

REVISIONAL CIVIL

*Before Daya Krishan Mahajan, J.*LABHOO RAM,—*Petitioner**versus*SEETAL,—*Respondent*

Civil Revision No. 142 of 1967

December 22, 1967

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Bona fide requirement for personal use of landlord—When to be seen—Landlord in occupation of one portion of the building, the other two portions being in occupation of two different tenants—Landlord filing application for eviction of tenant from one portion—The other portion falling vacant during the pendency of the application—Such vacation—Whether warrants dismissal of the eviction application.

Held, that the bona fide of the landlord claiming eviction of his tenant on the ground of personal requirements are to be seen at the time the claim for eviction is made.

Held, that there is no provision in the statute which warrants the dismissal of an application by a landlord for eviction of his tenant from one portion of a building merely because subsequently certain part of the premises in possession of another tenant falls vacant. It may be that the accommodation which falls vacant is not suitable so far as the landlord is concerned or it may be far more than his requirement. If he were to keep part of that accommodation with himself, the surplus accommodation may not be capable of being rented out. Therefore, the mere fortuitous circumstance that a part of the building in possession of another tenant has fallen vacant cannot lead to the dismissal of the application which was otherwise *bona fide* and was in accordance with law.

Petition under Section 15(5) of East Punjab Urban Rent Restriction, Act, 1949 for revision of the order of the Court of Shri Prem Nath Thakural Appellate Authority, (District and Session Judge, Ambala), dated 19th November, 1966, affirming that of Shri Om Parkash, Rent Controller, Ambala Cantt., dated 24th November, 1965, dismissing the application of the petitioner.

D. S. NEHRA, ADVOCATE, for the Petitioner.

S. P. GOYAL, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This petition for revision is directed against the concurrent decisions of the Appellate Authority and the Rent Controller dismissing the landlord's application for eviction of the respondent. On facts there is no dispute. The landlord was employed as an Assistant Accounts Officer and after his retirement was serving in the same capacity in Dehradun. As soon as his extended service came to a end, he came back to Ambala and occupied a part of the house in dispute. A part of this house is in occupation of the respondent. The other part was in occupation of one Banke. The landlord filed an application for eviction of the respondent on the 22nd of February, 1965, *inter alia* on the ground that the accommodation with him was insufficient for his own requirements. The other grounds which were raised are no longer in controversy and I have not, therefore, noticed them. During the pendency of the application on the 22nd of September, 1965, Banke surrendered the possession and with the consent of the landlord the premises were rented out to Miss Paul. It has been found as a fact by the Rent Controller that the accommodation with the landlord was insufficient for his requirements. In other words need for more accommodation was *bona fide*. But in spite of this finding the application was dismissed because Banke's accommodation fell vacant and according to the Rent Controller that accommodation would have met the requirements of the landlord fully and, therefore, he should not have agreed to rent it out to Miss Paul. It is on this ground alone that the petition has failed.

On appeal the Appellate Authority remitted the case to the Rent Controller for a finding whether the landlord had vacated the premises without any reasonable cause after the passing of the Act. The Rent Controller returned the finding that the landlord had not vacated any premises within the urban area of Ambala Cantt., without any reasonable cause after the passing of the Act. After the report, the Appellate Authority proceeded to deal with the landlord's appeal. The Appellate Authority rejected the application on the same ground on which the Rent Controller had rejected the landlord's application, namely, the landlord's consent to the letting of premises in occupation of Banke to Miss Paul would necessarily lead to the dismissal of the eviction application. It is against this decision that the present application for revision has been preferred.

In my opinion, the petition must succeed because the entire approach to the application of the landlord by the Appellate Authority as well as by the Rent Controller is legally erroneous. It is well settled that the *bona fides* of the landlord claiming eviction of his tenant are to be seen at the time the claim for eviction is made. In this connection, reference may be made to *C. L. Dayer v. Amar Nath Kapur* (1), *Maharaj Jagat Bahadur Singh v. Badri Parshad Seth* (2) and *Shrimati Lila Tully v. S. Gopal Singh* (3). At the time when the application was made there were two tenants in the premises, the respondent and Banke. The landlord had the choice either to evict Banke or the respondent. He exercised his choice to evict the respondent. It has been found as a fact that the accommodation in his possession was insufficient. According to the landlord, the accommodation in possession of respondent if made available to him would meet his requirements and that is why he chose to evict the respondent. The question that arises is whether the later vacation of premises by Banke after six months of the application for eviction would in any manner adversely effect the same. In my opinion, it will not. There is no provision in the statute which warrants the dismissal of such an application merely because subsequently certain part of the premises in possession of another tenant falls vacant. It may be that the accommodation which falls vacant is not suitable so far as the landlord is concerned or it may be far more than his requirement. If he were to keep part of that accommodation with himself, the surplus accommodation may not be capable of renting out. Therefore, the more fortuitous circumstance that a part of the building in possession of another tenant falls vacant cannot lead to the dismissal of the application which was otherwise *bona fide* and was in accordance with law. For instance, if the application had been granted before the 22nd of September, 1965, when the premises fell vacant, could the petition be dismissed thereafter on the ground that a few days later another tenant vacated the premises which would satisfy the requirements of the landlord? To this problem the answer given by the learned counsel for the respondent was that this would not nullify the order of eviction. How can then the fortuitous circumstances that before an order for eviction is passed, a part of the premises falls vacant could merit the dismissal of the eviction petition. As already stated if the intention of the

(1) 1968 P.L.R. 644

(2) 1954 P.L.R. 545.

(3) 1962 P.L.R. 441.

Legislature was that accommodation which may fall vacant during the pendency of the eviction petition were to lead to the dismissal of the eviction petition, a provision to that effect would have been made. On the contrary the provision is that before the application is made, the landlord has to satisfy the Rent Controller that he did not vacate any premises in his occupation in order to secure eviction of the tenant. In these circumstances, it appears to me that the Rent Controller as well as the Appellate Authority had mis-directed themselves in taking into consideration the vacation of premises by Banke on the 22nd September, 1965, for the purpose of rejecting the landlord's application. There is no legal basis which would warrant such a result.

In this view of the matter I allow this petition, quash the orders of the Appellate Authority and the Rent Controller and direct that the tenant be evicted from the premises. I, however, allow three months' time to the tenant to vacate the premises. There will be no order as to costs.

K. S. K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and R. S. Narula, J.

MUNI LAL,—*Appellant*

versus

CHANDU LAL,—*Respondent*

R.S.A. No. 1561 of 1963

January 3, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Application under—Existence of relationship of landlord and tenant between the parties denied—Rent Control Authorities—Whether can go into that question—S. 15(4)—Questions already decided by the Rent Control authorities—Whether can be re-adjudicated by Civil Courts—"Order" and "decision"—Whether synonyms.