
rental due before the box is allowed to be operation upon. These matters are decided accordingly with no order as to costs.

S.C.K.

Before : D. V. Sehgal, J.

DINA NATH GULATI,—Petitioner.

versus

SANTOSH KAUR and another,—Respondents.

Civil Revision No. 1806 of 1986

December 8, 1986

East Punjab Urban Rent Restriction Act (III of 1949) as amended by Punjab Act (II of 1985)—Sections 2(hh), 13(3)(1)(i), 13-A and 18-A & B—Provincial Small Cause Courts Act (IX of 1887)—Section 17—Code of Civil Procedure (V of 1908)—Order 50, clause (b), Rule 1—Scope and object of aforesaid sections—Stated.

Held, that :

- (i) the words "He does not own and possess any other suitable accommodation in the local area" and "intends to reside" in Section 13-A of the East Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No. 2 of 1985, have a different connotation and are not to be equated with the words "he is not occupying any other residential building in the urban area concerned" and "he requires it for his own occupation" respectively used in Section 13(3)(a)(i) of the Act;
- (ii) When a "specified landlord" defined in Section 2(hh) of the Act and on his death the heir mentioned in the first proviso to section 13-A applies to the Rent Controller to recover immediate possession of the premises specified in Section 13-A complying with its requirements, a right accrues to him to recover immediate possession of the same.
- (iii) By taking assistance of the first proviso to Section 13-A no constraint can be used on the words "for his own occupation" in the principal provision so as to mean that during his lifetime the specified landlord cannot accommodate with him his wife, children and grandchildren.

Dina Nath Gulati *v.* Santosh Kaur and another
(D. V. Sehgal, J.)

Similarly, it cannot be contended that on the death of a specified landlord when his/her widow/widower recovers possession under Section 13-A he/she cannot accommodate with him/her children, grandchildren and so on. Such a construction of the provision would defeat the very purpose of Punjab Act No. 2 of 1985. Specified landlord has been given by the law the right to recover immediate possession of his own residential house from the tenant/tenants so that he can live in comfort in the last phase of his life and not to be confined in solitude separate from his spouse, children and grandchildren whose company alone brings him solace, satisfaction and a sense of fulfilment in the evening of his life.

- (iv) In response to the service of summons on him by the Rent Controller with regard to an application under Section 13-A, if the tenant does not appear or is not successful in obtaining leave of the Rent Controller to contest the same, sub-section (4) of Section 18-A lays down in no uncertain terms that the statement made by the specified landlord in the application for eviction shall be deemed to be admitted and the applicant shall be entitled to an order of eviction of the tenant. Likewise, if the tenant appears and is given leave by the Rent Controller to contest the application but ultimately he fails to prove such facts as would disentitle the applicant from obtaining an order for the recovery of possession, the applicant shall be entitled to an order of eviction of the tenant. In view of the provisions of section 18-B, this entitlement of the applicant cannot be subjected to the satisfaction of the Rent Controller under clause (b) of Section 13(3) of the Act which is clearly inconsistent with Section 18-A.
- (v) Sub-section (7) of Section 18-A leaves no scope for doubt that the Rent Controller shall, while holding proceedings to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes. Keeping in view the provisions of Section 17 of the Provincial Small Cause Courts Act, 1887, the provisions of the Code of Civil Procedure such as settlement of issues and others as enumerated in clause (b) of Order 50, Rule 1 thereof shall not apply to such proceedings;
- (vi) The power of the High Court under the proviso to sub-section (8) of Section 18-A is not coextensive with the

power of revision under sub-section (5) of Section 15 of the Act. The former does not confer power on the High Court to appreciate the evidence to satisfy itself as to the legality or propriety of the order. It can call the record of the case for the purpose of satisfying itself that the order made by the Rent Controller is according to law. In other words it can interfere with the order if it is without jurisdiction or contrary to law and express provisions of the Act as amended by Punjab Act No. 2 of 1985 or where the order is perverse resulting in miscarriage of justice.

(Para 15).

PETITION Under Section 15(5) read with Section 18-A(8) of the East Punjab Rent Restriction Act, as amended by Punjab Act No. 2 of 1985, against the order of the Court of Shri M. L. Malhotra, P.C.S., Rent Controller, Ludhiana, dated 26th May, 1986, accepting the application under Section 13-A of the Act of 1985 and granting one month's time to the respondent to put Shrimati Santokh Kaur in possession of the demised premises failing which she shall be entitled to recover the possession through the process of law.

M. L. Sarin, Advocate with A. S. Grewal, and Jai Shree Thakar, Advocates, for the Petitioners.

H. L. Sibal, Senior Advocate (R. C. Setia and M. M. S. Bedi, Advocate with him), for the Respondents.

JUDGMENT

D. V. Sehgal, J:

(1) An order of ejectment of the tenant-petitioner passed by the learned Rent Controller, Ludhiana, on 26th May, 1986 on a petition under section 13-A of the East Punjab Urban Rent Restriction Act, 1949 as amended by the Amendment Act No. 2 of 1985 (hereunder called 'the Act') from the ground floor of the house which originally belonged to Dr. Karam Singh Dargon, deceased husband of respondent No. 1, is the subject-matter of dispute in the present revision petition.

(2) A few facts need mention here. The house in dispute is two-storeyed and was owned by Dr. Karam Singh Dargon. Its ground-floor is occupied as a tenant by Dr. Dina Nath Gulati petitioner and it is admittedly a scheduled building. The first floor was in occupation of Amrik Singh R.W. 1 as a tenant who vacated

Dina Nath Gulati v. Santosh Kaur and another
(D. V. Sehgal, J.)

the same in the month of December, 1980. Dr. Karam Singh Dargon was employed as a Scientist S-3 and Head, Division of Soils and Agronomy at the Central Soil Salinity Research Institute, Karnal, under the Indian Council of Agricultural Research, New Delhi. Prior to his deputation and ultimate absorption in the said Institute, he was an employee of the Punjab Government. On attaining the age of superannuation, he retired from the service of the Institute with effect from 28th February, 1981 as is evident from the office order of even date Exhibit A-1. It is the admitted case that after his retirement Dr. Dargon, his wife and other family members occupied and lived on the first floor of the house in dispute earlier vacated by Amrik Singh R.W. I. He filed an application dated 26th October, 1981 under section 13 of the Act for the ejection of the tenant-petitioner which was later dismissed without having been decided on merits. While the case of the petitioner is that Dr. Dargon had agreed to sell the house to him,—vide agreement dated 1st February, 1983, marked 'A', the case of respondent No. 1 is that the application for ejection was not pressed as the petitioner had stressed that he would vacate the ground floor of the house, Dr. Dargon along with his wife later left for U.S.A. to stay there with his sons who are settled and gainfully employed there. An advertisement dated 22nd May, 1983 marked 'B' appeared in the newspaper, which according to the petitioner, was for letting out first floor of the house in dispute which was lying vacant after Dr. Dargon had left for the U.S.A. Dr. Dargon while in U.S.A. died on 19th April, 1983. One of his sons Jasjit Singh, who is respondent No. 2 herein, is employed in a bank. He was earlier posted at Ludhiana. Later he was transferred to some out station but is again alleged to have been reposted at Ludhiana. Smt. Santosh Kaur, widow of Dr. K. S. Dargon, came back from the U.S.A. to reside at Ludhiana. She admittedly reoccupied the first floor of the house. She filed an application for ejection of the petitioner under section 13 of the Act which is pending. Punjab Act No. 2 of 1985 came into force on 16th November, 1985 whereby some provisions beneficial to the landlords, who had retired from Government service or are about to retire, were incorporated in the Act. The relevant provisions so incorporated, which shall come up for discussion in the present case, are reproduced below :—

“Section 2(kh) : “Specified landlord” means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in

a public service or post in connection with the affairs of the Union or of a State." *Section 13-A Right to recover immediate possession of residential or scheduled building to accrue to certain persons:* Where a specified landlord at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied) custom or usage to the contrary, a right to recover immediately the 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 :

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grandchild or a widowed daughter-in-law who was dependant upon such specified landlord at the time of his death shall be entitled to make an application under this section to the Controller,—

- (a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rest Restriction (Amendment) Act, 1985, within one year of such commencement :
- (b) in the case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death ;
- (c) in the case of death of such specified landlord, after such commencement and the date of his retirement, within one year of the date of such retirement :

Dina Nath Gulati *v.* Santosh Kaur and another
(D. V. Sehgal, J.)

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant :

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.

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate."

Section 18-A : Special Procedure for disposal of applications under section 13-A :

- (1) Every application under section 13-A shall be dealt with in accordance with the procedure specified in this section.
- (2) After an application under section 13-A is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.
- (3) * * * * *
- (4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons

or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

- (5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord from obtaining an order for the recovery of possession of the residential building or scheduled building, as the case may be, under section 13-A.
- (6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave is granted to the tenant to contest and shall hear the application from day to day till the hearing is concluded and application decided.
- (7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.
- (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.

Dina Nath Gulati v. Santosh Kaur and another
(D. V. Sehgal, J.)

(9) Save as otherwise provided in this section the procedure for the disposal of an application for eviction under section 13-A shall be the same as the procedure for the disposal of application by the Controller."

"Section 18-B: Section 18-A to have over-riding effect: 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.

Section 19. Penalties :

(1) (1) * * * *

(2) (1) * * * *

"(2-A) : The specified landlord or the widow, widower, child, grandchild or widowed daughter-in-law of such landlord, as the case may be, who having evicted a tenant from a residential building or a scheduled building in pursuance of an order made under section 13-A does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person other than the tenant in contravention of the provisions of sub-section (4-A) of section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both."

(3) Respondent No. 1 claiming herself to be the widow of a specified landlord and respondent No. 2 as the son of a specified landlord filed an application under section 13-A of the Act to recover possession of the ground floor of the house in dispute from the petitioner. On being served with the summons of this application the petitioner applied for leave to defend, which was granted to him by the Rent Controller. The Rent Controller did not frame any issues and applied the procedure prescribed for a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and after appreciating the evidence adduced by the parties held

that respondent No. 1 had a right to recover possession of the premises in dispute from the petitioner and allowed her application. He, however, held that respondent No. 2, in the presence of respondent No. 1, had no right to file an application under section 13-A *ibid* and dismissed the application on his behalf. The present revision petition has been filed by the petitioner under the proviso to sub-section (8) of section 18-A *ibid*.

(4) I have heard the learned counsel for the parties at sufficient length. The learned counsel for the petitioner has, *inter alia*, contended that Dr. Dargon as an officer having retired from an Institute under the Indian Council of Agricultural Research was not a specified landlord within the meaning of section 2(hh) and, therefore, respondent No. 1 as his widow was not entitled to maintain the petition by virtue of the proviso to section 13-A; that if at all respondent No. 1 could maintain the said petition she could recover possession of the demised premises only if the accommodation already owned and possessed by her in the local area concerned was not suitable for her; that for the purposes of such suitability she could not take into account the need of her children or grandchildren because the right to recover possession under section 13-A is confined to what is her own requirement; that the first floor of the house in dispute is more than sufficient not only for respondent No. 1 to accommodate herself but also for her son and grandchildren and as such her need for the ground floor in occupation of the petitioner as a tenant is not *bona-fide*; that her statement that she is suffering from pain in her joints, arthritis and blood pressure is not supported by any medical evidence, inasmuch as the prescriptions and certificates produced by her have not been duly proved on the record; and that the intention of respondent No. 1 is to get the house vacated and then to sell the same. This is apparent from the fact that Dr. Dargon agreed to sell the house to the petitioner,—*vide* agreement marked 'A' on 1st February, 1983. Even otherwise the first application for eviction of the petitioner filed by Dr. Dargon on 26th October, 1981 was dismissed while a second application filed by respondent No. 1 on 4th December, 1985 is pending. Advertisement marked 'B' dated 22nd May, 1983 shows that even the first floor of the house in dispute was intended to be let out. Thus, the need of respondent No. 1 is not at all *bona-fide*; that at any rate respondent No. 1 by taking shelter under the provisions of section 13-A as introduced by Punjab Act No. 2 of 1985 aims at evicting the petitioner and then disposing of the house; that after the Rent Controller has given leave to the petitioner to contest the

Dina Nath Gulati *v.* Santosh Kaur and another
(D. V. Sehgal, J.)

application under section 13-A he was wrong in adopting summary procedure of a Court of Small Causes; that he ought to have taken regular proceedings and afforded opportunity to the parties under the Code of Civil Procedure to lead evidence; and that this Court while exercising its revisional powers should re-appreciate the evidence brought on the record and the same would bring out that respondent No. 1 has not been able to establish her right to recover possession under section 13-A of the Act.

(5) The learned counsel for respondent No. 1, on the other hand, has submitted that Dr. K. S. Dargon as an officer in an Institute under the Indian Council of Agricultural Research was a specified landlord within the meaning of section 2(hh); that the application for ejectment of the petitioner made by him on 26th October, 1981, its withdrawal, the alleged agreement to sell—marked 'A'—and the advertisement dated 22nd May, 1983 marked 'B' to let out the first floor are of no consequence for the reason that Dr. Dargon along with respondent No. 1 had left for U.S.A. to reside with his sons there and perhaps his need for the house in dispute no longer existed but the position radically changed on the death of Dr. Dargon in U.S.A. which compelled his widow, respondent No. 1, to come back to India. She made an application under section 13 of the Act for ejectment of the petitioner on 4th December, 1985. Since she was entitled to recover possession from the petitioner as widow of the specified landlord by virtue of the first proviso to section 13-A she moved the instant application on 21st January, 1986. She has established her right to recover the possession. The Rent Controller was satisfied on the basis of her statement in Court that she was suffering from Arthritis and could not climb the stairs and put up on the first floor of the house; that she could not be compelled to live all alone in the premises in dispute; that for her comfort and normal living she could accommodate with her her son who is employed in a bank at Ludhiana as also her daughter-in-law and grand-children; she needed the entire house—ground floor as well as the first floor and that she did not intend either to sell the house or let out any part of the same. Punjab Act No. 2 of 1985 has stipulated a deterrent against a false claim under section 13-A inasmuch as sub-section (2-A) of section 19 provides that if the applicant under section 13-A on having evicted the tenant from the premises does not occupy it for a continuous period of three months or lets out the whole or any part of the same to a person other than the tenant, who was

evicted, such applicant shall be liable for imprisonment for a term which may extend to six months or with a fine which may extend to Rs. 1,000 or both. He further submits that in the present revision this Court has to satisfy itself whether the order passed by the Rent Controller is according to law. Evidence on the record is not to be re-appreciated. The scope of the revision is quite limited in nature.

(6) As regards the contention of the learned counsel for the petitioner that Dr. Dargon was not a specified landlord within the meaning of section 2(hh) of the Act, what has to be found out is whether at the time of his retirement he was holding an appointment in a public service or post in connection with the affairs of the Union or of the State by reference to the office orders Exhibit A-1 and A-2, it is beyond dispute that Dr. Dargon at the time of his retirement was holding the post of Scientist S-3 and Head, Division of Soils and Agronomy in the Council Soil Salinity Research Institute, Karnal, under the Indian Council of Agricultural Research. The question therefore is whether holding of an appointment under the Indian Council of Agricultural Research is in connection with the affairs of the Union. Article 37 of the Constitution lays down that the Directive Principles of State Policy enshrined in Part IV thereof are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 48 lays down that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle. In *Ramana Dayaram Shetty v. The International Airport Authority of India and others*, (1) it has been observed thus—

“Now, it is obvious that the Government which represents the executive authority of the State, may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government

(1) A.I.R. 1979 S.C. 1628.

Dina Nath Gulati *v.* Santosh Kaur and another
(D. V. Sehgal, J.)

multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporations came into being as the third arm of the Government. As early as 1819 the Supreme Court of the United States in *Mac Culloch v. Maryland* (2), held that the Congress has power to charter corporations as incidental to or in aid of governmental functions and as pointed out by Mathew, J., in *Sukhdev v. Bhagat Ram* (3), such federal corporations would ex-hypothesi be agencies of the Government. In Great Britain too, the policy of public administration through separate corporations was gradually evolved and the conduct of basic industries through giant corporations has now become a permanent feature of public life. So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government, it is to be found in the Government of India Resolution on Industrial Policy dated 5th April, 1948 where it was stated *inter alia* that 'management of State enterprise will as a rule be through the medium of public corporations under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this.' It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial Policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel, but the instrumentality or agency of

(2) (1816—19) 4 Wheat 316.

(3) (1975) 3 S.C.R. 619 (A.I.R. 1975 S.C. 1331)

Dina Nath Gulati v. Santosh Kaur and another
(D. V. Sehgal, J.)

(8) Thus, no scope for doubt is left that Dr. K. S. Dargon was holding an appointment in connection with the affairs of the Union and was thus a "specified landlord" within the meaning of section 2(hh) of the Act.

(9) The application filed by Dr Dargon under section 13 of the Act on 26th October, 1981 for ejection of the petitioner is of no consequence as the same was not decided on merits. For the reasons put forward by the petitioner or for those advanced by respondent No. 1 that application was not pressed. Even the fact that after Dr. Dargon and his wife respondent No. 1 had left for U.S.A., to stay there with their sons, an advertisement dated 22nd May, 1983 marked 'B' was published, according to the petitioner, for letting out the first floor of the house in dispute is also the fact that an agreement marked 'A' was allegedly executed by Dr. Dargon on 1st February, 1983 to sell the house in dispute to the petitioner are again not relevant factors while deciding the instant petition. All the plans which Dr. Dargon had for his future course of life after his retirement from service abruptly ended when he died in U.S.A. on 19th April, 1983. Respondent No. 1 might have lived happily in the company of her husband in the U.S.A. but after his demise she thought it fit to seek refuge back at home in India. She left U.S.A., reached Ludhiana and filed an application for ejection of the petitioner under section 13 of the Act on 4th December, 1985 which is admittedly pending. The learned counsel for the petitioner pointed out that the brother of respondent No. 1 during her absence to U.S.A. had asked for and got increase in the rent from the petitioner in respect of the ground floor of the house in dispute. That may be so but this is again not a deciding factor. The petitioner filed an application under section 13-A of the Act on 21st January, 1986. She being the widow of a specified landlord could maintain such an application and had the right to recover possession of the premises. No doubt respondent No. 2, who is the son of Dr. Dargon, could not maintain such an application and it has been rightly so held by the Rent Controller.

(10) The learned counsel for the petitioner has contended that since respondent No. 1 already had in her possession the first floor of the house in dispute consisting of as many as four rooms out of which one is drawing-cum-dining room and the other, according to respondent No. 1, is used as a Pooja room and two bed rooms, she did not have a genuine requirement for recovering possession of the

ground floor of the house in dispute from the petitioner. He contends that her plea that she is suffering from Arthritis and blood pressure is simply an excuse and it not supported by cogent evidence. Thus, her inability to climb the stairs to reach the first floor is only a camouflage to seek eviction of the petitioner from the ground floor. He further submits that section 13-A is to be strictly construed. Its language makes it explicit that during the lifetime of the specified landlord he can recover possession of a premises for his own use. On his death his widow can recover such a possession and it is after the death of the widow that children and then grand-children can seek possession of the premises under the said provision. During the lifetime of respondent No. 1, she cannot justify her claim for recovery of possession of the premises on the ground that she is to accommodate with her son and her grand-children. In my view, this contention, if allowed to prevail, would defeat the very object of Punjab Act No. 2 of 1985. A retired person or his widow is entitled to live along with the other members of the family including children and grand-children. In this way alone he/she can lead a homely life. A specified landlord is not supposed to live in solitude by forsaking his near and dear ones by recovering possession of the premises owned by him under section 13-A. I, therefore, reject this contention.

(11) The learned counsel for the petitioner then contended that even if respondent No. 1 is to allow her grand-children to live with her she has sufficient accommodation on the first floor of the house in dispute and the same is already in her occupation. He, therefore, contends that the requirement of section 13-A is not satisfied and the order of eviction passed by the Rent Controller cannot be sustained. He further submits that originally the plea taken by respondent No. 1 that an old widowed sister of Dr Dargon was also residing with her and she is not in a position to climb stairs. This ground is no longer available to her as the said old lady has since died. He contends that the statement of respondent No. 1 to the effect that she is suffering from Arthritis and blood pressure does not find place in her pleadings. I have examined these submissions. As already pointed out above, leaving aside the drawing-cum-dining room and the Pooja room there are two bed rooms on the first floor. Almost similar accommodation is available on the ground floor which is with the tenant-petitioner. On perusal of the application made by respondent No. 1 before the Rent Controller I find that she made a specific mention of the fact that she is

Dina Nath Gulati v. Santosh Kaur and another
(D. V. Sehgal, J.)

suffering from Arthritis. She has deposed this fact on oath as her own witness also. No doubt she produced some prescriptions, an X-ray report and diagnosis but these documents have not been formally proved on the record.

(12) However, it cannot be said that the Rent Controller could not rest his finding on the statement of respondent No. 1. While examining the matter in this revision petition, all that can be looked into is whether the order passed by the Rent Controller is in the exercise of the jurisdiction vested in him, the same is in accordance with law and is not in any manner perverse. Adequacy of material on the basis of which he returns his finding is not to be adjudged. No doubt if the finding is based on no evidence it would be against law but that is not so in the present case. I find that the Rent Controller has properly reached the conclusion that the first floor of the house in dispute in occupation of respondent No. 1 is not sufficient for her residence and keeping in view her ailment and the fact that her grand-children are to reside with her, it has been rightly held that she is entitled to recover the possession of the ground floor of the building in possession of the tenant-petitioner.

(13) The learned counsel for the petitioner questioned the procedure adopted by the Rent Controller. He contends that after leave had been granted to petitioner to contest the application, the practice and procedure that should have been followed was that of a regular trial by the Rent Controller and not that to be followed by a Court of Small Causes as provided by sub-section (7) of section 18-A. According to him, the procedure contemplated under the said provision is to be confined to the applications where the tenant does not choose to appear in response to the summons issued by the Rent Controller on an application under section 13-A, or on his appearance he is declined leave to contest the application. The scheme of section 13-A runs counter to this submission. In fact, when the tenant fails to appear in response to the summons or is not granted leave to contest the application under section 13-A, the Rent Controller has straightaway to pass an order of eviction of the tenant and no further procedure of trial is to be followed. The purport of sub-section (7) *ibid*, therefore, is that when the application is contested by the tenant on leave being given by the Rent Controller, the procedure laid down therein is to be followed.

(14) Another submission made by the learned counsel for the petitioner also remains to be dealt with. He contended on the basis of a catena of authorities that the specified landlord is required to prove his need for occupation of the premises in dispute. His mere desire to reside in the premises is not sufficient to order eviction of the tenant. All these judgments interpreted the words "he requires it (the premises) for his own occupation as used in section 13(3) (e) (i) of the Act also take into account the words "he is not occupying any other residential building in the urban area concerned." These are, therefore, of no help while interpreting the words "intends to reside" and "he does not own and possess any other suitable building in the local area" used in section 13-A of the Act. Therefore, I do not think it necessary to discuss these judgments here. Punjab Act No. 2 of 1985 was introduced to provide succour to the public servants who had retired or were going to retire within a specified period to recover possession of a residential house owned by them irrespective of the fact that it is treated as a scheduled building under the Act by evicting the tenant for their own residence. A retiree generally goes back to his home town on superannuation and his intention to reside there in his own house is manifest unless an intention to the contrary is proved. Thus, the tests which require to be satisfied while adjudicating on the application under section 13-A of the Act are quite at variance with the tests to be applied in the case of a *bona fide* need of a landlord under section 13(3)(a)(i) of the Act. It is for this reason that no discretion is left with the Rent Controller once the conditions laid down in section 13-A are satisfied by the specified landlord to whom a right accrues to recover possession of the premises from a tenant or tenants. The provisions of clause (b) of section 13(3) also for the similar reason have no application when an adjudication is made under section 13-A *ibid*.

(15) Since the statutory provisions introduced in the Act by the Amendment Act No. 2 of 1985 have been discussed above in the context of the contentions raised, I find it appropriate to sum up below the legal position that emerges on due application of these provisions—

- (i) The words "He does not own and possess any other suitable accommodation in the local area" and "intends to reside" in section 13-A of the Act have a different connotation and are not to be equated with the words "he is not occupying any other residential building in the

Dina Nath Gulati v. Santosh Kaur and another
(D. V. Sehgal, J.)

urban area concerned" and "he requires it for his own occupation" respectively used in section 13(3)(e)(i) of the Act. The case law having a bearing on the terms used in the latter provision of the Act is of no assistance in understanding the meaning and scope of the former.

- (ii) When a "specified landlord" defined in section 2(hh) and on his death the heir mentioned in the first proviso in section 13-A applies to the Rent Controller to recover immediate possession of the premises specified in section 13-A complying with its requirements, a right accrues to him to recover immediate possession of the same.
- (iii) By taking assistance of the first proviso to section 13-A no constraint can be used on the words "for his own occupation" in the principal provision so as to mean that during his lifetime the specified landlord cannot accommodate with him his wife, children and grand-children. Similarly, it cannot be contended that on the death of a specified landlord when his/her widow/widower recovers possession under section 13-A he/she cannot accommodate with him/her children, grand-children and so on. Such a construction of the provision would defeat the very purpose of Punjab Act No. 2 of 1985. Specified landlord has been given by the law the right to recover immediate possession of his own residential house from the tenant/tenants so that he can live in comfort in the last phase of his life and not to be confined in solitude separate from his spouse, children and grand-children whose company alone brings him solace, satisfaction and a sense of fulfilment in the evening of his life.
- (iv) In response to the service of summons on him by the Rent Controller with regard to an application under section 13-A, if the tenant does not appear or is not successful in obtaining leave of the Rent Controller to contest the same, sub-section (4) of section 18-A lays down in no uncertain terms that the statement made by the specified landlords in the application for eviction shall be deemed to be admitted and the applicant shall

be entitled to an order of eviction of the tenant. Likewise, if the tenant appears and is given leave by the Rent Controller to contest the application but ultimately he fails to prove such facts as would disentitle the applicant from obtaining an order for the recovery of possession, the applicant shall be entitled to order of eviction of the tenant. In view of the provisions of section 18-B, this entitlement of the applicant cannot be subjected to the satisfaction of the Rent Controller under clause (b) of section 13(3) of the Act which is clearly inconsistent with section 18-A.

(v) Sub-section (7) of section 18-A leaves no scope for doubt that the Rent Controller shall, while holding proceedings to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes. It is wrong to contend that this practice and procedure shall not be followed after the Court of the Rent Controller gives leave to the tenant to contest the application. Keeping in view the provisions of section 17 of the Provincial Small Cause Courts Act, 1887, the provisions of the Code of Civil Procedure such as settlement of issues and others as enumerated in clause (b) of order 50, rule 1 thereof shall not apply to such proceedings.

(vi) The power of the High Court under the proviso to sub-section (8) of section 18-A is not co-extensive with the power of revision under sub-section (5) of section 15 of the Act. The former does not confer power on the High Court to appreciate the evidence to satisfy itself as to the legality or propriety of the order. It can call for the record of the case for the purpose of satisfying itself that the order made by the Rent Controller is according to law. In other words it can interfere with the order if it is without jurisdiction or contrary to law and express provisions of the Act as amended by Punjab Act No. 2 of 1985 or where the order is perverse resulting in miscarriage of justice.

(16) In view of what has been discussed above, I find no merit in this revision petition which is consequently dismissed with no order as to costs. I, however, allow three months' time to the

Ram Rattan Shukla v. State of Punjab and others
(S. S. Kang, J.)

tenant-petitioner to vacate the premises in dispute on the condition that he deposits the entire amount of arrears of rent along with future rent for three months within one month from today. On his failure to comply with this condition, respondent No. 1 shall be entitled to take out execution and recover possession of the premises in dispute forthwith.

H.S.B.

Before : H. N. Seth, CJ., and S. S. Kang, J.

RAM RATTAN SHUKLA,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 4774 of 1986

December 10, 1986

Punjab Gram Panchayat Act (IV of 1953)—Section 10—Punjab Gram Panchayat Election Rules, 1960—Rule 40—Office of Sarpanch falling vacant on removal of previous incumbent—Block Development and Panchayat Officer informing Deputy Commissioner of vacancy and summoning meeting of Panches to elect an acting Sarpanch pending regular elections—Petitioner claiming to be elected acting Sarpanch in the said meeting—Deputy Commissioner notifying election programme for election of a regular Sarpanch—Rule 40 requiring vacancy to be filled within 60 days—Election, however, not held within this period nor the period extended by the Deputy Commissioner—Rule 40—Whether directory in nature—Election—Whether can be held beyond a period of 60 days from the date the vacancy occurs.

Held, that the provisions of Rule 40 of the Punjab Gram Panchayat Act, 1952, are in the nature of a command to the prescribed authority to hold elections within 60 days of the occurrence of vacancy or in an extended period. This rule casts a public duty on the Deputy Commissioner to fill in the vacancy expeditiously and within the prescribed period so that the Gram Panchayats continue to function with their full complement of elected representatives and no seats remain unfilled over long periods of time. The purpose in drafting the Rules was not to defeat or weaken the democratic process of direct elections. It is not the spirit of the