

course of his arguments, because they had been mentioned in the petition, but did not proceed to show how those articles (No. 14 and 19) apply to a case where an excise officer reduces the duty ex gratia whether under administrative instructions or otherwise. Plea of discrimination or denial of the equality before law or equal protection of law or the plea of freedom to acquire, hold, possess and dispose of property or to practise in business cannot be affected where an excise officer reduces ex-gratia the duty payable by persons, who are called upon to pay duty on unmanufactured tobacco.

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Manilal and Co.
Union of India
and others

Bishan Narain,
J.

No other point was argued before me.

For these reasons, I dismiss the petition with costs. Counsel's fee Rs. 100.

B. R. T.

REVISIONAL CIVIL

Before R. P. Khosla, J.

SHRI LABHU RAM AND OTHERS;—*Petitioners*

versus

SHRI RAM PARKASH,—*Respondent*

Civil Revision No. 354 of 1957.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3)(a)(iii)—“Require”—Meaning of—Requirement for reconstruction—Who is to determine—Act III of 1949—Object of—Expected disruption of joint Hindu family—Whether sufficient ground for bona fide personal use.

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Oct., 15th

Held, that the judge of whether the landlord requires the premises for reconstruction is the Rent Controller, for otherwise the landlord will have an absolute licence. He is merely to aver that he requires the building for reconstruction and he will get rid of the tenant. In considering

these provisions it is necessary to take into account the aims and objects of the enactment. This piece of legislation was brought into existence largely to safeguard the interests of the tenants. To hold that the desire of the landlord (may be based on a mere whim for that could not be excluded) would be effective as a ground for ejection would be to render the Act wholly purposeless and defeated of its objects. Both the spirit of the enactment in question and on the language employed in the relevant provision—section 13(3)(a)(iii)—the word “require” could not be held as synonymous of “desire”. “Require” would import something more than the mere desire and would call for invocation of an outside authority who would give the verdict that in a given case for some objective standards the need was genuine and the tests had been satisfied.

Held, further that disintegration of joint Hindu family which is yet to disrupt and the property is to be partitioned is an executor consideration. The same could not by itself be a ground for ejection. As and when the partition is effected it will have to be considered whether the person to whom this particular portion is allotted is not occupying another residential or scheduled building * * * in the urban area concerned. The ground of the premises being required for personal use because of the expected partition of the joint family was, in the circumstances, a wholly premature ground.

Petition under section 15(5) of the Rent Restriction Act for revision of the order of Shri Pitam Singh Jain, District Judge, Ludhiana, dated 27th May, 1957, affirming that of Shri Ishar Singh; Rent Controller; Ludhiana; dated 16th May, 1956, dismissing the application.

ATMA RAM, for Petitioner.

Y. P. GANDHI, for Respondent.

JUDGMENT

R. P. Khosla, J. R. P. KHOSLA, J.—This petition by landlords is directed against the order of District Judge, Ludhiana, dated the 27th May, 1957, by which the order of the Rent Controller dismissing the petition for ejection of the tenant had been affirmed.

The tenancy in question was that of a portion of a residential house. Labhu Ram, Payare Lal and Amrit Lal, sons of Phuman Lal, on 18th August, 1955, applied for ejection of Ram Parkash, the tenant respondent, from the premises in question. The ejection was claimed on the grounds of bona fide need to reconstruct and rebuild the premises and that the premises were required by the landlords for their personal use. The contentions of the landlords were held ill-founded and the landlords were non-suited by the Rent Controller. On appeal the learned District Judge (Appellant Authority under the East Punjab Urban Rent Restriction Act, 1949) considering the ground as to rebuilding covered by the amending Act (Act 29 of 1956) concluded that the ground reconstruction as envisaged by the amending Act was not made out. The claim of the landlords on the other ground either, e.g., that the premises were bona fide required for personal use did not succeed.

The learned counsel in support of the present petition in revision has virtually repeated and reiterated the grounds taken on behalf of the petitioners before the tribunals below. In addition it was contended that as regards the ground to rebuilding, the amending Act did not apply. I am of the view that the District Judge was in error in applying the amending Act when considering the ground regarding rebuilding and reconstruction of the premises. The law applicable was the law in force at the time of the application for ejection, e.g., 18th August, 1955. The amending Act having come into operation much later and not being retrospective in effect could not govern the facts of the instant case. Holding, therefore that the East Punjab Urban Rent Restriction Act (Act III of 1949) applied as it stood before the amendment, I have examined whether the ground raised could

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prevail. The language of section 13(3) (a) (iii) of the said Act is to the effect that if the landlord requires the premises for re-erection and rebuilding or for replacement of another building, it would be an effective ground for ejection. Question, therefore, that arises for determination is what is the true meaning of word "requires". Does it convey that a mere desire of the landlord to rebuild or reconstruct is enough or is it that the need of the landlord so to rebuild is to be decided upon by the Court keeping in view some objective test. In *Ram Chander v. Kidar Nath and others* (1), Kapur, J., held that wish and desire of the landlord to rebuild without any further enquiry was enough to sustain the ground. With all respects this construction is not possible keeping in view the subject and spirit of the enactment and the provisions in question. I had an occasion to express myself in this behalf in *Bua Das v. Piara Lal* (2), decided on 17th September, 1958. I was and am of the view that the judge of whether the landlord requires the premises for reconstruction etc., was the Rent Controller, for otherwise, as it would be apparent, the landlord would have an absolute licence. He was merely to aver that he required the building for reconstruction and he would get rid of the tenant. In considering these provisions it is necessary to take into account the aims and objects and purpose of the enactment (the East Punjab Urban Rent Restriction Act, 1949). This piece of legislation was brought into existence largely to safeguard the interests of the tenants. To hold that the desire of the landlord (may be based on a mere whim for that could not be excluded) would be effective as a ground for ejection would be to render the Act wholly purposeless and its defeated of its objects.

(1) 1954 P.L.R. 18.

(2) C.R. 107 of 1957.

Both for the spirit of the enactment in question and on the language employed in the relevant provision section 13(3)(a) (iii)—the word “require” could not be held as synonymum of “desire”. “Require” would import something more than the mere desire and would call for invocation of an outside authority who would give the verdict that in a given case for some objective standards the need was genuine and the tests had been satisfied. The observations of Kapur, J., in *Ram Chander v. Kidar Nath and others* (1), had been considered in another judgment, *Mangtoo Ram v. Girdhari Lal* (2), by Chief Justice Bhandari and the conclusions arrived at were to somewhat similar effect as found by me in Civil Revision No. 107 of 1957 decided on 17th September, 1958.

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On merits I was led through the evidence on this aspect. All that the landlord petitioner had been able to prove was that the premises were not in good condition and in pursuance of his wanting to reconstruct he had got a plan sanctioned. The tribunals below had considered this evidence and concluded that the premises were not in a dangerous conditions as to require reconstruction as postulated. Damage to the walls here and there could be set right by repairs. In the face of this finding of fact, the ground regarding rebuilding or reconstruction could not prevail.

On the other ground, e.g., that the premises were required for bona fide personal use, the contention was that the joint Hindu family of which the petitioner was a member was likely to disrupt and, therefore, the premises in question would be needed for use of the petitioner co-sharer. Disintegration of joint Hindu family which is yet to disrupt and the property is to be partitioned is an

(1) 1954 P.L.R. 18

(2) C.R. 346 of 1954

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executory consideration. The same could not by itself be a ground for ejection. As and when the partition is effected it will have to be considered whether the person to whom this particular portion is allotted is not occupying another residential or scheduled building * * * in the urban area concerned. The ground of the premises being required for personal use because of the expected said partition of the joint family was, in the circumstances, a wholly premature ground.

For all these reasons this petition cannot succeed. I would accordingly dismiss the same. There will be no order as to costs.

B. R. T,

APPELLATE CIVIL

Before Falshaw and Dua, JJ.

Mst. KISHNI,—Defendant-Appellant

versus

MEHMAN SINGH,—Plaintiff-Respondent.

Regular Second Appeal No. 127 of 1950.

1958

Oct., 16th

Restitution of Mortgaged Lands Act (IV of 1938)—Sections 2 and 4—Mortgage to be redeemed—Whether should be subsisting on the date of the coming into force of the Act or on the date of the application for redemption made under the Act—Indian Limitation Act (IX of 1908)—Section 19 and Article 148—Whether amended by Act IV of 1938—Endorsement of receipt of money on the mortgage deeds by the guardian of the mortgagee—Whether amounts to acknowledgment of liability to redemption.

Held, that the mortgage sought to be redeemed must be subsisting mortgage on the date on which the application for redemption under the Restitution of Mortgaged Lands Act 1938, is made and not on the date when the said Act came into force.