

Lachhman Dass and another v. Madan Lal (D. S. Tewatia, J.)

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have accorded explicit approval as to what has been done by the Superintendent of Police, but in the absence of any *mala fide* alleged, we are prone to hold that the explanation offered is not altogether unreasonable which could meet our disapproval outright; more so, when the rule has been wanting in clarity from judicial avenues. We thus do not find this to be a case in which the jurisdiction of the Court under article 226 of the Constitution deserves to be exercised in favour of the petitioner, in the facts and circumstances brought forth, without being made wiser as to any substantial injury to the petitioner or failure of justice having occasioned thereby.

(26) In the light of the above observations, this petition has to fail and is hereby dismissed with no order as to costs.

S. S. Sandhawalia, C. J.—I agree.

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N. K. S.

Before D. S. Tewatia, J.

LACHHMAN DASS and another,—Petitioners.

versus

MADAN LAL,—Respondent.

Civil Revision No. 1491 of 1974

July 18, 1980.

*East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(2) (a) (iii) and 13(4)—Shop with a tenant taken possession of by the Improvement Trust under a development scheme—Shops falling within the area of the scheme demolished and new ones constructed—A new shop allotted to the landlord in lieu of the one from which the tenant was dispossessed—Tenant applying for restoration of possession under section 13(4)—Such application—Whether maintainable—Provisions of section 13(4)—Whether attracted.*

*Held*, that where a tenant has been dispossessed from the building by the Improvement Trust under a development scheme, he cannot be said to have been evicted in execution of any order passed by the Rent Controller and, therefore, his surrendering of possession to the Improvement Trust cannot be treated as his eviction

under clause (iii) of sub-section (3) (a) of section 13 of the East Punjab Urban Rent Restriction Act, 1949. What is more, under sub-section (4) of section 13, the tenant is entitled to the restoration of the very building from which he is evicted which fact is made clear by the use of expression 'that' used before the word 'building'. Thus, after a building has been re-built it is not open under the law to the Controller to put the tenant back in possession and his power of restoring possession arises only when the building had not been re-built. (Paras 5 and 6).

*Petition under section 20-A of Haryana Urban Rent Eviction Act, 1973 as amended by Act 4 of 1974, for revision of the order of the Court of Shri Salig Ram Seth, Appellate Authority under Rent Restriction Act, Hissar, dated the 4th November, 1974, affirming with costs that of Shri I. P. Vashishat, Rent Controller, Bhiwani, dated the 5th June, 1973, ordering the restoration of the possession of the demised premises in favour of Madan Lal, tenant-respondent.*

H. L. Sarin, Senior Advocate with R. L. Sarin, Advocate, for the Petitioners.

C. L. Ghai, Advocate, for the Respondent.

#### JUDGMENT

*D. S. Tewatia, J. (Oral):*

(1) Respondent Madan Lal (hereinafter mentioned as the Tenant) was tenant of shop No. 664 situated at Bhiwani under Lachhman Dass, petitioner (hereinafter referred to as the Landlord). Under an improvement scheme notified by the Improvement Trust Bhiwani, known as Bapora Gate Development Scheme, the said shop was taken possession of by the said Improvement Trust from the tenant. This shop alongwith other buildings falling in the area of the said scheme were demolished. New shops were constructed by the Improvement Trust. The landlord applied for allotment of one shop to the Improvement Trust. He was allotted one shop by the Improvement Trust which the landlord transferred to his son, Ramesh Chander petitioner No. 2. The tenant applied under Section 13(4) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred as the Act) for restoration of the shop that the Improvement Trust had allotted to the landlord in lieu of shop No. 664 from which the Improvement Trust had dispossessed him. The Rent Controller allowed the petition. An appeal against that at the instance of the landlord and his son having failed, they have come to this Court in revision challenging the order of the Courts below.

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(2) Mr. R. L. Sarin, counsel for the petitioners, has urged that the orders of the Courts below are palpably illegal as they had no jurisdiction to entertain the petition for restoration in that the provisions of sub-section (4) of Section 13 of the Act are not attracted in the case at all and cannot be taken advantage of by the tenant. He contends that the provisions of sub-section (4) of Section 13 of the Act can be resorted to by a tenant only in cases where the landlord has obtained possession from the tenant of the building and land in pursuance of an order by the Rent Controller under the provisions mentioned in sub-section (4) of Section 13 and not otherwise and that too when the very said building is sought to be put to any use by the landlord or the landlord lets it out to any tenant other than the tenant evicted from the said building. In the event of reconstruction of the building from which a tenant is evicted, the tenant, under sub-section (4) of Section 13, cannot claim possession of the reconstructed building.

(3) In my opinion, there is merit in the contention advanced on behalf of the petitioners. Sub-section (4) of Section 13 of the Act is in the following terms:—

“Where a landlord who has obtained possession of a building or rented land in pursuance of an order under sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3) does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under sub-paragraph (i-a) of paragraph (a) of sub-section (3), his family does not occupy the residential building, or, if possession was obtained by him on behalf of his son in pursuance of an order under sub-paragraph (iv) of paragraph (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under sub-paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Collector shall make an order accordingly.”

(4) A perusal of sub-section (4) no doubt shows that the expression "in pursuance of an order" has not been used between the word 'building' and the words "under sub-paragraph (iii) as has been used in the earlier part of the section in relation to the obtaining of possession under other provisions of Section 13 but that would be of no consequence in view of the later qualification of the 'tenant' by using the word "evicted" in relation to the building. The use of the word "eviction" in the statute is in a legal manner, i.e., in pursuance of execution of an order made by the Rent Controller.

(5) In the present case, the tenant has not been evicted in execution of any order passed by the Rent Controller and, therefore, his surrendering of possession to the Improvement Trust cannot be treated as his eviction under clause (iii) of sub-section (3) (a) of Section 13, which is in the following terms:

"in the case of any building or rented land, if he requires it to carry out 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."

(6) What is more, as already observed, under sub-section (4) the tenant is entitled to the restoration of the very building from which he is evicted which fact is made clear by the use of expression 'that' used before the word 'building'. The matter is not *res integra*. This Court, had the occasion to interpret Section 13(4) in *Nathu Ram v. Pandit Ram Partap* (1), where the tenant had been evicted of a building the possession whereof had been sought and obtained by the landlord on the ground that the said building had become unsafe and unfit for human habitation. After securing the possession of the building, the landlord demolished the building and erected new building thereon. The tenant sought possession of the new building under sub-section (4) of Section 13 of the Act. Kapur, J., (as he then was) held that after a building had been rebuilt it was not open, under the law, to the Controller to put the tenant back in possession, and his power of restoring possession arises only when the building had not been rebuilt. That view taken by this Court appears to receive sanction from the Supreme Court in *Neta Ram and*

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*others v. Jiwan Lal and, another* (2), as would be clear from the following observations appearing in para 8 of the report:—

“Reading these provisions as a whole, it is obvious that if the landlord’s need be genuine and he satisfies the Controller, he can obtain possession of the building or the land, as the case may be. If, however, he does not re-erect the building and puts it to any other use or lets it out to another tenant, the former tenant can apply to be put back in possession.”

(7) For the reasons aforementioned, I allow the revision petition and set aside the order of both the Courts below and dismiss the application. However, in the circumstances of this case, I make no order as to costs.

N.K.S.

*Before D. S. Tewatia and S. S. Kang, JJ.*

UNION OF INDIA,—Appellant.

*versus*

HARBANS SINGH TULI AND SONS,—Respondent.

*First Appeal From Order No. 77 of 1980.*

July 19, 1980.

*Code of Civil Procedure (V of 1908)—Order 27, Rule 8-B(a)—Punjab Reorganisation Act (XXXI of 1966)—Sections 32 and 88—Arbitration Act (X of 1940)—Sections 15, 16, 30, 33 and 39—Notification issued by the erstwhile State of Punjab appointing Government pleaders for purposes of order 27—Whether legislative in character and a law within the meaning of sections 32 and 88—Government pleader so appointed by the Union Territory Administration—Whether competent to present an appeal on behalf of the Union of India—Objection petition challenging an award—Whether should be accompanied with affidavits—Arbitration clause stating that the award shall be final and conclusive—Such clause—Whether makes the award unimpeachable on any ground whatsoever—Pleas of limitation and estoppel raised before the Arbitrator—Such pleas—Whether a dispute*

(2) A.I.R. 1963 S.C. 499.