Mudholkar, J., gave a separate but concurrent judgment. His Lordship observed :—

> "Where, as here, the landlord is a displaced person and the land allotted to him is less than fifty acres the permissible area so far as he is concerned would be the area actuallf allotted to him. In the case of the appellant it would thus be 42 standard acres and 11 units."

In that case the displaced landowner was allotted 42 standard acres 11 units of land in 1949 and this land on the date of the enforcement of the Act, that is, April 15, 1953, was stated to be equivalent to 42 standard acres 11 units. It appears that the area of the land in possession of the displaced landowner was not evaluated differently to that which was originally allotted to him. That fact, in my opinion, reinforces my conclusion given above that the land of a displaced person allotted to him, if less than fifty standard acres, has not to be evaluated for the purposes of the Act as on the 15th of April, 1953.

(7) For the reasons given above, there is no merit in the writ petitions which are dismissed but without any order as to costs.

K.S.K.

REVISIONAL CIVIL

Before Mehar Singh, C. J.

SMT. KIRPAL KAUR,—*Petitioner*

versus

BHAGWANT RAI,—*Respondent*

Civil Revision 734 of 1967

November 28, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—Section 9—Increase of rent on levy of house-tax—Landlord—Whether entitled to—Application to Rent Controller for the purpose—Whether necessary—Such increase of rent—Whether operative earlier to the date of demand notice by the landlord.

Held, that it is apparent from the language of sub-section (1) of section 9 of East Punjab Urban Rent Restriction Act, 1949, that on the levy of house-tax after the commencement of the Act a landlord is entitled to increase in the rent to the amount of the house-tax. There is not one single word in this

section which requires an application to the Rent Controller by the landlord to obtain an order for such increase in the rent. The reason is obvious. The amount of the house-tax is decided upon by the authorities under the statute under which such tax is levied and once the amount of such levy is fixed, there is apprarently no necessity to go by way of an application before the Rent Controller merely for the Rent Controller to say that that amount is an addition to the rent. The statute itself makes the amount an addition to the rent from the date the landlord uses his right under section 9 to increase the rent to the extent of the amount of the house-tax. (Para 4)

Held, that unless a landlord moves under section 9 to exercise his right to increase the rent to the extent of the levy of the amount of house-tax, there is no automatic increase of the rent immediately as house-tax is levied. There is nothing in section 9, unlike in sections 4 and 5 of the Act when a landlord has to move an application either for fixation of fair rent or for increase of rent, that is to move the Rent Controller for increase of rent on account of levy of house-tax. It is to be his own act in exercising his right under that provision and that right he can only be taken to have exercised when he has made a demand for increase of rent under that section. So under section 9 of the Act the increase in the rent on account of levy of house-tax is operative only from the date of notice of demand and not from an earlier date. (Para 5)

Petition under Section 15 *of the East Punjab Urban Rent Restriction Act of* 1949, *for revision of the order of Shri Udham Singh, Appellate Authority (District Judge), Patiala, dated* 30*th May,* 1967, *affirming that of Shri Jasbir Singh Ahluwalia, Additional Sub-Judge III Class (Rent Controller), Patiala, dated* 24*th December,* 1969, *dismissing the application for enhancement of rent on levy of house rent.*

PURAN CHAND, ADVOCATE, for the Petitioner.

D. C. GUPTA, J. V. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—The demised property known as Serai Albel Singh is situate at Patiala. It was the property of Kuldip Singh who had let it to Bhagwant Rai, respondent for an annual rental of Rs. 2,850 sometime in the year 1954. In the year 1957, Patiala Municipality levied house-tax within its municipal limits. In the same year the rent of the demised property was raised from Rs. 2,850 to Rs. 3,300 per annum, thus making an increase in the rent of Rs. 450 per annum. After the death of Kuldip Singh his widow Kirpal Kaur, applicant has come to be the owner of the demised property under a gift from her deceased husband Kuldip Singh.

(2) On March 11, 1966, she gave a notice to the respondent that the demised property had been assessed by the Patiala Municipality to an annual amount of house-tax at Rs. 1,308.88 paise and saying that "You are, therefore, liable under the law to pay increased rent to the extent of Rs. 3,300 plus Rs. 1,308.88 paise as house-tax, totally Rs. 4,608.88 paise. Please note that in future, so long as you are a tenant in the said building, you will be liable to pay Rs. 4,608.88 paise as the annual rental of the property instead of Rs. 3,300 originally fixed and in case of non-payment of the same you will be liable to ejectment on that account." The notice further claimed arrears of house-tax at the rate as above for the years 1956-57 to 1961-62 within fifteen days of the date of the notice, otherwise threatening proceedings for eviction of the respondent. In reply the respondent denied his liability to pay any house-tax. The consequence was that the applicant made an application for eviction of the respondent from the demised property under section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), on the ground of non-payment of arrears of rent by the respodnent.

(3) The first date of hearing of the eviction application was on July 19, 1966. On that date the respondent paid Rs. 1,650 towards arrears of rent, Rs. 412.50 paise as house-tax from the date of the notice, that is to say March 11, 1966, to the date of the eviction application on May 16, 1966, Rs. 14.25 paise as interest on the arrears, and costs of the eviction application as assessed by the Rent Controller. The Rent Controller and the Appellate Authority have concurred in dismissing the eviction application of the applicant against the respondent on the ground that the applicant cannot claim the amount of house-tax, as part of rent, under section 9 of the Act from the respondent unless and until he makes an application to the Rent Controller for increase of rent to the extent of the amount of house-tax and obtains an order to that effect, which obviously the applicant has not done in this case. This is a revision application against the order of the Appellate Authority by the applicant.

(4) The provision as to increase of rent on account of levy of house-tax is contained in section 9 of the Act, which section reads—

> "9. Increase of rent on account of payment of rates, etc., of local authority, but rent not to be increased on account

of payment of other taxes, etc., (1) Notwithstanding anything contained in any other provision of this Act a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of this Act a fresh rate, cess or tax is levied in respect of the building or rental land by any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the Act:

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or any contract no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1)."

It is apparent from the language of sub-section (1) of section 9 that on the levy of house-tax after the commencement of the Act, and in this case it was a levy after that date, a landlord is entitled to increase in the rent to the amount of the house-tax. There is not one single word in this section which requires an application to the Rent Controller by the landlord to obtain an order for such increase in the rent. The reason is obvious. The amount of the house-tax is decided upon by the authorities under the statute under which such tax is levied and once the amount of such levy is fixed, there is apparently no necessity to go by way of an application before the Rent Controller merely for the Rent Controller to say that that amount is an addition to the rent. The statute itself makes the amount an addition to the rent from the date the landlord uses his right under section 9 to increase the rent to the extent of the amount of the house-tax. It is not inconceivable that in a given case the landlord may not wish to increase the rent to the extent of the liability for house-tax or to the extent of the whole of that liability. There can be many reasons for which he may not want to increase the rent commensurate with the figure of the house-tax payable by him. So when section 9 says that he is entitled to increase the rent to the extent of the amount of the house-tax, then he must proceed to do so. It is only when he takes a step to increase the rent that the rent becomes

increased to the amount of the house-tax. In this case it was on March 11, 1966, that the applicant gave notice to the respondent of the increase in the rent to the extent of the amount of house-tax levied and it is from that date that she exercised her right under sub-section (1) of section 9 to increase the rent in the terms of that sub-section. The increase in the rent is under the statute thus operative only from that date. There is no dispute at present that the arrears of rent as originally settled between the parties were paid by the respondent to the applicant on or before the first date of hearing of the eviction application on July 19, 1966. This is a matter which is not in dispute and it is, therefore, unnecessary to enter into the details of those payments. There is then the question of the arrears of rent as increased in relation to the amount of the house-tax levied from the date of the notice for that increase, that is to say, March 11, 1966. The respondent has paid Rs. 412.50 paise as house-tax admittedly, according to him, for the period from March 11, 1966, to the date of the eviction application, May 16, 1966, but this is a matter which is disputed on the side of the applicant. There is no material on the record as it is, to show what was the house-tax levied in the year 1965-66 and the year 1966-67, and not only the figure of the house-tax levied in each one of those years is not available, it is not possible to say that the increase of the house-tax by the applicant by her notice of March 11, 1966, as due to her to the date of her eviction application on May 16, 1966, has or has not been paid by the respondent on the first date of hearing of the eviction application on July 19, 1966? This matter can only be determined if further material is placed on the record in regard to the levy of the house-tax for either of those years and on consideration as to which of those two years is one for which the increase under the notice of March 11, 1966, is operative against the respondent. This depends upon the description of the assessment year for the purposes of house-tax under the relevant statute. This is a matter, therefore, which will have to be gone into by the Rent Controller before the eviction application of the applicant can be disposed of.

(5) There still remains one other question for consideration. The question is the claim of the applicant for the payment by the respondent of house-tax for the earlier years, which house-tax is treated by the applicant as arrears of rent. The house-tax was levied between 1956 and 1961. There was an exemption of house-tax from 1962 to 1964, and then it was again levied from the year 1965. The applicant has paid house-tax for the years 1956 to 1961

and then for the year 1965-66. All the payments were made after March 11, 1966, between March 23 and May 16, 1966. The total of the amount comes to Rs. 1,288.50 paise during those six years. This indicates that the claim of the applicant in the notice of March 11, 1966, that the annual house-rent is Rs. 1,308.88 paise may not be correct. This, however, is being left to be determined by the Rent Controller. The question is whether the notice for increase of the rent on account of the levy of house-tax having been given by the applicant on March 11, 1966, she can claim arrears of rent as house-tax for the period earlier to the date of the notice? In other words can the applicant treat the notice of March 11, 1966, as operating retrospectively to effect increase in the rent to the extent of the house-tax as from the year 1956? This apparently, as I have already said above, cannot be, for, unless a landlord moves under section 9 to exercise his right to increase the rent to the extent of the levy of the amount of house-tax, there is no automatic increase of the rent immediately as house-tax is levied. There is nothing in section 9, unlike in sections 4 and 5 of the Act when a landlord has to move an application either for fixation of fair rent or for increase of rent, that he is to move the Rent Controller for increase of rent on account of levy of house-tax. It is to be his own act in exerising his right under that provision and that right he can only be taken to have exercised when he has made a demand for increase of rent under that section which demand obviously in this case was made by the notice of March 11, 1966. The applicant cannot be taken to have made the demand from a date earlier than the date on which actually the demand has been made in this case. So under section 9 the increase in the rent on account of levy of house-tax in this case is operative only from March 11, 1966, and not from an earlier date. So the applicant cannot claim house-tax earlier to the date of the demand notice of March 11, 1966, as part of the arrears of rent for the purposes of a ground for eviction of the respondent. Whether otherwise the applicant can or cannot recover the amount of house-tax paid by her earlier to March 11, 1966, from the tenant in different proceedings is a matter that does not arise in these proceedings. There is one other case with regard to which I may not be deemed to have expressed any opinion. A case can be conceived in which there is a dispute about the quantum of the levy of house-tax and the dispute drags on for quite a period. During that period as the amount of the house-tax leviable is not determined, a demand under section 9 of the Act for increase in the

rent would be an impractical thing. When after sometime the matter is finally decided and the landlord has to pay house-tax for the back period, whether in such circumstances the exercise of the right by him under section 9 to increase rent will cover the period thus gone by and non-payment of house-tax would be taken as arrears of rent for the matter of eviction of the tenant or not is a question which can only be considered when it actually arises. In the circumstances of the present case no such situation arises. So the applicant cannot treat, in the facts of this case, the house-tax paid by her with regard to the period earlier to the date of the demand notice on March 11, 1966, as arrears of rent because the exercise of the right of the applicant under section 9 to increase rent is not operative prior to that date. Almost exactly the same question arose before Mahajan, J., in *Hari Krishan* v. *Dwarka Dass* (1), and the learned Judge was of the same opinion and held that house-tax levied earlier to the date of the demand notice was not to be treated as arrears of rent so far as the ground of eviction on the basis of non-payment of arrears of rent is concerned.

(6) In consequence, the orders of the authorities below are set aside, and the case is remitted back to the Rent Controller to dispose of on merits in the light of observations above. There is no order in regard to costs in this revision application. The parties, through their counsel, are directed to appear before the Rent Controller on December 16, 1968.

K.S.K.

APPELLATE CIVIL

Before S. B. Capoor and R. S. Narula, JJ.

HARDEV SINGH AND OTHERS,—*Appellants*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

L.P.A. 184 of 1964

November 28, 1968

The Punjab Security of Land Tenures Act (X of 1953)—*Section* 27—*The Punjab Security of Land Tenures Rules* (1956)—*Rule* 6(3)—*Proceedings for determination of surplus area of a landowner—Notice to persons likely to be prejudicially affected by—Whether mandatory—Entire proceedings—Whether vitiated for want of such notice.*

(1) C. R. 755 of 1966 decided on 4th November, 1968.