

# The Indian Law Reports

REVISIONAL CIVIL

*Before Gurdev Singh, J.*

JATINDER SINGH AND OTHERS,—*Respondents.*

*versus*

JATINDER SINGH AND OTHERS,—*Respondents.*

**Civil Revision No. 352 of 1965**

November 8, 1967

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Letting out of vacant land as such—Tenant putting up structures on it in connection with his business with the permission of land-lord—Such tenant—Whether bound to restore the property to the land-lord in its original condition—Rent Controller—Whether has the jurisdiction to order eviction of the tenant—Order for removal of the structures within specified time—Tenant not removing the structure—Land-lord—Whether entitled to get possession of the premises.*

*Held*, that if originally vacant land without any buildings is let out to a tenant and the tenant is given a right to set up structures suitable for his convenience and to instal machinery in connection with his trade and business, on the expiry of lease deed, he is bound to restore the property to the land-lord in its original condition. The land-lord does not lose the right to recover possession of the land simply because he permits the tenant to set up structures and instal machinery thereon, which is necessary for carrying on the business for which premises were let out. The Rent Controller, therefore, has jurisdiction to deal with an application for eviction of the tenant from the land if the case falls under any of the clauses of section 13 of East Punjab Urban Rent Restriction Act, 1949.

*Held*, that an order passed by the authorities under the Act, calling upon the tenant to remove the structures or machinery installed on the land let out, enures for the benefit of the tenant and if the tenant does not wish to avail of that concession, he is at liberty to ignore that part of the order. The tenant has to remove the structure if he so wishes within the period allowed, otherwise it would not effect the right of the land-lord to take possession of the premises.

*Petition under Section 15(5) of the East Urban Rent Restriction Act, 1949 for revision of the order of Shri M. L. Puri, Appellate Authority, Ludhiana, dated 21st December, 1964, reversing that of Shri Inder Mohan Malik, Rent Controller, Samrala, dated 12th May, 1964, accepting the appeal and dismissing the ejectment application.*

BHAGIRATH DASS, S. S. KANG AND S. K. HIRAJI, ADVOCATES, for the Petitioners.

R. K. AGGARWAL, ADVOCATE for the Respondents.

#### JUDGMENT

GURDEV SINGH, J.—The decision of this petition for revision of the order of the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949, dated 21st December, 1964, turns upon the determination of the legal question, namely, “Whether the Rent Controller has the jurisdiction to order eviction of the tenant from a vacant land which was originally let out as such, but on which the tenant with the permission of the landlords had put up structure in connection with his business ?”

It is common case of the parties that many years back vacant land situate in Khanna town, district Ludhiana, was let out by its owner Shrimati Ajmer Kaur to Shri Surinder Nath, predecessor-in-interest of the respondents 1 to 5, for purposes of their business. In due course, the tenants set up certain structures and installed machinery on the leased land and the landlady continued to renew the lease in his favour. The last rent-note, Exhibit A. 1, was executed by him on 30th November, 1949, it provided *inter alia* that the tenant if he so desired, could set up further structures on the vacant land leased out to him, but that would be at his own cost and risk, and on the expiry of 15 years, the term fixed under the lease, the landlady would be entitled to obtain vacant possession of the rented land only and not the structures. This rent-note further provided:—

“If the tenant dug any pits in the land, he would have to fill up the same while handing over possession on the expiry of the lease, and would give up the possession of the leased premises after levelling the land.”

Before the period of 15 years fixed under the lease deed could expire, Shrimati Mohinder Kaur and Shrimati Devinder Kaur, successors-in-interest of the landlady Shrimati Ajmer Kaur, applied

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for the eviction of the tenant on 10th September, 1962, under section 13 of the East Punjab Urban Rent Restriction Act on the grounds that the rent of the premises had fallen in arrears and that the tenant had sublet the premises or portions thereof to various persons. The arrears of rent having been paid by the first hearing of the case in accordance with the proviso to subsection (1)(a) of section 13 of the Act, that ground of eviction ceased to be available to the landladies. The trial of the application proceeded only on the plea that the tenant had incurred liability for eviction having sublet the premises without the consent of the land-ladies. The Rent Controller found that the subletting had been established. Accordingly, he ordered the eviction of the tenant. Against that order, an appeal was taken to the Appellate Authority, Ludhiana. Shri M. L. Puri, who dealt with the same, reversed the decision of the Rent Controller and dismissed the land-ladies' application for eviction.

The learned Appellate Authority accepted the finding of the Rent Controller that the premises had been sublet by the tenant without the consent of the land-ladies. He, however, took the view that since what was originally let out was vacant land and the buildings or structures thereon were constructed by the tenant himself, the Rent Controller had no jurisdiction to pass any order for the tenant's eviction from such premises which had ceased to be vacant land after it was originally let out. In this connection, he had sought to derive support from the Single Bench decision in *P. Chinnakannu Pillai v. Ammalu Ammal Gomathi Ammal and another* (1), and the judgment of this Court by Dua, J., (as he then was) reported as *Pyara Singh v. Mahant Gurmukh Das and another* (2). Being aggrieved by the decision of the Appellate Authority, the landladies have come up in revision to this Court.

Mr. Bhagirath Das, learned counsel for the petitioners, has vehemently argued that the view taken by the learned Appellate Authority is entirely untenable and contrary to the rule laid down by this Court in various cases. He contends that the question of liability of a tenant for eviction from the premises, such as a vacant land, has to be settled by taking into account the nature of

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(1) A.I.R. 1952 Tr. C. 125.

(2) 1964 P.L.R. 193.

the property at the time it was let out, and if subsequently the tenant builds upon the land for his own convenience or instals machinery therein in connection with his business, that is of no consequence so far as the right of the landlord to obtain eviction is concerned, and that right cannot be defeated by the tenant's conduct in effecting alterations in the premises to put it to the best use in connection with the business for which he had obtained the lease. This argument, in my opinion, is unexceptionable, and after hearing the counsel for both the parties, I am satisfied that the order of the Appellate Authority cannot be sustained.

As has been observed earlier, and this fact is not disputed before me; what was let out to the respondents' predecessor-in-interest Shri Surinder Nath was vacant land for the purpose of his business, and in order to enable him to carry on that business, the landlady had agreed to permit him to set up certain structures and instal machinery. Surinder Nath availed of this concession and set up certain structures. In the year 1949, when he executed the fresh rent note, Exhibit A. 2, he again obtained the right to put up further structures, but at the same time specifically agreed to hand over the possession of the rented land on the expiry of the period of 15 years. The structure was permitted to be put up by him at his own cost, and it was further agreed between the parties that while handing back the possession the tenant was to level the ground and fill up pits etc., if there were any. This indicates beyond any manner of doubt that the intention of the parties was that though during the period of tenancy the tenant could make use of the premises in any manner that he considered best in his interests and for that purpose he could put up certain structures, the nature of the premises at the time of the inception of the tenancy was vacant site, and it was in that state that its possession had to be delivered back to the landlady on the expiry of the lease.

On these premises, it will be evident that the Rent Controller had the jurisdiction to deal with an application for eviction of the tenant if the case fell under any of the clauses of section 13 of the Act.

The argument that has been raised on behalf of the respondents is that since by construction of buildings and installation of machinery over the rented land the nature of the premises had altered, the Rent Controller had no jurisdiction to order the

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eviction, as the respondents were not tenants in the buildings standing thereon and the vacant land as such was no longer there the possession of which could be handed over to the landladies. In support of this argument, reliance is placed upon the Single Bench decisions to which reference has already been made and upon which the judgment of the Appellate Authority proceeds. Both these decisions are, however, distinguishable on facts. In *P. Chinnakannu Pillai v. Ammalu Ammal Gomathi Ammal and anothers* (supra) (1), the Rent Controller had ordered the landlord to pay compensation for the structures set up by the tenant. The High Court held that that order was without jurisdiction. In the case before us there is no question of any compensation, and it can well be appreciated that the power to order eviction does not include the authority to order payment of compensation before the landlord takes over the property. In *Pyara Singh v. Mahant Gurmukh Das and another* (supra), (2), Dua, J., did not express any opinion on the effect of the tenant setting up a structure on the rented land. On the other hand, his Lordship expressly left this matter to be decided by the Rent Controller, and for that purpose remanded the case. The observations in that judgment, upon which Mr. Raj Kumar, appearing for the respondents, places reliance, are these:—

“In my opinion, the Rent Controller whose jurisdiction is circumscribed by the statute as a special tribunal was enjoined by law to keep himself within the bounds of his jurisdiction. As is obvious, the tenant was a tenant only in regard to the vacant site and the Rent Controller could only pass an eviction order in regard to that site. The fact that the tenant had not specifically raised the plea would not clothe the Rent Controller with jurisdiction to pass any order of eviction in regard to the property which is not let out, by the landlord to the tenant, whether actually or constructively. In my opinion, it was the duty and function of the Rent Controller to advert to this fact and not to pass an order of eviction from the building, as if it was automatic, merely on the failure of the tenant to pay or tender the arrears of rent on the first hearing of the application. The learned appellate authority also seems to me to have fallen into the same error, namely, that an order of eviction from the structure which is not the tenanted premises must automatically be passed on failure on the part of the tenant to pay or tender the arrears on the first hearing.”

These observations, in my opinion, do not support the contention raised on behalf of the respondents or the view taken by the learned Appellate Authority.

On the contrary, there are two other Single Bench decisions of this Court, in which the competence of the Rent Controller to order eviction from the land notwithstanding the setting up of the structures after the lease in his favour, has been recognized. In *Partap Singh and another v. Santokh Singh and another* (3), Grover, J., while dealing with a similar question, held that notwithstanding the fact that a structure had been put up on the rented land by the tenant, the Rent Controller could order eviction if the ground of eviction was made out under the Act. The facts of that case are closely similar to those of the case in hand. In that case, the Rent Controller had taken the view that though originally what was let out to the tenants was land, yet since they were allowed to set up machinery electric motors and also some structures, the premises fell within the category of non-residential building from which ejection could not be ordered after the amendment of the Act. The Appellate Authority agreed with that view, but Grover, J., overruled it with these observations:—

“It is common ground that originally when the land in dispute was let out, it consisted of a vacant piece but that certain structures were subsequently put up on it for the purposes of running a saw-mill. It had thus been rented for business, and merely because some structures had been put on it, it is not possible to see how it ceased to be a rented land. Whenever any land is let out for the purposes of being used principally for business or trade, some sort of structures are bound to be made in order to carry on that business or trade. “Building” is defined by sub-clause (a) of section 2 to mean ‘any building or part of a building let for any purpose whether being actually used for that purpose or not.....’. It is nobody’s case that the premises when they were originally let out fell within the definition of the word ‘building’. In order to become a building within the meaning of the definition, it must be let out as such. In other words, there must be a building

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(3) Civil Revision No. 165 of 1965 decided on 7th April, 1961.

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standing on some land which should be let out by the landlord to the tenant. I have not been persuaded either on the language of the statute or on the basis of any principle or authority that if some structures are put up on land which is rented for the purposes of trade or business in order to carry out that trade or business by the tenants, then the premises would cease to be rented land and would become building within the meaning of the definition given in section 2."

If I may say so with respect, this represents the correct legal position.

Later, in *Ram Parshad and another v. Municipal Committee, Ladwa* (4), Dulat, J., while dealing with the case of subletting by a tenant to whom vacant land had been let out but upon which some structure had been put up subsequent to the commencement of the lease by the landlord, held that if the premises were sublet the Rent Controller had jurisdiction to order eviction notwithstanding the fact that the structure had to be put up upon the rented land by the tenant during the term of his lease. The relevant observations made by his Lordship are found in the following passage of that judgment:—

"Mr. Aggarwal first contends that the property let in this case cannot be properly described as rented land because according to him, the purpose for which the land was let to the lessees was not any business or trade but merely the building of one or two shops on it, the implication of the argument being that it is not necessary or even permissible to look beyond the immediate object, namely, the construction of shops. I do not see how it is possible to view the facts in that artificial manner. The recitals in the lease-deed and other admitted facts leave no doubt that the only purpose for hiring the land in question was to build shops for purposes of the ordinary business and trade of the lessees. Rented land is defined in the Rent Restriction Act as land let separately for the purpose of being used principally for business or trade and there is

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(4) Civil Revision No. 430 of 1961, decided on 3rd November, 1961.

little doubt that in this case the main purpose was business and trade, and of course the land was let separately from any building.”

After noticing the decisions of this Court in *Lachhman Dass v. Kesri* (5), and *Raja Ram v. Mukand Singh* (6), and distinguishing the same, his Lordship held that a tenant who had sublet the premises after putting up structures on the rented land was liable to eviction.

It is thus obvious that so far as the authority of this Court goes, the view taken is against that which has appealed to the learned Appellate Authority. Even on the bare reading of the various provisions of the Act, I find there is nothing to sustain the decision of the Appellate Authority. To ascertain the nature of the premises and the purpose for which it was let one has primarily to look to the lease deed or the rent note itself. If subsequently there is any alteration made in the premises by the tenant or it is used for a purpose different from the one for which it had been let out, that would not deprive the landlord of his right to seek eviction. This is obvious from the very provisions of section 13 as conversion of user itself is made a ground for ejection. In the instant case, there is no dispute that what was originally let out to the respondents was vacant land without any building, and though the tenants were given the right to set up structures suitable for his convenience and to instal machinery in connection with their trade and business, on the expiry of the lease deed, they were bound to restore the property to the landlady in its original condition. It is true that so far as the buildings standing on this land are concerned the tenant has the right of ownership and the petitioners have no claim over the same. It is also correct that so far as those buildings are concerned, the respondents are not the tenants of the petitioners, but that does not mean that the petitioners have lost the right to recover possession simply because they had permitted the tenant to set up structures and instal machinery which was necessary for carrying on the business for which the premises were let out.

For all these reasons, I am of the opinion that the subletting having been proved, the respondents had incurred liability for

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(5) C.R. 476 of 1959.

(6) C.R. 475 of 1960 decided on 10th November, 1960.



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eviction and cannot remain in possession as tenants. The petition is, accordingly, accepted with costs. The respondents are, however allowed three months' time to hand over the possession of the premises to the petitioners.

It may be mentioned that Mr. Raj Kumar Aggarwal has contended in the course of arguments that no order calling upon the tenant to remove the structures or the machinery installed thereon can be passed by the Rent Controller or the Appellate Authority. It is needless to go into this matter as such an order would enure for the benefit of the tenant, and if the tenant does not wish to avail of that concession, he is at liberty to ignore that part of the order. I would thus make it clear that if the respondents wish to remove the structures and the machinery installed by them on the rented land, they will be at liberty to do so and should remove the same within the period of three months allowed to them by this order, but if they do not wish to avail of this concession, it would not affect the right of the petitioners to take possession of the premises.

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R. N. M.

LETTERS PATENT APPEAL

*Before S. B. Capoor and Shamsher Bahadur, JJ.*

RAM CHANDER,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

**Letters Patent Appeal No 298 of 1966**

November 13, 1967

*Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 34—Constitution of India (1950)—Article 299(1)—Acquired evacuee properties in the compensation pool—Transfer of to the Punjab Government as “package deal”—Such transfer—Whether to be effected by instrument of conveyance under Article 299(1)—Package deal properties—Whether completely transferred to the Punjab Government—Settlement authorities—Whether can pass any orders in relation thereto—Sale of such properties by the Punjab Government—Whether can be set aside.*

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