REVISIONAL CIVIL

Before S. B. Capoor and R. P. Khosla, JJ.

RAM KISHAN DASS AND OTHERS,—*Petitioners*

versus

GORDHAN DAS AND ANOTHER,—*Respondent*

Civil Revision No 690 of 1958

1960

May 9th

East Punjab Urban Rent Restriction Act (III of 1949) before amendment by Act XXIX of 1956—S. 13 (3) (a) (ii)—Requirements of—Inadequacy of the other building occupied by the landlord in the urban area concered—Whether of any consequence—East Punjab Urban Rent Restriction Act (III of 1949) as amended by Act XXIX of 1956—S. 15(5)—Revision under—Whether maintainable in respect of proceedings pending but not decided before the amending Act came into force—Right of appeal or revision—Whether substantive.

Held, that a landlord seeking to evict a tenant under section 13 (3) (a) (ii) of the East Punjab Urban Rent Restricion Act, 1949 (as it stood before its amendment by Amending Act XXIX of 1956) must prove not only that he *bona fide* required the premises for his own use (in contradistinction to somebody else's use) but that he is also not occupying any other such building in the urban area concerned. Both the conditions must co-exist with the result that if the landlord is in occupation of a building or a part of a building, however inadequate, in the urban area concerned for the purpose of his business, he cannot evict his tenant.

Held, that the right of appeal and *a fertiori* a right of revision is right of substance and not mere form; such a right to be available ought to exist at the time the cause arose and was agitated and that the subsequent amendment cannot add such a right unless the amendment is made restrospective in effect either expressly or by necesary intendment.

Held, that the provisions of section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 as amended in

1956, invested the High Court with the power of revision in respect of orders and proceedings taken under the old Act but pending and not yet become final when the Amending Act came into force. Subject to these limitations as respects causes that arose and were agitated before amendment, the parties can avail the right of revision to the High Court.

Case referred by the Hon'ble Mr. Justice Capoor vide his order dated the 9th September, 1959, to a larger Bench for decision of the legal question involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice R. P. Khosla finally decided the case on 9th May, 1960.

Petition under Section 15(5) of East Punjab Urban Rent Restriction Act, III of 1949, as amended by Punjab Act 29 of 1956 for revision of the order of Shri H. S. Bhandari, District Judge, Rohtak dated the 11th December, 1958 reversing that of Shri Bahal Singh, Rent Controller, Rohtak, dated the 23rd April, 1957, directing the appellant (Gordhan Dass) to be put in possession of the shop in dispute within fifteen days from the date of the order.

PREM CHAND JAIN & G. P. JAIN, Advocates for the Petitioners.

F. C. MITTAL & D. S. NEHRA, Advocates for the Respondents.

P. R. JAIN, Advocate for the Minor Respondent.

JUDGMENT

R. P. Khosla, J. R. P. KHOSLA, J.—The short point that arises and has been referred for decision in this revision petition is as follows :—

> "Is a landlord applying under clause (ii) of section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949 (as it stood before its amendment by Punjab Act No. 29 of 1956), on the ground of *bona fide* personal use, entitled to secure the eviction of tenant from a non-residential building notwithstanding the

fact that the landlord is occupying another such building in the urban area concerned, if he establishes that the other such building is insufficient for the purpose of his business."

To appreciate the point under reference and the controversy arising, it will be necessary to set out the material facts bearing on the matter. The respondent on or about 21st March, 1956, purchased the shop premises now in question from Messrs Shiv Dayal-Jai Krishan. The present petitioners were in occupation of the said premises as tenants. On or about 28th of May, 1956, the respondent, new owner and landlord, to whom apparently the petitioners had meanwhile attorned maintained the petition giving rise to the present proceedings in revision for their eviction. The eviction was sought on a number of grounds. The ground that is material for the purposes of the present proceedings was that the premises were required *bona fide* for personal use and need. It may be mentioned that the respondent landlord was at the time occupying a portion of another shop premises in the locality. It is not necessary to give the chequered career of the litigation culminating in the present civil revision : the same is detailed lucidly in the referring order of the learned Single Judge. Suffice it to say that the tenants Ram Kishan, etc., have challenged the order of their eviction in the present proceedings on the ground that the eviction in view of the landlord occupying one-half of another shop in the urban area concerned was not warranted by the relevant provisions of the East Punjab Urban Rent Restriction Act (East Punjab Act No. III of 1949) as it stood before its amendment by Punjab Act 29 of 1956.

It is common ground that the instant matter was governed by the East Punjab Urban Rent

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Restriction Act (East Punjab Act No. III of 1949) hereinafter to be referred to as the Act and not by the said Act as amended. It would be necessary here to set out the terms of the relevant provisions as respects non-residential building, i.e., section 13(3)(a)(ii) of the Act 1949 which are worded :

> "13(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—
>
> (1) * * * * *
>
> (ii) in the case of a non-residential building or rented land if—
>
> (a) he requires it for his own use ;
>
> (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be ; and
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> (c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the urban area concerned :"

Question that arises for decision, therefore, is whether on the reading of the above-said provisions question of sufficiency or insufficiency of the business premises occupied by the landlord was material in directing eviction : in other words, was the mere fact of occupying some building, the accommodation howsoever inadequate, in the urban area concerned negatives his right to secure eviction of the tenant.

Before the point in question could have been gone into, Mr. Daya Sarup Nehra, the learned

Counsel for the respondent, by way of preliminary objection challenged the maintainability of this revision petition. It was urged that admittedly as the present cause was governed by the East Punjab Urban Rent Restriction Act as it stood before the amendment and since no right of revision was made available by the said Act, the present petition was incompetent. It was conceded that the question of maintainability of the present revision had not been raised before the learned Single Judge, but in view of the whole case being before us it would clearly be open to the parties o raise objections as advised. We would, therefore, proceed to deal with it. Pursuing the preliminary objection, the learned Counsel for the respondent pointed out that the right of appeal and so also the right of revision was not a matter of mere procedure, but was a substantive right. The amendment not being retrospective, remedy by way of revision was not open in the instant case. *Ram Parshad Halwai* v. *Mukhtiar Chand* (1), *Messrs Gordhan Das-Baldev Das* v. *The Governor-General in Council* (2), *Garikapati Veeraya* v. *N. Subbiah Choudhry and others* (3), were cited in support of the proposition. Reading of Maxwell on the Interpretation of Statutes, 9th Edition, at page 229, which is to the following effect—

> "*Pending Actions.*—In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

was also relied upon. There is little doubt that right of appeal and a *fortiori* a right of revision is

(1) 1958 P. L. R. 332.
(2) A. I. R. 1952 Punj. 103.
(3) A. I. R. 1957 S. C. 540.

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a right of substance and not mere form ; such a right to be available ought to exist at the time the cause arose and was agitated and that the subsequent amendment cannot add such a right unless the amendment is made retrospective in effect either expressly or by necessary intendment. There is nothing to show as regards the instant matter that the amendment relating to the right of revision was made retrospective expressly. The contention pressed on behalf of the petitioner was that section 15(5) of the Act as amended by Act 29 of 1956 which is in the terms as follow :—

> "The High Court may, at any time, on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit."

by necessary intendment gave right of revision to the present petitioner. Reliance in this behalf was placed on the decision in *Indira Sohanlal* v. *Custodian of Evacuee Property, Delhi and others* (1). That case is clearly distinguishable for action taken in the exercise of power conferred by old law was specifically deemed to have been done or taken as if under the amended law. It is necessary, therefore, to decide whether section 15 of the Act (The East Punjab Urban Rent Restriction Act, 1949), as amended by Punjab Act, 29 of 1956, impliedly extended the right of revision in respect of this *lis* that arose before the amendment.

The bare perusal of the amended provision as set out above would show that the High Court was

(1) A. I. R. 1956 S. C. 77.

invested with the power of revision in respect of orders and proceedings taken under the old act but pending and not yet become final. Subject to these limitations as respects causes that arose and were agitated before amendment, the parties could avail the right of revision to the High Court. The order of the Controller and other proceedings in consequence thereof came into being as respects the instant matter after the Act had been amended and obviously fell within the ambit of section 15(5) of the Act as read after amendment. In *Murari Lal* v. *Piara Singh* (1), Gosain, J., deciding the same preliminary objection came to the similar conclusion. Dictum of the Supreme Court in *Moti Ram* v. *Suraj Bhan and Others* (2), supports the proposition and sets at rest the controversy. In this view of the matter, the preliminary objection must be repelled. We would, therefore, hold that the present revision petition was competent.

On the main question referred, namely, whether inadequate occupation of the landlord in another building in the urban area concerned deprived the landlord of his right to evict a tenant in respect of non-residential tenement, learned Counsel for the respondent, while seeking support from Single Bench decisions in *Baij Nath* v. *Badhawa Singh* (3), (Harnam Singh, J.), and Civil Revision No. 648 of 1957 (Gosain J.) (4) and in *Murari Lal* v. *Piara Singh* (1), (Gosain J.) maintained that in respect of residential building insufficiency of accommodation had been held to be a ground for eviction. It was urged that the same considerations applied in respect of non-residential building giving landlord the right to evict the tenant in the event of his (landlord's) occupying accommodation ill-suited to his requirements. For

(1) I. L. R. (1960) 1 Punjab 1016.
(2) A. I. R. 1960 S. C. 655.
(3) 1956 P. L. R. 236.
(4) Civil Revision No. 648 of 1957.

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the reasons to be detailed presently, I am of the view that the contention of the learned Counsel for the landlord is not sound and cannot prevail.

In the first place, the cases cited do not consider the provisions in question or they are based on decisions not in point. *Baij Nath* v. *Badhawa Singh* (1) decided by Harnam Singh, J., did not at all notice or construe the relevant statutory provisions. The decision of the learned Judge was primarily based on the findings in *R. Venkatesachary* v. *The Judge, Court of Small Causes, Madras, and another* (2), and *F. K. Rahate* v. *Dr. D. N. Pendharkar and another* (3), The language of the Madras Act and that of Nagpur Act as given herein below was wholly different from the provisions of the East Punjab Urban Rent Restriction Act, 1949. Madras Rent Control Act (No. XV of 1946), section 7(3)(a)(i) is worded :—

> "* * * in the case of a residential building, if he requires it for his own occupation and if he is not occupying a residential building of *his own* in the city, town or village concerned."

Section 13(3)(vi)(a) of the C.P. and Berar Letting of Houses and Rent Control Order (1949) reads :—

> "that the landlord needs the house or a portion thereof for the purpose of—(a) his *bona fide* residence, provided he is not occupying any other residential house of *his own* in the city or town concerned."

The dictum in *Baij Nath* v. *Badhawa Singh* (1), therefore, with respect, cannot be of any guidance. The decision in Civil Revision No. 648 of

(1) 1956 P. L. R. 236.
(2) A. I. R. 1950 Mad. 366.
(3) A. I. R. 1954 Nag. 257.

1957, follows the pronouncement in *Baij Nath Badhawa Singh* (1), and does not, therefore, advance the matter. Another judgment of Gosain, J., in *Murari Lal* v. *Piara Singh* (2), not cited at the Bar, but brought to my notice subsequently proceeds, with respect, on somewhat erroneous analysis. That was a case of landlord with inadequate accommodation seeking to evict the tenant from residential building. Gosain, J., while giving effect to the claim of the landlord, observed—

> "Evidently, the Legislature did not intend that if the landlord was occupying even one room anywhere in the urban area, he must be forced to live in that one room and should not be allowed to evict a tenant from his own house which alone can fulfil his need for a reasonable accommodation for his family. The other building contemplated by the law must be one which provides reasonable accommodation to the landlord and must not be one which is a building only in name. If the interpretation adopted by the learned District Judge is accepted, it would certainly lead to absurd results and great hardship. There is no doubt that a statute has to be interpreted only on the basis of language which it actually uses. If, however, the language of the statute is not clear enough, an interpretation has to be placed upon it which would avoid the hardship and absurd results."

It is not understood as to how the language of the instant provisions 'is not clear'. The function of the Court is to interpret and not to be concerned whether in result it works hardship or otherwise.

(1) 1956 P. L. R. 236.
(2) I. L. R. (1960) 1 Punjab 1016.

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As would appear in the course of this judgment, there is no ambiguity attaching to the instant provisions sought to be construed.

It would thus keeping in view the provisions of section 13(3)(a)(ii) of the Punjab Act have to be determined whether in the given circumstances as indicated at the outset the right of the landlord to evict his tenant was defeated.

The terms of the relevant section, i.e., section 13(3)(a)(ii) of the Act (East Punjab Urban Rent Restriction Act No. III of 1949) as it stood before amendment in respect of non-residential building, have to be read as a whole. It is conceded that all the three grounds enumerated in section 13(3)(a)(ii) must co-exist before a landlord could succeed in evicting the tenant and that overall the claim must be *bona fide*. It would thus be for decision as to what does the term "*bona fide* required for own use" connote in relation to eviction sought under section 13(3)(a)(ii). The learned Counsel for the landlord maintaining to seek support from two of my earlier decisions (sitting singly) in *Bua Das* v. *Piare Lal-Dewan Chand* (1), and *Labhu Ram and others* v. *Ram Parkash* (2), urged that genuineness of the need of the landlord tested objectively did form the basis for eviction of the tenant.

These cases as is evident related to eviction under section 13(3)(a)(iii) of the Act (III of 1949) which reads :—

> "13(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—
>
> (iii) In the case of any building or rented land, if he requires it to carry out

(1) A. I. R. 1959 Punj. 23.
(2) A. I. R. 1959 Punj. 103.

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any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation."

The aforesaid provision and the considerations applicable are somewhat on a different footing. The provision stands alone and is not limited or circumscribed by any other checks as in the instant matter where "*bona fide* required for own use" has to be read and co-exist with the requirement of other clauses (b) and (c). The term '*bona fide*' required for own use' for the purposes of section 13(3)(a)(ii) has to be interpreted in such a manner that the other of its clauses, i.e., (b) and (c) are not rendered ineffective.

If the interpretation evolved in *Bua Das* v. *Piare Lal-Dewan Chand* (1), and *Labhu Ram, etc.* v. *Ram Parkash* (2), was to be adopted, section 13(3)(a)(ii)(b) would obviously become redundant. It will have, therefore, to be held that the landlord when seeking to evict under the instant provisions is to prove not only that he *bona fide* required the premises for his own use (in contradistinction to somebody else's use), but that he was not occupying any other such building in the urban area concerned.

What it comes to is this, that for eviction of the tenant under section 13(3)(a)(ii) even if the landlord shows that he *bona fide* requires the premises for his own use, he has further to satisfy that he is not occupying in the urban area concerned for the purpose of his business any other such building.

(1) A. I. R. 1959 Punj. 23.
(2) A. I. R. 1959 Punj. 103.

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The term "building" has received meaning in the Act itself. Section 2(a) providing the definition reads—

> "building 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, outhouses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house;"

Thus, therefore, if the landlord though requiring the tenanted premises for his own use, is in occupation of a building or a part of building in the area concerned for the purpose of his business he cannot succeed. The reference is answered accordingly.

The case in the ordinary course ought to go back to the learned Single Judge for him to enter final judgment, but since the whole case before us had been allowed to be reopened and fully argued and there is no other point requiring decision, the matter is being finally disposed of.

For the reasons and conclusions arrived at above, this revision petition must succeed. I would accordingly allow this petition and setting aside the order of the learned District Judge (acting as appellate authority) restore that of the Rent Controller.

S.B. Capoor, J.

The respondent landlord, in the result, remains non-suited. The parties however, are left to their own costs.

S. B. CAPOOR, J.—I agree.

B.R.T.