REVISIONAL CIVIL

Before Harbans Singh and Jindra Lal, JJ.

CHATTAR SAIN,—*Petitioner*

versus

M/S JAMBOO PARSHAD AND SONS,—*Respondents.*

Civil Revision No. 254 of 1963.

1964

October, 20th

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 11, 13 and 19—Owner of a building himself in occupation thereof—Whether can convert it to any use without the permission of Rent Controller—Building—Whether includes property occupied by owner himself—Landlord owning two buildings, one occupied by himself and the other let out to tenants—Whether can eject the tenants on ground of personal need.

Held, that the expression 'building', 'non-residential building' or 'residential building' used in the East Punjab Urban Rent Restriction Act, 1949, applies to a building which is let to tenants and not to a building which is occupied by the owner himself. The Act does not concern itself with property, residential or otherwise, which is occupied by an owner himself, and which is not in the possession of tenants. No provisions of the Act appear to apply to such a property and the owner of the building can convert it to any use that he likes without obtaining the permission of the Rent Controller as prescribed in section 11 of the Act. What section 11 means is that where the tenants are in possession of a 'residential building', it cannot be converted into a 'non-residential building', without the permission in writing of the Controller.

Held, that it is not competent for a Rent Controller not to order the eviction of tenants merely because the landlord has another building in his own occupation which is *bona fide* being used by him for non-residential purposes resulting in his need for residential building. It cannot be the intention of the Act to deprive a landlord of the legitimate use of his own building which is in the possesssion of the tenants if he satisfies the Rent Controller that he *bona fide* needs it for his personal use and occupation.

Case referred by the Hon'ble Mr. Justice Harbans Singh on 28th November, 1963 to a larger Bench for decision owing to the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice Jindra Lal on 20th October, 1964.

Petition under Section 15(v) of Act III of 1949 as amended by Act 29 of 1956 for revision of the order of Shri Sant Ram Garg, Appellate Authority (District and Sessions Judge), Ambala dated the 25th February, 1963, reversing that of Shri H. S. Ahluwalia, Rent Controller, Ambala Cantt, dated the 19th September, 1962 ordering the tenants to ~~deliver~~ possession of the premises in dispute to the landlords on or before 25th April, 1963 and leaving the parties to bear their own costs.

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H. L. Sarin, H. S. Sawhney and K. K. Cuccuria, Advocates, for the Petitioners.

R. Sachar, Advocates, for the Respondents.

JUDGMENT.

Jindra Lal, J.—This judgment will dispose of two civil revisions, i.e., No. 254 of 1963 by Chattar Sain and No. 255 of 1963 by Narinder Kumar. Jindra Lal, J.

Gian Chand and Nem Chand, sons of Jamboo Parshad, and Shrimati Kamla Wati, widow of Jamboo Parshad (respondents in both the civil revisions mentioned above), are proprietors of a firm Messrs Jamboo Parshad and Sons, Ambala Cantonment. The house, in which they all live, was constructed by them in the year 1950. At that time, they had started a small business of manufacturing scientific goods and for the purpose of the business were using two of the rooms of their residential house. This house has five rooms and the three other rooms in it were used by them for their personal residence.

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The respondents own another house in Ambala Cantonment, being house No. 3652-3653, 3653/1, 3652-53-A and 3654-54-A, which is double-storeyed and has been rented out to two tenants, Chattar Sain petitioner in civil revision No. 254 of 1963 being a tenant in the upper storey, and Narinder Kumar petitioner in civil revision No. 255 of 1963 being a tenant in the lower storey.

The respondents in the two revisions before us filed two petitions under section 13 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the Act, for the ejectment of the two tenants, mentioned above. The petition against Narinder Kumar was registered as rent case No. 300 of 1961 and the petition against Chattar Sain as rent case No. 301 of 1961. Both were consolidated because the grounds more or less, were the same.

Various grounds were taken in these petitions on account of which the ejectment was sought. One was non-payment of rent in the petition against Chattar Sain which is no longer now in dispute, and in both cases one common ground taken was the personal requirements of the landlords. An additional ground in regard to the rooms occupied by Narinder Kumar was that he had sublet a part of the premises to one Rehtu Mal.

The Rent Controller dismissed both the petitions, but the Appellate Authority accepted the appeals of the landlords and ordered the ejectment of the tenants. The tenants filed two revision petitions in this Court (being Civil Revisions No. 254 and 255 of 1963), which came up for hearing before my learned brother Harbans Singh, J. In view, however, of some difficult questions involved, my learned brother was pleased to refer the case to a Division Bench and that is how these revisions have been placed for hearing before us.

Both Gian Chand and Nem Chand are married and have children and it is in evidence that the family is growing. It is further in evidence that the business of manufacturing scientific goods has expanded considerably since 1950, with the result that some of the rooms previously used by the respondents for their residence are

now being used for the purpose of their business. Consequently, the residential accommodation left with the respondents is not sufficient for them, not only because their family has grown but also because some accommodation previously used by them for their residential use is now being used for their business. They, therefore, claim that the residential building in the occupation of the tenants petitioners is required for the personal residence of Nem Chand and his family. Gian Chand has a wife and six children and Nem Chand at the time of the petition had two children, but it was stated at the bar that the family had increased by one child more during this interval. The mother of Gian Chand and Nem Chand also lives with them.

The finding of the Appellate Authority is that much of the accommodation, which was previously occupied by the respondents landlords for their personal residence is now being used by them for their business purposes and consequently the residential accommodation now available with them is not sufficient for them and their family. The residential building in dispute is held to be required for the family of Nem Chand, who *bona fide* requires it for his personal residence as also for the residence of his family. An argument urged before the Appellate Authority but rejected by it was that a landlord could not by using for his business purposes the residential accommodation available with him, seek to eject a tenant from his other residential building on grounds of personal need.

Mr. Harbans Lal Sarin, learned counsel for the petitioners, has taken us through the relevant provisions of the Act and has attacked the order of the Appellate Authority.

His main ground of attack is based on a combined reading of certain provisions of sections 11, 13 and 19 of the Act. Section 11 provides that no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller. Section 19 provides for penalties for a contravention of the provisions of section 11 and some other sections of the Act. It is the contention of Mr. Sarin that the respondent-landlords could not convert their residential building

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in which they themselves were residing, into a non-residential building except with the permission in writing of the Controller. If they have done so, then in addition to their being liable under section 19, they are not entitled to any relief by the Rent Controller. By thus converting their residential building into a non-residential building, they cannot claim that the residential accommodation now left with them for their residential purposes is not sufficient and claim ejectment of the tenants from another residential building of theirs on that ground.

It appears to us that this argument is not sound, 'Building', as defined in section 2(a) of the Act; means "any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses etc. etc. ....." Sub-section (d) of section 2 defines 'non-residential building' as meaning "a building being used solely for the purpose of business or trade." The proviso to this sub-section does not concern us. 'Residential building' has been defined in section 2(g) as meaning "any building which is not a non-residential building."

It follows, therefore; that the expression 'building'; 'non-residential building' or 'residential building' used in the Act, applies to a building which is let. The Act does not concern itself with property residential or otherwise which is occupied by an owner himself, and which is not in the possession of tenants. No provisions of the Act appear to apply to such a property. In the case of such property no question of fixation of rent or eviction can, obviously, arise. Various other provisions of the Act like cutting or withholding of any amenities or failure to repair a building, etc, etc.; cannot also possibly apply to property which is occupied by the landlord himself: If this is the correct reading of the Act, then it follows that Section 11 cannot apply to any property, which is not occupied by a tenant; and an owner of such property can convert it to any use that he likes without the permission of the Rent Controller.

In the present case, therefore, to the property in the occupation of the respondents themselves, the provisions of section 11 cannot apply. Consequently the respondents

are entitled to use their own residential property for non-residential purposes without the permission of the Controller. The language of section 11, read with the definitions mentioned above, can only mean, in my view, that where the tenants are in possession of a 'residential building' it cannot be converted into a 'non-residential building' without the permission in writing of the Controller. One of the reasons for this is that in the case of 'residential buildings' the permissible increase of rent is much lower than the permissible increase for 'non-residential buildings'. A reference to section 4 of the Act makes it clear.

In the present revisions before us, both the Rent Controller and the appellate authority have found that the accommodation available with the respondents in their own residential house is not sufficient for their personal residence. Part of this insufficiency results from the use of their residential accommodation for non-residential purposes.

Section 13(3)(a) of the Act provides that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession in the case of a 'residential building' if he requires it for his own occupation. The question, therefore, is whether the landlords in this case do require the residential building, which is in the occupation of tenants, for their own use. That they do so admits of no doubt and has been so found by the tribunals below.

It is urged by Mr. Sarin that if the owner of residential property is allowed to convert it into business property and then allowed to claim that he has no sufficient residential accommodation for his personal residence and is consequently permitted to evict his tenants from a 'residential building' belonging to him, then the very purpose of the Act would be defeated. I do not think that this result can necessarily follow. The provisions of section 13 of the Act have to be read in conjunction with other provisions of the Act. Section 13(3)(b) of the Act provides that "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

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or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application." This is a salutary provision and in a given case if the Controller comes to the conclusion that the claim of the landlord is not *bona fide*, he can reject the application.

In view of the above discussion, therefore, it must be held that it is not competent for a Rent Controller not to order the eviction of tenants merely because the landlord has another building, in his own occupation which is *bona fide* being used by him for non-residential purposes resulting in his need for residential building. It cannot be the intention of the Act to deprive a landlord of the legitimate use of his own building now in the hands of the tenants and the rights of the tenants are sufficiently protected by the Act.

The orders of the appellate authority, therefore, are correct and these revisions are consequently dismissed. No order as to costs.

HARBANS SINGH, J.—I agree.

R. S.