

Sarwan Singh v. Kaur Chand and another. (Mahajan, J.)

(annexure 'E') are quashed and set aside. In the circumstances of the case, there is no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

SARWAN SINGH,—Petitioner.

versus

KAUR CHAND AND ANOTHER,—Respondents.

Civil Revision No. 521 of 1968

September 23, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(c) and 13—Application for eviction—Decendants of original land-lord—Whether individually have right to file such application.

Held, that it is apparent from the definition of "landlord" in section 2(c) of East Punjab Urban Rent Restriction Act that every person who derives title from the landlord is the landlord. The result is that all the descendants of a original landlord, who has died, are landlords individually in their own right. Section 13 of the Act under which an application for eviction is made provides that a landlord who wants to evict shall apply to the Controller in that behalf. Therefore, it is obvious that one of the landlords can make application for eviction of the tenant under the Act.

(Para 3)

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of Shri Diali Ram Puri, Appellate Authority, Ferozepore, dated 16th May, 1968, reversing that of Shri Hardial Singh, Rent Controller, Muktsar, dated 19th October, 1967, setting aside the order of the learned Controller and accepting this appeal and directing the tenant-respondent to deliver possession of the tenancy premises in dispute to the landlords-appellants.

PURAN CHAND, ADVOCATE, for the Petitioner.

G. C. MITTAL, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This petition for revision is directed against the decision of the appellate authority reversing on appeal the decision of the Rent Controller rejecting the application of the landlords-respondents for eviction of the petitioner-tenant. The eviction

was claimed on two grounds; non-payment of rent and that the landlords required the premises for their personal use, as they wanted to shift to Malaut because they were carrying on their business there. The Rent Controller came to the conclusion that the landlords did not *bona fide* require the premises for their own use. The arrears of rent were paid at the first hearing. Therefore the claim to eviction on that ground disappeared. In appeal by the landlords, the appellate authority has taken the view that the landlords required the premises for their personal use and, therefore, he set aside the decision of the Rent Controller and granted order for eviction of the tenant. The tenant who is dis-satisfied with this decision has come up in revision to this Court. The first contention of Mr. Puran Chand, learned counsel for the petitioner-tenant is that the eviction application should have been by all the landlords and not by two out of the landlords and in support of his contention, the learned counsel has relied upon the decision of the Orissa High Court in *Mohammad Asgar Ali v. Narayan Mohapatra and others* (1), and Bombay High Court in *Vagha Jesing v. Manilal Bhogilal Desai and others* (2). These decisions do support the contention of the learned counsel. In fact, if a reference is made to Note 34 of Chitale's Transfer of Property Act (IV of 1882) 3rd edition, page 1737, it will be found that the view enunciated by the Orissa High Court is the preponderant view. However, these decisions will not have any application to the facts of the present case. It is not disputed that the original contract of lease was between the father of the present applicants and the tenant. The rights of the father have devolved on the applicants by succession. Therefore, there is no contract of lease between the present applicants and the tenant. In any event, the objection that the sisters of the present applicants who are heirs to the property along with their brothers should have been joined in the application for eviction, was not raised at the trial. In my opinion, this objection cannot be permitted at the stage of revision, because if this objection had been raised at the trial, the defect could have been remedied by impleading the sisters as co-applicants.

(21) I am even doubtful whether this contention would be correct so far as the provisions of the East Punjab Urban Rent Restriction Act, 1949, are concerned. Section 2(c) of the Act defines the "landlord" in the following terms:—

(1) A.I.R. 1958 Orisa 101.

(2) A.I.R. 1935 Bom. 262.

date, the result was declared. Shri Harchand Singh, respondent, was declared as a returned candidate, his nearest rival being Shri Brish Bhan. The present petition has been filed by the petitioner under sections 80 and 81 of the Representation of the People Act, 1951 (hereinafter called the Act). The only ground, on which the election of the returned candidate is sought to be declared void, is one under section 100(1)(c) of the Act, namely, that the nomination paper of the petitioner was improperly rejected.

(3) The respondent, Shri Harchand Singh, filed his written statement on the 23rd of April, 1969. He raised a number of pleas; but the only plea, that was put in issue and on which the trial proceeded, relates to the improper rejection of the nomination paper of the petitioner. The only disputed question is, whether the petitioner was below the age of 25 years on the date when he filed his nomination paper?

(4) An application was made on the 6th of May, 1969, by Shri Brish Bhan, the defeated Congress candidate, praying that he may be impleaded as a respondent inasmuch as the petitioner was colluding with the returned candidate and would thereby defeat the fair trial of the petition by withholding proper evidence. This petition was allowed by my order dated the 7th of May, 1969. An amount of Rs. 1,000 as security was also deposited by the applicant.

(5) Shri Brish Bhan filed his written statement on the 9th of May, 1969, along with an application that he may be permitted to lead evidence to support the allegations made in the petition. Notice of this application was issued to the petitioner and Shri Harchand Singh, respondent. Both of them filed their replies to the same on the 16th of May, 1969. It was denied that they had colluded with the petitioner. It was also prayed that Shri Brish Bhan should not be allowed to lead evidence in support of the allegations made in the petition. After hearing the learned counsel for the parties, by my order dated the 16th of May, 1969, I permitted respondent No. 2, Shri Brish Bhan to lead evidence.

(6) The only issue, which was framed and on which the trial proceeded, is set out below:—

“Whether the nomination paper of the petitioner has been improperly or illegally rejected, and what is its effect?”

(7) The contention of Mr. A. S. Bains and Mr. Jagan Nath Kaushal, learned counsel for the petitioner and respondent

No. 2, respectively, is that the nomination paper has been improperly rejected inasmuch as:—

(a) on the face of the nomination paper, the petitioner had stated his age as 26 years. The electoral roll, which was prepared on the 1st of January, 1965, in which his age is recorded as 20 years, could not be taken to be conclusive. In fact, no presumption is attached to the electoral roll in the matter of age. Only that person could be an elector who is 21 years of age when he is entered in the electoral roll. Under section 36(7) of the 1951 Act, if a person is entered as an elector, there is a conclusive presumption that he is not less than twenty-one years of age. Therefore, the Returning Officer should have proceeded on the basis that on the 1st of January, 1965, the petitioner was 21 years of age and necessarily on the date of the filing of the nomination paper, that is, 7th of January, 1969, the petitioner was more than 25 years of age; and

(b) that, in any case, it is proved on the record that the age of the petitioner was more than 25 years on the 7th of January, 1969, and therefore, his nomination paper could not be rejected because he was not 25 years of age on the day, he filed his nomination paper.

(8) On the other hand, the contention of Mr. J. S. Rekhi, learned counsel for respondent No. 1, Shri Harchand Singh, is that no attempt was made by the petitioner to show that his age recorded in the electoral roll was wrong and, therefore, the Returning Officer was justified in proceeding on the basis that the age of the petitioner was 20 years. In view of the fact, that no other material was placed before the Returning Officer, when he rejected the petitioner's nomination paper, his order is final and is not open to scrutiny in an election petition because on the material available to the Returning Officer, the order of rejection cannot be held to be, in any manner, improper.

(9) These respective contentions have to be determined to arrive at the conclusion, whether the rejection of the nomination paper was proper or not. Before examining these contentions, it will be proper to refer to the relevant provisions of the Representation of the People Act, 1950 (Act No. 43 of 1950) (hereinafter called the 1950