

Shori Lal v. Lt. Surinder Kumar Mehra (Narula, J.)

with any clause or clauses of the contract. When the breaches were found to have been committed by the appellants and the Administration rescinded the contract, it was open to the Arbitrator to direct that the property and all other assets which had been transferred to the appellants, and could be retained by them only so long as they fulfilled certain conditions, should be reverted to the Administration. In our opinion, the Arbitrator acted within his jurisdiction and the scope of the reference, in directing, amongst other things, the return of the property and other assets by the appellants to the Administration. No question of the Arbitrator going beyond the reference, therefore, arises in these circumstances.

(15) No other point was urged before us.

(16) For the foregoing reasons, the appeal must fail and is hereby dismissed with no order as to costs.

(17) PANDIT, J.—I agree.

R.N.M.

REVISIONAL CIVIL

Before R. S. Narula, J.

SHORI LAL,—Petitioner.

versus

Lt. SURINDER KUMAR MEHRA,—Respondent.

Civil Revision No. 260 of 1969

August 6, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(3) (a) (i-a) and 15(5)—Indian Soldiers (Litigation) Act (IV of 1925)—Section 3—Landlord being a member of armed forces applying for ejection—Certificate of the prescribed authority of his serving under “special conditions”—Such certificate—Whether conclusive—Courts—Whether can adjudicate on the existence or otherwise of the special conditions—Finding of fact recorded by Appellate authority—When can be assailed in revision.

Held, that the first explanation to section 13(3) (a) (i-a) of the East Punjab Urban Rent Restriction Act, 1949, has been added for the obvious reason that it is necessary to avoid evidence being led in Courts about the existence of “special conditions” in a particular part of the country at a

particular time. The Legislature is the best judge of the matter and can lawfully prescribe such rules of evidence. The Legislature has taken notice of the fact that it is not possible for persons serving under special conditions to prosecute litigation in Courts in the same manner and to the same extent as other citizens of the country not handicapped in this respect can do. Hence when a certificate issued by the prescribed authority says in so many words that a landlord is serving as member of the armed forces of the Union of India under "special conditions", it is not open to the Courts to adjudicate upon the matter whether in fact special conditions as defined in section 3(b) of Indian Soldiers (Litigation) Act, 1926, exist in the country or not. (Para 4)

Held, that findings of fact recorded by the Appellate Authority under the Act cannot be assailed in a petition for revision filed under section 15(5) of the Act. Question of *bona fides* of the landlord regarding his need for the premises is a question of fact and cannot be interfered in proceedings under section 15(5) by the High Court. (Para 3)

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, against the order of Shri Pritam Singh Pattar, Appellate Authority, Amritsar, dated 21st March, 1969, affirming that of Shri R. S. Gupta, Rent Controller, Amritsar, dated 17th August, 1967 directing the respondent to vacate the building.

D. N. AWASTHY, ADVOCATE, for the Petitioner.

H. L. SARIN, SENIOR ADVOCATE, WITH A. L. BAHL AND H. S. AWASTHY, ADVOCATES, for the Respondent.

JUDGMENT

NARULA, J.—This is a tenant's petition under section 15(5) of the East Punjab Urban Rent Restriction Act (3 of 1949) (hereinafter called the Act), against the order of the Court of Shri Pritam Singh Pattar, District Judge, Amritsar (who is the appellate authority under the Act), dated March 21, 1969, upholding the decision of the Court of Shri R. S. Gupta, Rent Controller, Amritsar, dated August 17, 1967, directing the ejection of the petitioner from the residential premises belonging to the respondent under section 13(3) (a) (i-a) of the Act.

(2) The petitioner executed a rent note, dated January 6, 1953, in respect of the premises in dispute in favour of one Gauri Shankar who owned these premises at that time. By registered sale-deed, dated November 3, 1966, the property of which the premises in dispute form part, was purchased by Smt. Raj Karni. The petitioner became her tenant at Rs. 25 per mensem. Raj Karni's application Exhibit R. 2, dated March 31, 1965, for ejection on various grounds including that of *bona fide* personal requirement,

Shori Lal v. Lt. Surinder Kumar Mehra (Narula, J.)

was withdrawn by her on May 30, 1966. During the course of the trial of that application, Raj Karni had made statement Exhibit R. 1, before the Rent Controller, Amritsar, on March 17, 1966. After the withdrawal of her application for ejection Raj Karni gifted away the property in question by registered gift deed Exhibit A. 1, dated June 8, 1966, in favour of her son Lieutenant Surinder Kumar Mehra, who is the respondent before me. Written notice of the gift was given to the petitioner on June 22, 1966. Thereafter the present petition was filed by the respondent on July 8 1966, for eviction on the following ground contained in section 13(3)(a) (i-a) of the Act:—

“A Landlord may apply to the Controller for an order directing the tenant to put the landlord in possession,

(i-a) in the case of the residential building if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act.”

Two explanations to the above quoted provision are also relevant for deciding the present case which may, therefore, be quoted at this very stage :—

“For the purposes of this sub-paragraph—

- (1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and
- (2) “family” means such relations of the landlord as ordinarily live with him and are dependent upon him.”

As a result of the contest raised by the petitioner, the Rent Controller framed the following five issues :—

- “(1) Whether the relationship of landlord and tenant exists between the parties ?
- (2) Whether Act No. 6 of 1966 is *ultra vires* of the Punjab Legislature ?

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- (3) Whether the petitioner *bona fide* requires the premises in dispute for the occupation of the family .
- (4) Whether the petitioner is a member of the armed forces of the Union of India and is serving under special conditions within the meaning of section 3 of the Indian Soldiers (Litigation) Act ?
- (5) Relief.”

By his order, dated August 17, 1967, the Rent Controller held that the relationship of landlord and tenant exists between the parties, that Punjab Act 6 of 1966 (whereby the abovequoted provision was added to section 13(3)(a) of the Act) is *intra vires* the Punjab Legislature, that the respondent *bona fide* requires the premises in dispute for the occupation of his family, and that the respondent was a member of the armed forces of the Union of India and was serving under special conditions within the meaning of section 3 of the Indian Soldiers (Litigation) Act. Not satisfied with the order of the Rent Controller, the petitioner went up in appeal to the District Judge, Amritsar, who, as already stated, is the Appellate Authority under the Act. The decision of the Rent Controller on issues Nos. 2 and 4 was not contested before the Appellate Authority. The learned District Judge has stated in paragraph 3 of his order that no arguments were addressed to him on those two issues. By his order under revision, the learned Appellate Authority upheld the findings of fact recorded by the Rent Controller on issues Nos. 1 and 3, and also the decisions of law on issues Nos. 2 and 4 and dismissed the appeal of the tenant.

(3) In this petition for revision of the order of the Appellate Authority, Mr. D. N. Awasthi, the learned counsel for the tenant, has firstly contended that the father and the mother of the respondent do not constitute his family within the meaning of the abovequoted provision of law as introduced by the Punjab Amending Act 6 of 1966. The submission of the counsel is that the parents of the respondent are entitled to maintenance only if they prove that they cannot maintain themselves, and if they ordinarily reside with the landlord. Mr. Awasthi's argument is that mere old age does not entitle the parents to obtain the benefit of the provision in question through their son who may be in the army. Counsel has vehemently contested that there is no evidence on the record of this case to show that the other son of the parents of the respondent with

whom they are putting up does not want to keep them with him. Mr. Sarin has on the other hand submitted that in deciding this case we are not to be guided by the normal connotation of the expression "family" and that such connotation of the word in question has to be given a statutorily enlarged interpretation by operation of the second explanation to section 13(3)(a)(i-a) of the Act. The explanation has already been quoted in an earlier part of this judgment. In order to constitute any person as a member of the family of the landlord covered by the provision in question, only three things are necessary :—

- (i) that the person in question must be a relation of the landlord ;
- (ii) that he should be such a relation as ordinarily lives with the landlord; and
- (iii) that such relation as is covered by items (i) and (ii) mentioned above is dependent upon the landlord.

The Rent Controller as well as the Appellate Authority have found all these three points in favour of the respondent. It is settled law—*vide* judgments of this Court in *Kimti Lal v. Seth Nanak Chand*, (1), and *Firm Shiv Sharan Krishan Kumar and another v. Lala Maharaj Mal and others*, (2), that findings of fact recorded by the Appellate Authority under the Act cannot be assailed in a petition for revision filed under section 15(5) of the Act. I am, therefore, unable to re-open the questions of fact decided by the Rent Controller in respect of the first submission of Mr. Awasthi. Same applies to the second argument which was pressed by Mr. Awasthi with no less vehemence. This relates to the question of the *bona fides* of the respondent regarding his need for the premises. Both the Courts below have found that the claim of the respondent is *bona fide* and I am unable to interfere with that finding of fact in these proceedings.

(4) The question of law which Mr. Awasthi has pressed before me relates to the interpretation of the first explanation to section 13(3)(a)(i-a). He says that he does not question that the certificate Exhibit A. 2 has been issued by the prescribed authority. Counsel submits that he also does not question that the respondent is a member of the armed forces. What he wants to submit is that despite the certificate Exhibit A. 2 stating that the respondent is serving under special conditions, I should hold that

(1) 1967 P.L.R. 799.

(2) 1967 P.L.R. Short Note 16.

the certificate is incapable of being correct in that respect. The argument is that "Special conditions" as defined in section 3 of the Indian Soldiers (Litigation) Act were not in existence at the time the petition for eviction was filed. Section 3 of the abovenamed 1925 Act says that an Indian soldier shall be deemed to be serving under special conditions when he is or has been serving: (a) under war conditions, or (b) overseas, or (c) at any place beyond India. Serving under war conditions has been explained in section 3(b) to imply serving of an Indian soldier when he is or has been at any time during the continuance of any hostilities declared by the Central Government by notification in the Official Gazette to constitute a state of war for the purposes of the Indian Soldiers (Litigation) Act, or at any time during a period of six months thereafter. Mr. Awasthi's argument is that in so far as the Central Government had not declared India to be at war with any country at the time the petition for eviction was filed, I should hold that the certificate Exhibit A. 2 does not fulfill the objective conditions and the requirements of the respondent serving under war conditions. I regret I am unable to agree with the submission of the learned counsel on the short ground that the Legislature has barred any inquiry into a matter of this type by enacting the explanation referred to above. Certificate A. 2 is in the following terms :—

"It is hereby certified under section 7 of the Indian Soldiers (Litigation) Act (IV of 1925) that Mr. Surinder Kumar Mehra, son of Shri Panna Lal Mehra of Amritsar is serving as a member of the armed forces of the Union of India under special conditions within the meaning of section 3 of the Indian Soldiers (Litigation) Act (IV of 1925)."

There is no meaning in the Legislature saying that a certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions if it were to be open to the Court after the grant of the above quoted certificate to question whether the member of the armed forces in question is actually serving under special conditions or not. In so far as the certificate Exhibit A. 2 certifies in so many words that the respondent is serving as a member of the armed forces of the Union of India under special conditions within the meaning of section 3 of the Indian Soldiers (Litigation) Act, it is not open to me to adjudicate upon the matter whether in fact special conditions as defined in section 3 existed at the relevant time or not by entering into the question whether war conditions as defined in section 3(b) existed in the country or not. It appears to me that this argument has not been raised before me for the

Shori Lal v. Lt. Surinder Kumar Mehra (Narula, J.)

first time. Practically the same argument was raised by Mr. D. N. Aggarwal, Advocate before Pandit, J. in *Raj Kumar v. Major Gurmitinder Singh*, (3), P. C. Pandit, J. observed as follows :—

“It was contended by the learned counsel for the Petitioner that there were no war conditions in India at the time when the certificate was issued, inasmuch as there was no declaration of war by the Central Government published in the Gazette and he referred to the provisions of clause (b) of section 3 in that behalf. This argument ignores the explanation added to the sub-paragraph in section 13 of the Act, which laid down that the certificate of the prescribed authority would be conclusive evidence that the landlord was serving under special conditions. It was not suggested that the certificate in the instant case was not issued by the prescribed authority or was not a genuine one. That being so, the said certificate had to be taken as conclusive evidence of the fact that the respondent was serving under special conditions. This argument also, therefore, fails.”

Mr. Awasthi submits that he was not previously aware of this judgment of Pandit, J., but having been faced with it, he wants to submit that *Raj Kumar's case* (3), has not been correctly decided and that the decision of the learned Judge in respect of the above-mentioned point needs reconsideration. Not only I am bound by the judgment of the learned Single Judge, but I am also in respectful agreement with it. The object of incorporating into the Act the provision introduced by the Punjab Amending Act 6 of 1966, is that members of the Indian armed forces who are working under special conditions should rest at peace in so far as the comfortable residence of their family members (including the relations who are dependent on them and normally live with them) is concerned. The Legislature has taken notice of the fact that it is not possible for persons serving under special conditions to prosecute litigation in Courts in the same manner and to the same extent as other citizens of the country not handicapped in this respect can do. The first explanation to the provision has also been added for the obvious reason that it is necessary to avoid evidence being led in Courts about the existence or non-existence of “special conditions” in a particular part

of the country at a particular time. In any event, the Legislature is the best judge of the matter and can lawfully prescribe such rules of evidence. Making provision for drawing a conclusive presumption from certain facts is a well-known method of shutting out evidence to prove the contrary. Various such provisions have been held to be valid by a Full Bench of this Court in *Mahant Lachman Dass Chela Mahant Ishar Dass v. The State of Punjab and others*, (4). The counsel for the petitioner having frankly conceded that he does not impugn the vires of the provision, the valid and statutory rule of evidence contained therein takes away the jurisdiction of the Court for questioning the correctness of the certificate in so far as it relates to the matters covered by the explanation.

(5) For the foregoing reasons I hold that it is conclusively proved from certificate Exhibit A. 2 that the respondent is serving under special conditions.

(6) Though Mr. Awasthi submitted in the beginning that he would also assail the finding of the Appellate Authority on issue No. 1, no argument at all was addressed by him on that issue.

(7) No other point having been argued in this case, the revision petition fails and is dismissed. In the interest of justice, however, the petitioner is allowed one month's time from to-day to hand over vacant possession of the premises in question to the respondent provided all arrears of rent are deposited by the petitioner with the Rent Controller within seven days from to-day. Petitioner must pay the costs of these proceedings to the respondent. If, however, he hands over vacant possession of the premises to the respondent without the landlord being required to execute the order for eviction, the direction for payment of costs of this revision petition shall be deemed to have been satisfied. If the petitioner deposits the arrears of rent within time, the respondent will be entitled to draw the same without the necessity of filing any action. If the requisite deposit is not made by the 13th instant, the petitioner would be liable to immediate eviction.

R.N.M.

(4) I.L.R. 1968(2) Pb. & Hr. 499.