

personal necessity when the premises had been separately rented out. The said contention was repelled with the following observations:—

“So far as the first contention is concerned, I do not find any merit in it. The tenant is one and the landlord is one. It is immaterial whether the premises are rented out by one rent note or by several rent notes. When the entire premises are needed *bona fide* by the landlord for his personal use, the contention raised is wholly besides the point. Therefore, I repel the first contention.”

(7) As observed earlier in the present case, the ground of ejection was sub-letting of the residential portion by the tenant. Since the said portion was let out separately the tenant could not be evicted on that ground from the business premises. In these circumstances the petition succeeds. The impugned orders are set aside and the application for ejection from both the premises is dismissed with no order as to costs. However, the landlord will be entitled to seek ejection of his tenant separately from both the premises on the grounds which may be available to him under the Act.

PCG.

Before J. V. Gupta, J.

SOHAN LAL,—Petitioner

versus

COL. PREM SINGH GREWAL AND ANOTHER,—Respondents.

Civil Revision No. 2380 of 1988

February 28, 1989.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(g), 13-A, 18-A—Specified landlord filing ejection applications against four tenants—Premises used for business and residential purpose—Whether entire building can be termed as residential building—Right of landlord—Entitled to recover possession of one part of residential building.

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Held, that the premises were being used for both purposes i.e. business as well as residences the building will fall within the definition of residential building as defined in S. 2(g) of the East Punjab Urban Rent Restriction Act, 1949 which provides 'residential building means any building which is not a non-residential building. 'Non-residential building' means a building which is solely used for the purpose of business or trade. In these circumstances the demised premises are held to be 'residential building' as defined under the Act, and therefore, the landlord was entitled to seek ejection of his tenants therefrom. (Para 9)

Held, that even under S. 13-A of the Act it has been provided that specified landlord has a right to recover immediate possession of such residential building or scheduled building or any part or parts of such building, if it is let out in part or parts. The second proviso makes it further clear that the landlord is not entitled to recover possession of more than one residential building inclusive of any part or parts thereof if it is let out in part or parts. (Para 10)

Petition under Section 18-A(8) Proviso of Pb. Act No. II 1985 for revision of the order of the court of Shri N. D. Bhatara, P.C.S. Rent Controller (CJM), Patiala dated 7th September, 1988 accepting the application with costs and ordering the ejection of the respondents from the premises in their possession and directing them to put the petitioner landlord in its possession within one month from the date of the order.

CLAIM.—Applications under section 13-A of the East Punjab Urban Rent Restriction Act.

CLAIM IN REVISION.—For reversal of the order of the lower court.

M. L. Sarin, Sr. Advocate with Miss Jaishree Thakur, Advocate, for the Petitioner.

G. S. Grewal, Sr. Advocate, for the Respondent.

ORDER

J. V. Gupta, J.

(1) This order will also dispose of civil revisions Nos. 2414, 2389 and 2390 of 1988 as all these four petitions were disposed of by one order by the Rent Controller, dated 7th September, 1988.

(2) Landlord Col. Prem Singh Grewal filed these four ejection applications under Section 13-A of the East Punjab Urban Rent

Restriction Act, 1949 (as amended) against his four tenants separately. According to the landlord he was a specified landlord as defined. He retired from service with effect from 31st January, 1980 and filed the present ejectment applications on 10th November, 1986 alleging that earlier the property in dispute was converted into four portions and each portion was given at a monthly rent of Rs. 18 plus house tax etc. to the tenants. The tenants started using *verandah* as shop whereas in the rear portion they started residing. The landlord requires the same for his own use and occupation keeping in view his status and family requirement. He has no residential building at Patiala in the urban area concerned in his occupation. Rather as and when he comes to Patiala he puts up with his brother who has got a house here. Thus, he wants to keep the building for his own use and occupation.

(3) The tenants on receipt of the notice, filed applications under Section 18-A of the said Act, supported by affidavits and other documents seeking permission to contest the petitions on the allegations that the application was not in accordance with law. The premises in question is a shop and cannot be vacated for residential purpose. In the ejectment application filed earlier by the landlord and his brother, regarding the premises in dispute, the same were described to be a shop. Even in the receipt regarding payment of rent issued prior to July 1985, the premises were shown to be the shop. Moreover, the premises in dispute are situated in the area of shopping centre and there are about 20 shops of the landlord and his brother in this area. In these circumstances, the landlord was not entitled to ejectment under Section 18-A of the amended Act. The learned Rent Controller allowed the necessary permission to contest the ejectment applications, *inter alia*, on the ground that "whether the disputed premises is a residential building or not?"

(4) After considering the entire evidence led by the parties, the learned Rent Controller found that, "I am clearly of the view that it stands proved on record that the premises in dispute are not solely used for trade, business rather those are used for trade and residence also". In view of that finding ejectment orders were passed against the tenants.—*vide* impugned order dated 7th September, 1988.

(5) Learned counsel for the tenant-petitioners submitted that the finding of the Rent Controller that the premises in dispute are residential is wrong and illegal. According to the learned counsel, from the evidence on record, it could not be held that the premises

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are residential. The same were let out for business purposes as per rent note and, therefore, no ejection order could be passed with respect to the demised premises under Section 13-A of the amended Act. In support of this contention, reference was made to *Shri Hari Mittal v. Shri B. M. Sikka* (1) and *Lal Chand v. Bal Kishan* (2). It was further contended that in any case under Section 13-A; second proviso, a landlord was not entitled to recover possession of more than one residential building inclusive of any part or parts thereof if it is let out in part or parts, and that being so, the landlord could eject only one of the tenants from the demised premises. On the other hand, the learned counsel for the landlord submitted that on the appreciation of the entire evidence, it has been found that the premises are residential and that being a finding of fact should not be interfered with in revisional jurisdiction, in view of sub-section 8 of Section 18-A of the Act. He further submitted that second proviso to Section 13-A of the Act is to be construed in the manner that it serves the purpose for which Section 13-A was introduced in the Act.

(6) I have heard the learned counsel for the parties and have also gone through the relevant evidence on record.

(7) The scope for interference by this Court in the revisional jurisdiction is given under sub-section 8 of Section 18-A of the Act. It reads as under:—

“(8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.”

Section 18-B further provides that ‘Section 18-A or any rule made for the purpose thereof shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force’.

(1) 1986(1) PLR. 1.

(2) 1987 (2) PLR 222.

(8) Keeping in view the said provisions of sub section 8 of Section 18-A, I am of the considered view that from the evidence on record, it could not be successfully argued that the conclusion arrived at by the Rent Controller that the premises in dispute are residential building is without any evidence or is wrong or illegal to the extent that it requires interference in revisional jurisdiction. Even if two views are possible, it does not entitle this Court to interfere in the said finding. According to the learned counsel for the petitioners, the premises were let out for business purpose. There are rolling shutters in front of the shop and no regular kitchen, bath room and latrine etc. have been provided therein. All the receipts upto July 1985 are issued describing the property a shop and even the tenants got licences under the Shops and Commercial Establishments Act, for doing trade business in the demised premises and thus, taking into consideration the entire facts and circumstances of the case, the demised premises could not be held to be the residential premises.

(9) On the other hand, it has been brought on record that the names of the tenants are entered in the voters' list on the address of the demised premises. The tenants have not led any positive evidence that they are residing anywhere else. Mere statements that they are residing in a particular Mohalla was not sufficient to locate their residence as such. Kehar Singh tenant even applied for the ration card at the address of the demised premises. The landlord duly made provisions for bath room, kitchen and laterine in the demised premises and according to the evidence led by the landlord, the tenants were residing in the rear portion whereas in the front portion, they were doing their business. Since the premises were being used for both purposes i.e., business as well as residences the building will fall within the definition of residential building as defined in Section 2(g) of the Act which provides 'residential building' means any building which is not a non-residential building. 'Non-residential building' means a building which is solely used for the purpose of business or trade. Since from the evidence. it has been concluded by the Rent Controller that the premises is not being used solely for business or trade, the same will fall within the definition of 'residential building'. As observed earlier, from the evidence on record it could not be said that the said finding of the Rent Controller is without any evidence or the view taken by the Rent Controller was not possible on the evidence produced by the parties. In these circumstances the demised premises are held to

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be 'residential building' as defined under the Act, and, therefore, the landlord was entitled to seek ejectment of his tenants therefrom.

(10) As regards the question as to whether the landlord is entitled to seek ejectment of the tenants or he could only eject one of the tenants which he may like to choose, the second proviso to Section 13-A reads as under :—

“Provided further that nothing in this section shall be so construed as conferring a right on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts”.

Even if it be assumed for the sake of argument, that the whole building was let out in different parts to the different tenants, even then according to the said proviso, the landlord could not recover possession of more than one residential building inclusive or any part or parts thereof if it is let out in part or parts. That being so, the landlord could only claim ejectment of one of the tenants from one part of the building and not all the tenants from all parts of the building. For ejecting the other tenants, he will have to seek his remedy under Section 13 of the Act, in accordance with law. Since Section 13-A is a special remedy to recover immediate possession of residential building given to certain persons who are specified landlord, it is to be construed strictly. Even under Section 13-A it has been provided that specified landlord has a right to recover immediate possession such residential building or scheduled building or any part or parts of such building, if it is let out in part or parts. The second proviso reproduced above makes it further clear that the landlord is not entitled to recover possession of more than one residential building inclusive of any part or parts thereof if it is let out in part or parts.

(11) Faced with this situation, the learned counsel for the landlord-respondent submitted that in that situation he will like to seek ejectment of his tenant Ram Niwas who has filed civil revision No. 2389 of 1988, since he is putting on one corner of the entire building as shown in the plan Exhibit AW5/B. In these circumstances, the said revision petition filed by Ram Niwas i.e. C.R. No. 2389 of 1988 fails and is dismissed with no order as to costs whereas the other three revision petitions are allowed with no

order as to costs. However, Ram Niwas tenant is allowed two months time to vacate the premises provided all the arrears of rent, if any, are deposited by him along with advance rent of two months with the Rent Controller within a fortnight, with a further undertaking in writing that after the expiry of the said period vacant possession will be handed over to the landlord.

R.N.R.

Before : M. M. Punchhi and A. L. Bahri, JJ.

N. K. BATRA AND OTHERS,—Petitioners.

versus

KURUKSHETRA UNIVERSITY AND OTHERS,—Respondents.

Civil Writ Petition No. 6755 of 1989.

August 16, 1989.

Constitution of India, 1950—Arts. 14, 15 and 226—Equal opportunity in admission—Admission to B. Tech. degree courses in Engineering Colleges in Haryana—Basis of selection changed from entrance test to system of normalisation of marks—Normalisation challenged by students of Central Board of Secondary Education on the ground of granting unfair advantage to students of the Haryana School Education Board by giving institutional preference—System of normalisation—Whether violative of equality clause.

Held, that in the instant case, the basis of selection is not on any normalisation as no standard is recognised by any of the two Boards i.e. Central Board of Secondary Education and Haryana School Education Board. The standard as was inherent would be the standard derived at by drawing an average, whichever was higher in the two boards. The principle involved thus, in our view, can in no event be normalisation, so that it could promote equal chances and opportunities for admission and rather it would go, in our view, to make things abnormal, promoting inequality and denial of equal opportunity for admission.

(Para 9)

Held, that it is plain from the material placed before us that it is the State Government who had enforced the decision on the M. D. University and the Vice-Chancellor of whom thereon had decided to