

Before R. S. Narula, Chief Justice

RAJINDER SINGH NANDA—(Tenant)—Petitioner

versus

KEWAL KRISHAN—(Landlord)—Respondent.

Civil Revision No. 175 of 1974.

April 11, 1975.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3) (a) (i)—Conditions for eviction of a tenant on ground of personal necessity set out therein—Landlord—Whether has to plead and prove such conditions.

Held, that for obtaining an order of eviction against a tenant under section 13(3) (a) (i) of the East Punjab Urban Rent Restriction Act, 1949 on the ground of bona fide personal necessity, the landlord must plead and prove all the three ingredients or statutory conditions set out in paragraphs (a), (b) and (c) thereof.

(Para 2)

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act (3 of 1949) for revision of the order of Shri O. P. Saini, Appellate Authority, Ferozepur, dated 3rd January, 1974 affirming with cost that of Shri T. N. Gupta, Rent Controller, Ferozepur, dated 26th May, 1973, ordering the respondent to vacate the premises detailed in the headnote of the application and restore these to the possession of the petitioner on or before 26th of July, 1973 (The Appellate Authority allowed one month's time to vacate the premises).

Claim:—Application under section 13 of the East Punjab Urban Rent Restriction Act, 1949.

Claim in Revision:—For reversal of the orders of both the Courts below.

H. L. Sarin, Senior Advocate with M. L. Sarin, Advocate, for the Petitioner.

Harinder Singh Gyani, Advocate and G. C. Mital, Advocate, for the Respondent.

JUDGMENT

Narula, C.J.—(1) This is a petition under section 15(5) of the East Punjab Urban Rent Restriction Act (3 of 1949) (hereinafter

called the Act) for revision of the order of the Appellate Authority, Ferozepore, dated January 3, 1974, upholding the decision of the Rent Controller for the eviction of the tenant—petitioner under section 13(3)(a)(i) of the Act, that is on the ground of *bona fide* personal necessity. The only ground pressed by Mr. Harbans Lal Sarin, learned Senior Counsel for the petitioner, for setting aside the decision of the Courts below is that out of the three statutory conditions precedent entitling a landlord to apply to the Rent Controller for an order directing the tenant to put the landlord in possession specified in section 13(3)(a)(i) of the Act, namely :—

- (a) he requires it for his own occupation;
- (b) he is not occupying another residential building in the urban area concerned; and
- (c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

the landlord neither pleaded nor proved conditions (b) and (c) specified above. The ground of ejection is specified in paragraph 4(b) of the application for ejection. It is clear that the pleas requisite under section 13(3)(a)(i)(b) and (c) have not been taken therein or at any other place in the application for ejection. Nor has any clear evidence on those two points been led by the landlord-respondent.

(2) The learned counsel for the tenant-petitioner has referred to the judgment of the Delhi High Court (Himachal Bench) in *H. N. Bhasin v. Chamba Mall* (1) and the judgment of a learned Single Judge of this Court (Mahajan, J. as he then was) in *Darshan Singh v. Jagdish Kumar and another* (2) in support of his contention that the landlord cannot succeed in obtaining an order or direction against the tenant for his eviction under section 13(3)(a)(i) unless he pleads and proves all the three ingredients of the aforesaid provision referred to above. Mr. Gokal Chand Mittal, learned counsel for the respondent, has on the other hand relied on the earlier Division Bench judgment of this Court in *Shri Krishan Lal Seth v. Shrimati Pritam Kumari* (3) (to which Mahajan, J. himself

(1) 1970 R.C.R. 840.

(2) 1974 R.C.R. 99.

(3) 1961 P.L.R. 865.

Rajinder Singh Nanda v. Kewal Krishan (Narula, C.J.)

was a party). In that case it was held that in an application under section 13 of the Act for the eviction of tenant on the ground of the requirement of the residential building for personal occupation, it is not necessary for the landlord to restate in the application the statutory conditions set out in paragraphs (b) and (c) of sub-clause (i) of clause (a) of section 13(3) of the Act. It appears that subsequent to the decision of the Division Bench in *Krishan Lal Seth's case* (supra), this matter came up for consideration somewhat obliquely before a Full Bench of this Court in *Messrs Sant Ram Des Raj Kalka v. Karam Chand Mangal Ram* (4). While concurring with the main judgment of Mehar Singh, J. (as he then was) in that case, Shamsher Bahadur, J. (as he then was) observed that a landlord may apply under sub-section (3) of section 13 of the Act for ejection of the tenant from a residential building on fulfilment of all the three conditions laid down in paragraphs (a), (b) and (c) of sub-clause (i) of clause (a) of that sub-section. In a later judgment of the Supreme Court in *Attar Singh v. Inder Kumar* (5), it was held that in order to succeed under a similar provision, the landlord has not only to prove that he requires the premises in question for his own use, but he has also to prove that he is not in possession of any other such premises in the urban area in question, and also to prove that he had not vacated any such premises without sufficient cause after the commencement of the Act. It is clear that in view of the observations made by Shamsher Bahadur, J. in the Full Bench judgment of this Court in the case of *Messrs Sant Ram Des Raj Kalka* (supra), and the authoritative pronouncement of their Lordships of the Supreme Court in *Attar Singh's case* (supra), the Delhi High Court and the learned Single Judge of this Court took the correct view (referred to above), and the view taken by the Division Bench in *Krishan Lal Seth's case* (supra) is no longer good law. In the face of the state of law referred to above, Mr. Gokal Chand Mittal could not support the order of the Rent Controller and the Appellate Authority, but has prayed that instead of dismissing his application for ejection I should adopt the course that was adopted by the Delhi High Court in *H. N. Bhasin's case* (supra), and by D. K. Mahajan, J. in *Darshan Singh's case* (supra). I agree and accordingly remand the respondent's application for ejection to the Rent Controller for fresh trial after allowing the landlord-respondent an opportunity to amend the application for ejection. Mr. Sarin has no objection to this course being adopted.

(4) A.I.R. 1963 Punjab I.

(5) 1967 P.L.R. 83.

(3) For the foregoing reasons I allow this petition, set aside the judgment and order of the Appellate Authority and of the Rent Controller, and remand this case to the Rent Controller, Ferozepore, for rehearing and redeciding the case on merits in the light of the observations herein made after allowing the landlord-respondent an opportunity to amend his petition for ejection. The amended petition may be filed by the landlord before the Rent Controller on May 12, 1975, when the parties will appear before him for further proceedings. The landlord may serve an advance copy of the amended petition on the counsel for the tenant in the trial Court. The tenant would be entitled to file his fresh written statement in reply to the amended petition. As it is an old case, the Rent Controller shall make an effort to dispose it of as expeditiously as possible. There is no order as to costs incurred by the parties in this Court.

B.S.G.

Before A. S. Bains, J.

MEHAR SINGH ETC.,—Petitioners

versus

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ Petition No. 1474 of 1975

April 18, 1975.

The Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 17 and 113-A—The Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961—Rules 2(d) and 3—Election of Chairman and Vice-Chairman of Panchayat Samiti—State Government—Whether has power to interfere in and postpone such election.

Held, that from a reading of section 113-A of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, it is evident that the Government has no power either to fix the date for the election of the Chairman or Vice-Chairman of Panchayat Samitis or to postpone it afterwards. It has only the power upto the co-option stage to issue the election programme etc. Section 17 of the Act shows that it is the Deputy Commissioner or any other Officer not below