REVISIONAL CIVIL

Before Falshaw J.

MAHARAJ JAGAT BAHADUR SINGH,—*Plaintiff-Petitioner*

v.

SHRI BADRI PARSHAD SETH,—*Respondent.*

Civil Revision No. 200 of 1954

1954

Sept. 27th

East Punjab Urban Rent Restriction Act (III of 1949) Section 13—'Requires', interpretation of—Constitution of India, Article 227—Power of High Court to interfere on questions of fact—Whether power analogous to the power, of the High Court under section 115 Civil Procedure Code. Landlord and Tenant—Tenant whether can contract himself out of the East Punjab Rent Restriction Act.

Held, that word "requires" means something less than "needs" or "reasonably requires" and all that the landlord has to show is that he bona fide intends to occupy the premises and carry on the business there for which he claims possession. The landlord is not debarred from claiming possession of the premises in order to carry some other business than that in which he has hitherto been engaged and clauses (a) and (c) in subsection (3)(a)(ii) of section 13 would only come into operation if the landlord is or has been carrying on the same business for which he claims possession of the premises in suit on the same terms.

Held, that the power of High Court under article 227 is to all intents and purposes similar to its power under section 115 of the Code of Civil Procedure. The number of cases in which the court can use its power under section 115 Civil Procedure Code, to correct errors of fact is infinitesimally small. It is possible that cases may arise where the lower court's treatment of facts is so utterly perverse as to amount virtually to failure to exercise jurisdiction. If this is not so High Court will not interfere with the finding of fact under Article 227 of the Constitution.

Held, also, that the primary object of the East Punjab Urban Rent Restriction Act is quite clearly to prevent landlords from charging excessive rents, and from forcing tenants to pay increased rents by the threat of ejectment. The underlying principle appears to be that any contract entered into by a tenant is likely to be made under pressure, and that, therefore, the tenants must be protected from its consequences and so to allow a landlord to enforce a contract would be against public policy.

Ireland v. *Taylor* (1), and *Clift* v. *Taylor* (2) relied on.

Petition under article 227 of the Constitution of India, for the revision of the order of Shri I. M. Lall, District Judge, Ambala, dated the 7th May, 1954, affirming that of Shri J. N. Kapur, Rent Controller, Simla, dated the 7th July, 1952, dismissing the suit.

J. G. SETHI, M. L. SETHI, F. C. MITTAL and R. N. MALHOTRA, for Petitioners.

TEK CHAND, for Respondent.

JUDGMENT

FALSHAW, J. The facts leading to this petition are as follows. The petitioner Jagat Bahadur Singh is the owner of a building once called the Ranzor Hall but for many years past known as the Rivoli Cinema, which is occupied by Badri Parshad Seth respondent as a tenant and run by him as a cinema. The building was leased to the respondent by the petitioner's father as far back as 1940, and on each occasion when the lease was renewed the rent was increased, with the result that by the time the lease was last renewed by the petitioner's father in the year 1947, the rent had become Rs. 14,000 per annum as compared with the original rent of Rs. 7,000. In the year 1950, the petitioner expressed his intention of terminating the tenancy and not renewing the lease for any further period as he wanted to run the cinema business himself. He was, however, prevailed upon to renew the lease for a further period of

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(2) (1948) 2 K.B. 394

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two years from the 1st of March, 1950, to the 29th of February, 1952, at the same annual rent of Rs. 14,000 and in the preamble of the lease-deed the following passage was inserted—

> "Whereas the premises known as the 'Ranzor Hall' also known as the 'Rivoli Theatre' together with all its furniture, fixtures and effects described in the schedule hereto were rented by the tenant from the landlord for the period ended on the 14th March, 1950, and
>
> Whereas the landlord desirous of running the cinema himself issued a notice to the tenant on the 16th March, 1950, asking him to vacate the said premises and to hand over the possession of the same to the landlord; but
>
> Whereas the tenant asked for a further extension of the lease for the period ending 29th February, 1952, vacating the premises and handing them back to the landlord on the 1st March, 1952, to which request the landlord agreed."

In the beginning of October, 1951, the petitioner sent a notice to the respondent intimating to him that he did not intend to renew the lease and that he intended to resume possession of the premises in accordance with the agreement of March, 1950, no reply to this notice being sent by the respondent. He did not, however, vacate the premises on the 1st of March, 1952, and shortly thereafter the petitioner filed a petition in the Court of the Rent Controller at Simla, under section 13 of the East Punjab Urban Rent Restriction Act, III of 1949, for the ejectment of the respondent on

the ground that he required the premises for his own use for the purpose of running the cinema business. The petition was resisted by the tenant who alleged that it was not *bona fide*. He alleged that in fact before the expiry of the tenancy he had asked the landlord to reduce the rent for the next lease period but that the landlord had demanded that the rent should be increased to Rs. 18,000 per annum. His case was that the landlord did not require the premises for his own use as he was already running the business of the Mayfair Motor Works and of the Burmah Shell Agency, and that he was only pretending that he wanted to start up the cinema business himself in order to rack-rent the tenant. The Rent Controller came to the conclusion that the allegations of the tenant were correct and therefore dismissed the landlord's petition and the learned District Judge upheld this finding and dismissed the landlord's appeal. The present petition is being filed in this Court under Article 227 of the Constitution.

It may also be mentioned that after the landlord's petition had been filed in the Court of the Rent Controller the tenant also filed a petition for the fixation of the standard rent, and by an order passed on the same day on which he rejected the landlord's petition the Rent Controller fixed the standard rent for the premises in dispute at Rs. 9,750 per annum plus taxes.

The preliminary objection was raised on behalf of the respondent that I should summarily reject the present petition on the strength of my judgment in Civil Revision No. 46 of 1951, decided on the 27th of July, 1951, by which I dismissed a revision petition filed practically in the same form as the present petition, namely on the printed form for civil revisions which simply mentioned at the bottom of the opening sheet that the

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petition was under Article 227 of the Constitution. The basis for that decision was that it had been held sometime earlier by a Full Bench in *Messrs. Pitman's Shorthand Academy* v. *Messrs. B. Lila-Ram and Sons and others* (1), that in deciding an appeal from the order of the Rent Controller the District Judge was acting as a *Persona designata* and not as a Court and that no revision lay against the order of the District Judge, under section 115, Civil Procedure Code, and I held that although the petition in that case mentioned Articles 226 and 227 of the Constitution at the foot of the opening sheet, as in the present case, the petition under either of those Articles was required to be filed in a different form and accompanied by an affidavit. In the judgment I referred to a previous revision petition of a similar kind which I had refused to treat as a petition for a writ and accordingly dismissed.

It does not seem, however, that this decision of mine, which remained unreported, has ever been followed in this Court and in fact it has become the practice to file these petitions in the form in which the present petition has been filed and for office purposes these petitions are treated as revisions and numbered as such. I, therefore, see no reason for dismissing the petition on this ground.

On behalf of the petitioner it is contended that neither the Rent Controller nor the learned District Judge has properly considered the meaning of the relevant provisions of law in deciding the case against the landlord. The relevant provisions of section 13 of the East Punjab Urban Rent Restriction Act, III of 1949, read—

> "13. (1) A tenant in possession of a building on rented land shall not be evicted

(1) (1950) 52 P.L.R. 1

therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) * * * * *
* * * * *

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) * * * * *
* * * * *

(ii) in the case of non-residential building or rented land, if—

(a) he requires it for his own use ;

(b) he is not occupying in the urban area concerned for the purpose of his business any other building or rented land, as the case may be ; and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned ;

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* * * * *

(b) The Controller shall, if he is satisfied that the claim of the landlord is *bona fide*, make an order directing the tenant to put the landlord in possession of the building or rented land on such

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date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application :

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate ;

(4) Where a landlord who has obtained possession of a building or rented land in pursuance of an order under sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of subsection (3) does not himself occupy it * * * *

for a continuous period of twelve months from the date of obtaining possession

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* * * * * *

the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly."

It is argued on behalf of the petitioner that proper consideration has not been given to the meaning of the word 'requires' in this section which means something different from either 'needs' or 'reasonably requires', the words used in similar provisions in other Acts of this kind.

On this aspect of the matter it is certainly true that apart from finding that the landlord did not intend to run a cinema business himself in the premises in dispute, but merely used the threat to do

so, as his father had previously done, for the purpose of exacting an increase of rent from the tenant, the Rent Controller has given a somewhat half-hearted finding that the landlord did not need the premises, since he was carrying on a motor works and an oil and petrol distributing business in some other premises owned by him not far from the premises in dispute, and the learned District Judge did not find it necessary to examine this aspect of the case. The main authority relied on by the learned counsel for the landlord regarding the interpretation of the word 'requires' is a decision of the English Court of Appeal in *Ireland* v. *Taylor* (1). The view expressed by Tucker L. J., on this point is found on page 311 as follows—

> "The referee had interpreted the word 'required' as if it meant 'needed', somewhat on the lines of the words 'reasonably required' in the Rent Restriction Acts. The county court judge rightly rejected this construction, but appears to have interposed his own judgment as to the landlord's 'requirements' whereas, in my opinion, in this part of section 5, the landlord must be the sole arbiter of his own requirements, provided that he proves that he in fact desires possession and genuinely intends to occupy. I think that this construction is strongly supported by the use of the word 'intention', in the proviso, which, it may be observed, provides a means whereby a landlord who goes back on his expressed intention can be penalized."

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The view of Somervell L. J., is found as follows on page 316—

"The next question is whether the judge was right in ordering a new lease. On this point, I think, the appeal succeeds on the grounds that the landlords required the premises for occupation by themselves. The referee in his report construed 'requires' as meaning 'needs' and came to the conclusion that the landlords did not need this large house. It is unnecessary to refer to the evidence in detail, but neither in the referee's findings nor, as far as I can see, in cross-examination was any doubt thrown on the intention of the landlords to go and live in the house if they got the chance. The judge did not regard 'requires' as meaning 'reasonably requires' or 'needs', but as a somewhat stronger word than 'intends' He, again, as I read the judgment, threw no doubt on the landlord's intention. He regarded their desire to live in this large house, and in particular Taylor's desire for the large lounge for use as a studio, as a whim or fancy.

In *Clift* v. *Taylor* (1), it is said that any real ambiguity of language ought to be resolved in favour of maintaining common-law rights. I doubt if there is any real ambiguity. 'Requires' may, of course, have different senses in different contexts. In its present context it is, I think, satisfied if a landlord establishes, as the landlords here did, that he wants and intends to occupy the

(1) (1948) 2 K.B. 394

premises. Apart from the Act, that is his common-law right. If the legislature had intended to place some burden on him of establishing that he was reasonable or not unreasonable in requiring what was his own, plain words would have been used."

Cohen L. J., expressed the same view and held that it was not for the Judge to decide on the landlord's intention and that provided that their intention was genuine, the landlords were entitled to rely on the proviso to section 5 subsection 3.

It is undoubtedly true that in all the Acts of this kind one or other of the words "requires" 'needs' and 'reasonably requires' occurs, and it must be presumed that the selection from among them of a particular form in any Act is deliberately done with the knowledge that they do not mean exactly the same thing, and I think the view of the English Court of Appeal must be accepted that where the word selected is 'requires' it means something less than 'needs' or 'reasonably requires' and that all that the landlord has to show is that he *bona fide* intends to occupy the premises and carry on the business there for which he claims possession. It does not seem to me that as far as the Punjab Act goes, the landlord is debarred from claiming possession of the premises in order to carry on some other business than that in which he has hitherto been engaged and in my opinion clauses (b) and (c) in subsection (3)(a)(ii) would only come into operation if the landlord is or has been carrying on the same business for which he claims possession of the premises in suit in the same town.

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However, as I have said earlier, this aspect of the case has hardly been touched on by the Rent Controller and not dealt with at all by the learned District Judge, and both of them have rejected the landlord's claim to possession simply on the finding that he failed to prove the *bona fides* of his alleged intention to carry on the cinema business in the premises in dispute. This is obviously to a great extent a finding of fact, and the difficulty in the way of the petitioner is whether in a petition of this kind this Court can or ought to interfere with such finding of fact. It is difficult to see in what way in this respect a petition of this kind is on any better footing than an ordinary civil revision petition under section 115, Civil Procedure Code. The powers of the Court under Article 227 of the Constitution are certainly not very clearly defined, and there only appears to be one decision of the Supreme Court relating to a case under this Article dealing with the East Punjab Rent Restriction Act. This is *Waryam Singh and another* v. *Amarnath and another* (1). This was a case from Himachal Pradesh, where this Act is also in force. The facts were that the landlord had applied to the Rent Controller for the ejectment of his tenants on the ground of non-payment of rent but his petition was dismissed in December, 1950, because the tenants paid the arrears of rent into Court on the first hearing. The tenants apparently did not pay the rent for the period while the petition was pending, and in January, 1951, the landlord filed another petition based on similar grounds. This petition was dismissed by the Rent Controller on the ground that although the tenants had admittedly not paid the rent for the period in suit, they had withheld it on the ground that they were awaiting the decision of the Rent Controller for the fixation of the fair

(1) A.I.R. 1954 S.C. 215

rent. This order was upheld by the learned District Judge who held that the tenants were not liable to ejectment because their non-payment of rent was due to a misapprehension of the legal position. On this the landlord moved the Judicial Commissioner under Articles 226 and 227 of the Constitution. The learned Judicial Commissioner held that he was entitled to interfere under Article 227 and that the landlord was entitled to a decree for ejectment. The learned Judges of the Supreme Court in appeal filed by the tenants repelled the contention that Article 227 only confers on the High Court administrative superintendence over the subordinate Courts and Tribunals, but at the same time held that the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority, and not for correcting mere errors. It was, however, held that in that case the learned Judicial Commissioner had acted correctly since the lower Courts had realized the legal position but in effect declined to do what was by section 13(2)(i) of the Act incumbent on them to do, and thereby refused to exercise jurisdiction vested in them by law. In my opinion this amounts to holding that the power of the High Court under Article 227 is to all intents and purposes similar to its power under section 115 of the Code of Civil Procedure.

If this principle is applied to the present case, it is difficult to see how this Court can possibly interfere, since the number of cases in which the Court can use its power under section 115, Civil Procedure Code, to correct errors of fact is infinitesimally small. It is possible that cases may arise where the lower Court's treatment of the facts is so utterly perverse as to amount virtually

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to a failure to exercise jurisdiction, as for instance if a state of affairs which is admitted by both parties to exist is completely ignored, and a finding is given which is based on a state of affairs which exists only in the imagination of the Court, but I do not consider that any such state of affairs exists in the present case.

Admittedly both the Rent Controller and the learned District Judge appear to have attached some importance to the admission of the landlord that up to the time when he gave his evidence in these proceedings he had not even taken the preliminary steps by way of negotiation either to procure machinery for the purpose of running the cinema or to arrange for the booking of any films, and the importance attached to this aspect of the matter has in my opinion been exaggerated, since if the landlord were to obtain possession of the premises the law allows him a period of one year to start the business for which possession was claimed. If this had been the only ground on which the landlord's petition was rejected, it might have been possible to hold that it was fanciful and quite insufficient in the light of the terms on which the lease was last renewed between the parties in March, 1950. There are, however, other grounds which are set out in the order of the Rent Controller. In fact the correspondence which has been proved and placed on the file shows that the tenant agreed to pay rent at Rs. 10,000 per annum for the period of 1943 to 1946, as against the amount of Rs. 8,000 previously paid by him on the threat that the landlord wanted the premises in order to run the cinema business himself, and that in 1947, the rent was again increased to Rs. 14,000 on the same threat that the landlord wanted to run the cinema

business through his son who is the present landlord. In these circumstances it cannot possibly be held that the finding in the present proceedings that even the inclusion of the term in the preamble of the lease deed executed in March, 1950, to the effect that on the expiry of the lease at the end of February, 1952, the present landlord was to be given possession of the premises for the purpose of running the cinema business himself, was a mere pretext for forcing the tenant to pay an annual rent of Rs. 14,000 as against what has now been found to be the proper standard rent of Rs. 9,750 is no guarantee of the *bona fides* of the landlord's expressed intention was altogether unfounded. The finding is in fact not so divorced from the material on the record that it could possibly justify interference of this Court under section 115, Civil Procedure Code, or, assuming that the same principles apply, under Article 227 of the Constitution.

One other point raised by the learned counsel for the petitioner was based on the fact that although in some similar Acts, e.g., the Delhi and Ajmer-Merwara Rent Control Act, the introductory portion of the section relating to eviction includes some such words as "notwithstanding anything contained in any contract" these words are not found in section 13 of the East Punjab Urban Rent Restriction Act. His contention was that the absence of these words implied that the parties could by contract avoid the effect of the section and that since presumably when the lease was renewed in March, 1950, they were aware of the existence of the Act, they must be deemed to have done so. It seems to me, however, that *prima facie* the words in section 13(1) "whether before or after the termination of the tenancy" cover a

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case in which contractual tenancy has terminated, and that in order to make the section universally applicable it is not absolutely necessary to include such words as I have mentioned above. The case relied on is *S. Raja Chetty and another* v. *Jagannathadas Govindas and others* (1). This was a case of a lease of cinema, the lease being of ground, building and fittings, including cinema machinery and the lease itself contained a clause which rendered the tenant liable to ejectment if he fell in arrears of rent for two months. The landlord moved the Rent Controller for ejectment after the rent had fallen in arrears for one month, which constituted a ground for ejectment under the Madras Buildings (Lease and Rent Control) Act. It was held by Rajamannar, C. J., and Krishnaswami Naydu, J., that by the terms of the contract the landlord had waived his right to claim ejectment of the tenant for one month's default of payment of rent on the principle set out at page 389 of the 9th edition of Maxwell :—

> "Everyone has a right to waive and to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy."

The Madras Act did not contain any express provision forbidding contracting out of it, and the learned Chief Justice who delivered the judgment observed—

> "Though we realise that the Act was passed in accordance with a general policy, we

(1) A.I.R. 1950 Mad. 284

cannot say that policy would be violated if a contract is entered into between a landlord and tenant giving the tenant larger rights and greater privileges than those conferred on him by the Act."

This, however, is a very different matter from holding that a tenant can contract himself out of the benefits of an Act the main object of which is the protection of tenants against landlords. In fact the primary object of the Punjab Act and other Acts of this kind is quite clearly to prevent landlords from charging excessive rents, and from forcing tenants to pay increased rents by the threat of ejectment. The underlying principle appears to be that any contract entered into by a tenant is likely to be made under pressure, and that therefore the tenants must be protected from its consequences and so to allow a landlord to enforce a contract would be against public policy.

This point was raised for the first time before me, and was never even hinted at before the Rent Controller or the learned District Judge, and it is obviously quite impossible to conclude from the material on the record that by the terms of the lease entered into in March, 1950, the tenant was voluntarily surrendering any protection given to him by the law, and I very much doubt whether, even if this had been in the minds of the parties at the time, the tenant could be permitted to do so.

In the circumstances I do not think that there is any sufficient ground for interference in this case and I accordingly dismiss the petition, but in the circumstances order that the parties shall bear their own costs.