. It has been indicated by this Court that parting of possession is an important incidence of sub-lease. Parting of legal possession means possession with the right to include and also right to exclude others. It has been held by this Court that in the context of exclusive possession of substantial portion of tenanted premises by the club

A which had carried on its own activities, the finding of the courts below that
a case of sub-lease was made out, is wholly justified. The learned counsel for
the appellant has submitted that even if it is assumed that the tenant respondent
No. 1 had really carried on his soap business in a portion of the suit premises,
B the admitted fact remains that a distinct legal entity namely a registered society
had been given exclusive possession of a portion of the tenanted premises for
carrying on its diverse activities and such registered society admittedly had
been claiming an independent right to hold the disputed premises as tenant by
paying rent for the said premises through its President. Hence, the finding by
the Rent controller that the tenant had sub-let the said premises is wholly
C justified and the decision of this Court in *Shalimar's* case (supra) is applicable
in all fours. The learned counsel has submitted that the impugned order should
be set aside by affirming the order of eviction passed by the Rent Controller.

The learned counsel for the respondent has however refuted the conten-
tions of the learned counsel for the appellant. It has been contended by the
D learned counsel that the tenant respondent No. 1 has not parted with possession
of the suit premises in favour of Mahavir Gram Udyog Samiti. The case of
the tenant is that the tenant is still carrying on the business of soap in the said
premises but in his anxiety to ensure service to the rural population of the
locality he had formed a registered society some time in 1977 with himself and
E his family members for undertaking various beneficial activities for the rural
population. There has not been any assignment of the tenanted premises or any
part thereof to the said society. There has not been any payment of rent by the
said society to the respondent No. 1 tenant. As a matter of fact the activities
of the firm are now being discharged by the said society in a bigger way with
F additional members of the family. The tenant being the President of the said
society is controlling the affairs of the said society. Even if it assumed that the
said society being a distinct legal identity, its possession can not be held to
be the possession of the tenant respondent No.1 despite his being President of
the said society, in the absence of any evidence as to letting out any portion
of the said premises to the society on acceptance of rent, it should be held that
G the said society is in permissive possession of the said premises. As the tenant
has not parted with possession of the said premises or any portion thereof by
allowing the said society to possess the same in exclusion of the respondent
No. 1, no case of sub-tenancy can be made out. Accordingly, the Appellate
Authority has rightly held that the case of sub-tenancy can not be accepted.
H Such finding of the Appellate Authority being wholly justified in the facts of

the case, has been upheld by the High Court.

The learned counsel for the respondent has submitted that the landlord has not discharged the onus to prove sub-tenancy. The landlord has adjoining shops and one of such shops is in his possession. Such fact has been admitted by the land lord in his deposition. The registered samiti was formed in 1977 and the said Samiti had been carrying on its activities openly in the said shop room. The landlord has also been accepting rent from the said Mahavir Gram Udyog Samiti through respondent No. 1 who is the president of the said samiti. In the aforesaid circumstances, the landlord with full knowledge has allowed the said samiti to remain in possession of the suit premises and having acknowledged the possession in the said samiti, has allowed the said samiti to pay rent of the said premises in its name through respondent No. 1 . A decision of this Court in *A.S. Sulochana v. C. Dharmalingam*, (1987) 1 RCC 213 has been referred to by the learned counsel. This Court has indicated in the said case that if a sub-tenant has remained in possession openly for 18 years and if the landlord has not taken any objection for such long possession as sub-tenant, it would give rise to inference that the said tenancy was not unlawful and the tenant should not be evicted on the ground of sub-letting. The learned counsel has submitted that the said samiti after being formed has been occupying the tenanted premises and has been carrying on its diverse activities. The landlord with knowledge of such activities of the samiti has not raised any objection for a number of years and only in 1986 the eviction suit was instituted by him. In the aforesaid facts, such long possession openly by the said samiti will raise a reasonable inference that the sub-tenancy is not unlawful.

The learned counsel for the respondent has also contended that the respondent No. 1 was inducted as a tenant and the said tenant had been carrying on business in the name and style of Ashoka Jain industries with a son as partner. The said partnership firm had only changed its nomenclature by forming a registered society in the name of Mahavir Gram Udyog Samiti. Since the activities of the firm were being carried in a new form, it should be held that for all practical purposes, the old firm of the tenant was there and there has not been any sub-letting simply because form of the legal entity and the name were changed. In support of such contention, reliance has been placed on a decision of this Court in *Madras Bangalore Transport Company v. Inder Sen*, [1986] 3 SCC 62. In the said case, a partnership firm was carrying on business of transport as a tenant in the disputed premises. In order

A to circumvent a ban on the partners to operate transport business in a particular area, a private limited company was formed with the partners as Directors of the said company. The firm was appointed as Agent of the Company and the company was appointed as agent of the firm. The firm allowed the said company to operate from the tenanted premises along with it. Both the company and the firm had their sign boards at the premises and both of them were registered under the Shop and Establishment Act as having their offices in the disputed premises. In the aforesaid peculiar facts, this court has held that there was no sub-letting, assignment or parting with possession of the premises in question by the firm to the Limited Company. This Court has held that in the facts of that case, the firm continued to be in possession of the premises even after the Private Limited Company came into existence. The firm never effaced themselves. The firm allowed the said Private Limited Company to function from the same premises but the Private limited Company though a separate legal entity was in fact a creation of the partners of the firm and was the very image of the firm. The Limited Company and the Partnership firm were two only in name but one for practical purposes, there was substantial identity between the Limited Company and the partnership firm. As such, even though the firm and the Company were distinct legal entities, there was no sub-letting or assignment etc. In our view, the decision in *Madras Bangalore Transport Company's* case has no application in the facts of this case. The Ashoka Jain Industries and Mahavir Gram Udyog Samiti are not only two separate legal entities, their composition are different and nature of activities are also not the same. The Ashoka Jain Industries is concerned with soap business but admittedly the samiti is concerned with various diverse activities including breeding of cows and bulls. The firm is also not the agent of the society and *vice versa*. The society can not be held to be a creation of the said firm or image of the said firm. Moreover in the written statement, it has been specifically averred that the society and not the firm was paying rent through its President for the suit premises.

G The learned counsel for the respondent has also referred to decisions in *Vishwanath v. Chaman Lal*, AIR (1975) Delhi 117, since referred to with approval in the decision of this Court in *Madras Bangalore Transport Company's* case (supra). In Vishwanath's case, Vishwanath took tenancy and was carrying on business in the name of M/s. Interads International Advertising Agency Pvt. Ltd. The tenant converted his firm as Interads Advertising Pvt H Ltd. and landlord issued rent receipts in the name of the Interads Advertise-

ment Pvt. Ltd. In such circumstances High Court negated the finding of Rent Controller that the tenant had sublet the premises. The learned counsel has also relied on the decision in *M/s. Associated Tube well Ltd.'s case* (1984) 2 (Rent Control Report 449) by contending that the said decision was approved in *Madras Bangalore Transport company's case* (supra). In *M/s. Associated Tube Well Ltd. Company's case*, the said M/s. Associated Tube Wells Ltd. took out tenancy with a right to sublet. The sub-letting was in favour of M/s. Clearing House and Agencies Pvt. Ltd. The original tenant surrendered its tenancy and as such direct relationship of landlord and tenant was created after such surrendering of tenancy. In such circumstances, the case of sub-letting as alleged by the landlord was disallowed. In our view, both the said decisions have no application in the facts of this case. In Vishwanath's case only the name of the business was changed and in the second case, there was a provision for sub-letting and original tenant having surrendered, by payment and acceptance of rent between the landlord and sub-tenant a new tenancy directly in favour of the sub-tenant was created.

The learned counsel for the respondent has submitted that in order to establish sub-tenancy, exclusive possession of the alleged sub-tenant with tenant retaining no control of the premises should be established. The other ingredient of sub-tenancy is that right to occupy the premises must be in lieu of payment of some compensation or rent. In support of the said contentions, reliance was made to the decision of this Court in *Dipak Banerjee v. Lilabati Chakraborty*, [1987] 1 SCC 161. The learned counsel has submitted that the respondent No. 1 has retained possession of the premises wherein he carries on the business of soap and he has not parted with possession on acceptance of any consideration from the said samiti. Hence, no case of sub-tenancy can be lawfully held against the respondent. He has submitted that in the aforesaid facts, the appeal should be dismissed with cost.

After giving careful consideration of the facts and circumstances of the case and the submissions made by the learned counsel for the parties it appears to us that the respondent No. 1 took out the tenancy of the shop room in his personal capacity in July 1973 and he had been carrying on business of soap in the name and style of Ashoka Jain Industries. It is the case of the respondent No. 1 that one of his sons also became partner of the said firm Ashoka Jain Industries. Later on in the year 1977, a society in the name in Mahavir Gram Udyog Samiti was formed and registered under the Societies Registration Act.

A Such society, according to case of respondent No. 1, comprises of a number of members drawn from the family of the respondent No. 1 and including himself. Admittedly, such society has been formed not for carrying on the said family business of the Respondent No. 1 but for alleged diverse activities alleged to be beneficial for the rural population in the locality namely Khadi activities, agriculture, breeding of cows and bulls etc. etc.

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C It is an admitted position that the said registered society has been carrying on it diverse activities in the said shop room. At the relevant time, respondent No. 1 was the President of the said registered society and therefore had occasion to control and regulate the activities of the said society . It appears that the aforesaid fact of regulating the activities of the said society by the respondent No. 1 in his capacity as the President of the said society, has weighed with the learned Appellate Authority in coming to the finding that the said respondent No. 1 had retained his possession of the said shop room. But, in our view, the Appellate Authority has failed to notice that the registered society is a distinct legal entity. Its assets and liabilities belong to the said society which can sue and be sued in its name. The learned Rent Controller has rightly indicated that from the memorandum of association of the said registered society, which has been exhibited in the eviction case, it clearly transpires that any member may be removed and new members may be taken in the society by the decision of 2/3rd majority of members. It is, therefore, not unlikely that in course of time, the respondent No.1 or their family members may not be members of the said registered society and such society may be run by a completely different group of persons. It is therefore immaterial whether at the time of trial of the eviction proceedings, the respondent No.1 had been controlling the affairs of the said registered society in his capacity as its President.

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G It may be indicated here that it is not the case of the respondent No. 1 that the said registered society was allowed to possess the tenanted premises for carrying on its diverse activities only as a licensee of the respondent No. 1 or of the said firm Ashoka Jain Industries. On the contrary, the specific case made out by the respondent No. 1 in his written statement is that the firm Ashoka Jain Industries has been changed to the registered society in the name of Mahavir Gram Udyog Samiti and the said society is occupying the tenanted premises and carrying on its various activities from the said premises by asserting its independent right as a tenant. As a matter of fact, the respondent

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No. 1 has averred in the written statement that the said registered society has been paying rent for the tenanted premises not on behalf of the respondent No. 1 or the said Ashoka Jain Industries but on its own behalf through its President, namely, the respondent No. 1. On account of such assertion of independent status of tenancy by the said registered society, a case was sought to be made out by the respondent No. 1 that the landlord having accepted rent tendered in the name of the said registered society is estopped from seeking eviction of the respondent No. 1 and the said society on the ground of sub-letting.

It appears to us that the respondent No. 1 in an attempt to show that he had not completely parted with possession of the said shop room in favour of the registered society also stated that he had been carrying on his shop business in the said premises. Such Case, in our view, should not be accepted. The Respondent No. 1 has clearly stated in the written statement that the firm Ashoka Jain Industries was changed to a registered society and the said registered society is carrying on its activities in the shop room by asserting its status as a tenant. The activities of the registered society can not be held to be personal activities of the respondent No. 1 or the alleged partnership business of the firm Ashoka Jain Industries. Even if it is assumed on the face value of the assertion of the respondent No. 1 that he is also carrying on his shop business in the disputed premises, in the context of the written statement of the respondent No. 1, it only follows that the said registered society is possessing the tenanted premises by asserting its independent status as tenant by tendering rent in its own name through its President and the said respondent No. 1 is in permissive possession under the said society in a portion of the tenanted premises for carrying on his personal business of soap. In any event, it is quite evident from the case made out by the respondent No. 1 in the written statement that he has surrendered his right of tenancy in favour of the registered society and has delivered exclusive possession of the tenanted premises in favour of the said registered society which is occupying the same by asserting a right of tenancy. Hence, a case of lease without the written consent of landlord as required under Section 14 of the Rent Act for creating a valid assignment of sub-tenancy has been clearly established. Unfortunately, such position in law which is apparent from the case made out by the respondent No. 1 has been lost sight of both by the learned Appellate Authority and by the High Court.

So far as payment of rent by respondent No. 1 qua President of the said registered society and acceptance of such rent tendered on behalf of the

A registered society by the landlord with knowledge of the possession of the shop room by the said society are concerned, it may be stated that the tenancy of respondent No. 1 had not been surrendered and such surrender of tenancy has not been accepted by the landlord. If upon accepting the surrender of tenancy of the said tenant, occupation of a new tenant is acknowledged by the landlord by accepting payment of rent from the new tenant, then by such payment and acceptance of rent between the tenant and landlord, a new tenancy may be created. By a unilateral action of the tenant of surrendering his right of tenancy in favour of a third party by delivering possession of the tenanted premises to the said third party, no new tenancy is created which may legally bind the landlord. By mere acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, neither a new tenancy or a valid sub-tenancy in favour of the said registered society has been created. In this connection, reference may be made to a decision of this Court in *Hiralal Kapur v. Prabhu Choudhury*, [1988] 2 SCC 172. In the said case rent was paid by two cheques, one drawn by the tenant himself for a part of the rent, the other was drawn by the sub-tenant for the remaining part of the rent. It has been held by this Court that the landlord was entitled to rent (Rs. 600 p.m.) and so long he got this amount, it was immaterial for him whether the amount was paid in lumpsum or by one cheque or more than one cheque and who the makers of the cheque were. In that case, a number of cheques given to the landlord were returned dishonoured and the landlord wrote to the tenant in which he specifically referred that five cheques were given by the sub-lessee. Even then, it has been held by this Court that such fact will not improve tenant's position at all for it only evidences the fact that the landlord was receiving the cheque issued in the name of the sub-lessee in discharge of the tenant's obligation to pay rent for the tenanted premises.

The Rent Act is a special statute governing and regulating tenancy and sub-tenancy. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy. Under Section 14 of the Rent Act, mere knowledge of the landlord about occupation of the tenanted premises by the said registered society and acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, will not create a sub tenancy unless induction of a sub-tenant is made with the written consent of the landlord. It is nobody's case that the landlord has given any written consent for induction of sub-tenant. There is no estoppel against statute. Hence, even

if the landlord has accepted payment of rent for the disputed premises from the said society, such acceptance of rent will not constitute legal and valid sub-tenancy in favour of the registered society. Consequently, landlord will not be estopped from claiming eviction of unauthorised sub-tenant along with the tenant for indulging in inducting sub-tenant without lawful authority.

We, therefore, allow this appeal and set aside the impugned order of the High Court and affirm the order of eviction passed against the respondent by the learned Rent Controller, Nalagarh in case No. 6/2 of 1986. As the eviction case is pending for a long time, it is directed that the execution proceedings should be expedited. There will be, however, no order as to cost in this appeal.

T.N.A.

Appeal allowed.