damages, the plaintiff would be entitled to Rs. 25,000, i.e., there is further increase by a sum of Rs. 15,000 over and above what has been awarded to him by the Court below. On the enhanced amount, the plaintiff would be entitled to interest at the rate of 6 per cent per annuam from the date of filing of the suit till realisation. The plaintiff-respondent would be entitled to full costs of this Court on cross-objections which the State would be liable to pay to him.

H. S. B.

Before B. S. Dhillon and G. C. Mital, JJ.

KARNAIL SINGH,—*Petitioner*

versus

VIDYA DEVI ALIAS BEDO,—*Respondent.*

Civil Revision No. 130 *of* 1980.

April 11, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3) (a) (i)—Landlord occupying a building in the capacity of a tenant—Building belonging to such landlord in the same urban area rented out to a tenant—Landlord—Whether able to claim ejectment of the tenant on the ground of bona fide personal necessity without proving anything more—Section 13(3) (a) (i)—Whether stands in the way of the landlord for proving insufficiency of accommodation under his occupation.

Held, that a reading of section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 would show that a landlord can apply for an order directing the tenant to put him in possession in regard to a residential building, if under clause (a) he is able to prove his *bona fide* requirement, under clause (b) he is able to prove that he is not occupying another residential building in the urban area concerned and under clause (c) if it is proved that he has not vacated such a building without sufficient cause after the commencement of the Act in the said urban area. The Act is a social legislation intended to give protection to the tenants against indiscriminate increase of rent and eviction. It has to be interpreted in a manner more beneficial to the tenants. If the Legislature wanted that the occupation of another residential premises in the urban area concerned should be as 'owner' or as 'landlord', then it would have so provided in sub-clause (b) but by not adding these words the intention of the Legislature is clear that only possession as of right, whether as owner, landlord tenant, mortgagee with possession or in any

other form, recognised by law was to be taken into consideration for the purpose of sub-clause (b). Therefore, if the landlord is in possession of another residential building in the same urban area in any of the modes mentioned above or in any other recognised mode, having right in property the landlord would not be able to claim eviction of his tenant from other premises in the same urban area without alleging and proving anything more. If the landlord claims that the premises under his occupation are insufficient for his needs section 13(3)(a)(i)(b) of the Act is no bar in the way of the landlord to prove that the residential building in his occupation is utterly unsuited to his needs and requirements. The landlord, is, therefore, entitled to prove that a case for ejectment has been made out on the ground that the premises under him as tenant are insufficient for his needs. (Paras 6 and 13)

Hari Kishan Dogra v. *Arjan Singh*, 1973 P.L.R. 658.

OVERRULED.

Petition under section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 for revision of the order of the Court of Shri Sarup Chand Gupta, Appellate Authority, Faridkot, dated the 19th December, 1979 affirming that of Shri Gurdev Singh, Rent Controller, Giddarbaha, dated the 16th November, 1978 dismissing the appeal and giving two months' time from today, i.e., 19th December, 1979 to vacate the premises.

H. L. Sarin, with M. L. Sarin and R. L. Sarin, Advocates, *for the Petitioners.*

R. S. Ahluwalia, Advocate, *for the Respondents.*

JUDGMENT

Gokal Chand Mital, J.—(1) The point of substance which arises in this revision filed by the tenant is whether his landlord can claim ejectment from the residential premises in his possession merely on the ground of *bona fide* personal necessity without proof of anything more in spite of the fact that the landlord is in occupation of another residential premises in the same urban area as a tenant.

2. The facts, in brief, are that Shmt. Vidya Devi filed an application for ejectment against her tenant Karnail Singh under section 13(3) (a) (i) of the East Punjab Urban Rent Restriction Act, III of 1949 (hereinafter called the Act), on the ground of personal necessity and it was stated that she had purchased the house in dispute from its previous owner for her personal use and occupation.

The other ground was regarding non-payment of rent. The tenant, *inter alia,* pleaded that Shmt. Vidya Devi was already in occupation of another house in the urban area concerned which was more commodious having more amenities and, therefore, in view of section 13(3)(a)(i) (b) of the Act, she was not entitled to claim ejectment on the ground of personal necessity. Shmt. Vidya Devi filed a replication in which it was pleaded that the house occupied by her is not commodious and her husband keeps buffaloes and the house is not sufficient for tethering those cattle. In her statement, she admitted that she is living in the rented house although she stated that she does not own any other house in the same urban area. However, she explained that the house in the same urban area. was a small one and the cattle could not be tethered in that house.

3. The Rent Controller, Gidderbaha,—*vidè* order, dated 16th of November, 1978, by following *M/s. Johan Tinson and Co. Ltd., Simla* v. *Shri Amar Chand Sood and another,* (1) and *Hari Kishan Dogra* v. *Arjan Singh* (2) came to the following two conclusions:—

(1) Since Shmt. Vidya Devi was in occupation of the other house only as a tenant and not as owner, it does not mean that she is occupying another residential building in the urban area concerned, and

(2) that she had proved that she required the house in dispute for her personal use and occupation and that her necessity was *bona fide* and it did not make any difference if she wanted to keep the buffaloes of her husband in the house in dispute as the two buffaloes were needed for supplying milk to the members of the family and was not meant for doing the business of dairy.

On the aforesaid findings, an ejectment order was passed against the tenant who took the matter in appeal and the Appellate Authority, in its brief judgment, dated 19th of December, 1979, after noticing the contention of the tenant, proceeded to decide the appeal merely on the basis of *M/s. Johan Tinson and Co.* and *Hari Kishan Dogra's cases* (supra) and held as follows:—

"So far as the rented house is concerned, she was not occupying it in her own right. It is well-settled that where a landlord

(1) 1971 Rent Control Reporter, 33.
(2) 1973 P.L.R. 658.

occupying a rented premises wants possession of his own house, his need is *bona fide*. It cannot also be disputed that the tenant can purchase a building for his own needs and an application for ejectment cannot be thrown out merely on the ground that he was already occupying another residential building in the area concerned. This view finds support from two authorities reported as *M/s. Johan Tinson and Co. Ltd., Simla* v. *Shri Amar Chand Sood and another, and Hari Kishan Dogra* v. *Arjan Singh* (supra). The finding of the learned Rent Controller on this issue is endorsed."

The argument was raised on behalf of the tenant on the other aspects also that Shmt. Vidya Devi was occupying another house which was more commodious and pucca while the demised house was a kutcha one and had lesser accommodation. It was further argued that the house occupied by the landlord consisted of two rooms, a latrine and a bath-room while the house in the occupation of the tenant does not have any bathroom or latrine. No decision was given by the Appellate Authority on the aforesaid matter and yet it was observed in para 10 of the order that no point was argued before him, which is apparently incorrect in view of the arguments of the tenants counsel noticed in para 8 thereof.

4. The tenant has come in revision before this Court and at the motion hearing, the learned counsel for the tenant urged that the two decisions relied upon by the authorities below did not lay down correct law as the occupation of a tenant is as of right and is interest in property under the Transfer of Property Act and such a possession is legally recognised and, therefore, has to be termed in one's own right and not at the sufferance of anybody else. According to the learned counsel, the possession of a tenant is clearly protected by the provisions of section 13(3)(a)(i)(b) of the Act and, therefore, an order of ejectment passed merely on the ground of not owning another residential building in the same area is of no consequence. It was further argued that it was shown, on the record that the premises in occupation of Shmt. Vidya Devi was bigger than the demised premises and that there was no latrine and bath-room in the demised premises whereas the house in her occupation had a latrine and a bath-room.

5. I entertained a doubt about correctness of the decision of this Court in *Hari Kishan Dogra's case* (supra) and, therefore, admitted

the revision to be heard by a Division Bench and that is how it has been placed before us.

6. Shri H. L. Sarin, Senior Advocate, appearing for the tenant, has urged that section 13(3)(a)(i)(b) of the Act only talks of 'occupation' and not of 'ownership' and, therefore, the provision has to be given its literal meaning. It will be useful to reproduce below the relevant provision:—

"13(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of residential building, if—

(a) he requires it for his own occupation;

(b) he is not occupying another residential building in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area ;

(d) * * * * *"

A reading of the aforesaid provision would show that a landlord can apply for an order directing the tenant to put him in possession in regard to a residential building, if under clause (a) he is able to prove his *bona fide* requirement, under clause (b) he is able to prove that he is not occupying another residential building in the urban area concerned and under clause (c) if it is proved that he has not vacated such a building without sufficient cause after the commencement of the Act in the said urban area. A Full Bench of this Court in *Shri Banka Ram* v. *Smt. Sarasti Devi* (3) has held that it is necessary for the landlord to plead all the aforesaid three ingredients in the petition for ejectment and if any one of them is not pleaded, the ejectment petition would not be competent. It has further held that an order of ejectment can be granted only on the proof of all the three aforesaid ingredients and not otherwise.

7. The Act is a social legislation to give protection to the tenants against indiscriminate increase of rent and eviction and, therefore, it has to be interpreted in a manner more beneficial to the

(3) 1977 P.L.R. 112.

tenant apart from giving literal meaning to the words used in the various provisions of the Act. Coming back to the interpretation of sub-clause (b), reproduced above, if the Legislature wanted that the occupation of another residential premises in the urban area concerned should be as 'owner' or as 'landlord' (the definition of 'landlord' shows that a person other than the owner can also be a landlord), then it would have been so provided in sub-clause (b) but by not adding these words the intention of the Legislature is clear that only possession as of right, whether as owner, landlord tenant, mortgagee with possession or in any other form, recognised by law was to be taken into consideration for seeing the occupation of the landlord for purposes of sub-clause (b). In nutshell, the sole basis of enacting sub-clause (b) was that if the landlord is occupying any other residential building in his own right, that is, possession recognised by law, then he could not claim eviction from another residential building in the same urban area. Unless we read sub-clause (b) as follows, no other conclusion is possible :—

> "He is not occupying another residential building in the urban area concerned as an owner."

Therefore, on a reading of sub-clause (b), as it stands in the statute book, we hold that if the landlord is in possession of another residential building in the same urban area, whether as owner, landlord, tenant, mortgagee with possession or in any other recognised mode, having right in property, he would not be able to claim eviction of his tenant from other premises in the same urban area without alleging and proving anything more.

8. This brings us to the consideration of the earlier decision of this Court in *Hari Kishan Dogra's case* (supra). In that case, on facts, it was found that the premises which was in occupation of the landlord as a tenant in the same urban area was quite insufficient and did not meet his requirement and, therefore, *bona fide* requirement for personal necessity was made out and an order of ejectment passed by the authorities below was maintained. So far as the decision on the facts is concerned, it is correct and is in consonance with the Full Bench decision of this Court in *Messrs Sant Ram Des Raj* v. *Karam Chand* (4). However, Mr Sarin has challenged

(4) 1962 P.L.R. 758.

the legal proposition laid down in para 6 of the judgment which forms the head-note. Therein, it was ruled as follows :—

> "It is true that the landlord was occupying another house in Amritsar, but he was residing there as a tenant. Surely, a person, who is residing as a tenant in a building, is entitled to purchase a residential house for his own needs and his application for ejectment cannot be thrown out merely on the ground that he is already occupying another residential building in the urban area concerned, even though he may be doing so merely as a tenant, and, consequently, at the mercy of his landlord. 'Occupation of another residential building' occurring in section 13(3)(a)(i)(b) of the Act, in my opinion, means that he must be there in his own right. Moreover, in my view, it is also not necessary that the landlord should prove that his landlord had actually taken ejectment proceedings against him and he was going to be evicted from the tenanted premises and it was only then that he could move an application for the eviction of his tenant from the house, which he had purchased for his own occupation."

We are unable to agree with the aforesaid view taken by P.C. Pandit, J. to the effect that occupation of a tenant is at the mercy of the landlord and is not in his own right and, therefore, is not covered by the words 'occupation of another residential building' occurring in section 13(3)(a)(i)(b) of the Act, for the detailed reasons already stated above. No reason has been given by P. C. Pandit, J., in arriving at the aforesaid conclusion. It hardly needs reiterating that tenancy rights are right in property and are covered by the Transfer of Property Act and are further protected by the provisions of the Act. The mercy of the landlord which was in the way of the tenant under the Transfer of Property Act has been whittled down to a very large extent and now the tenant can be thrown out only on one of the grounds stated in section 13 of the Act and in no other manner. Therefore, since the coming into force of the Rent legislation, the tenants have complete protection of law and their occupation under these circumstances cannot be termed either at the mercy of the landlord or that it is not in their own right. As against the aforesaid view of P. C. Pandit, J., Shri Sarin has brought to our notice three unreported judgments of this Court in *Shrimati Savitri Devi* v.

Shri Des Raj, (5), decided by S. B. Capoor, J., *Salig Ram* v. *Hari Ram,* (6) decided by D. Falshaw, J., and *Lal Chand* v. *Udhe Bhan* (7) decided by S. S. Dulat, J., in which it was ruled that the possession as a tenant is in his own right or that it cannot be said that the possession of the tenant is at the sweet-will of the landlord and he could be turned out at any time. The respective passages from the aforesaid decisions are as follows :—

(i) "The contention on behalf of the petitioner is that this occupation must be as a matter of right and in this connection reliance is placed on *Ram Singh* v. *Sita Ram,* (8). That was a case in which the petitioner-landlord was found to be in occupation of a house which was at one time owned by his father and had subsequently been gifted by the latter to the petitioner's mother. In those circumstances it was held that the petitioner could not be said to be occupying that house as a matter of right in as-much as he could not legally enforce that right of user. The present case is, however, a very different one. The petitioner was occupying a residential building belonging to Mansha Ram as a "statutory tenant and it could not be said that this was at the sweet-will of the landlord and that the petitioner could be turned out at any time from that building. In fact, if the relevant statutory provision is interpreted in the way in which it is sought to be interpreted by the learned counsel for petitioner, the protection conferred on tenants by the Act would become illusory."

(ii) "What in effect has been found both by the Rent Controller and the learned Appellate Authority is that in respect of the house of Smt. Hira Devi, the plaintiff enjoyed the same protection of law as any other tenant and could only be ejected on any of the grounds contained in section 13, and on the case revealed by Smt. Hira Devi in this case she would not have been able to get him ejected. The position thus was that the plaintiff was covered by sub-section (3)(a)(i)(b) as he was occupying

(5) C.R. 100 of 1959 decided on 22.7.59.
(6) C.R. 193 of 1960 decided on 27.9.60.
(7) C.R. 335 of 1963 decided on 3.4.64.
(8) 61 P.L.R. 132.

another residential house in the urban area concerned and that if he were to vacate the house which he was occupying without sufficient justification, which in this context would mean some reason for which his landlady would be entitled to eject him under the law, his case would fall under sub-section (3)(a)(i)(c). This view of the law appears to me to be correct."

(iii) "Mr Dhingra then says that on the second ground eviction should be ordered. That ground is that Lal Chand genuinely requires the disputed house for his own occupation, but assuming that to be so, the difficulty in his way is that he is occupying other premises at the same place as a tenant and section 13 of the Urban Rent Restriction Act bars the relief of eviction to a landlord who is occupying another residential building in the urban area concerned. Mr Dhingra says that although the petitioner is a tenant in another house, that house is required by the owner and he has been served with a notice to vacate the premises and it should, therefore, be found that he is actually not occupying the other residential building as of right. It is impossible to agree, for the fact is that he is in occupation of another residential building and his occupation is as a tenant and this in his own right, and in view of section 13 of the Urban Rent Restriction Act it is impossible to order the present respondent's eviction from the petitioner's house."

In all the aforesaid three cases, the landlord was in occupation of another premises as a tenant and he had sought eviction of his tenant merely on the ground of personal necessity without saying anything more. In all the three cases it was found that the landlord's possession as a tenant was in his own right and since he was occupying other premises in the same urban area, therefore, he could not claim ejectment in view of section 13(3)(a)(i)(b) of the Act. No case of insufficiency of accommodation was pleaded by the landlords in those cases. The interpretation which we have placed on sub-clause (b) is in consonance with the aforesaid three decisions.

9. Accordingly, we approve of the decisions in *Shrimati Savitri Devi* v. *Shri Des Raj*, *Salig Ram* v. *Hari Ram and Lal Chand* v. *Udhe Bhan* (supra) and over-rule the view of P. C. Pandit, J., enunciated in para 6 of *Hari Kishan Dogra's case* (supra), and hold

as a matter of law that no order of ejectment can be passed on the application of a landlord when that landlord is in occupation of another residential building in the same urban area as a tenant without saying anything more, in view of section 13(3)(a)(i)(b) of the Act. The authorities below had also followed *M/s Johan Tinson and Co.'s case* (supra), a decision of the Delhi High Court. We have gone through that case and find that the point in issue in this case was neither raised nor decided in that case. Counsel for the parties are also of this view. Therefore, that decision was wrongly referred to by the authorities below in coming to the conclusion that possession of a landlord of another premises as a tenant is not in his own right.

10. As already noticed, an exception was provided by the Full Bench judgment of this Court in *M/s Sant Ram, Des Raj's case* (supra) to the provisions of section 13(3)(a)(i)(b) of the Act where a landlord was held entitled to get eviction of his tenant provided he was able to show that the other residential building in his occupation was wholly insufficient for his needs. It is difficult to envisage hypothetically any other exception to the aforesaid provision and whenever suitable facts are brought out, such a question may arise for consideration.

11. Another way of looking at the matter is that if a landlord who is in occupation of another premises as a tenant or in any other capacity as of right, in the same urban area, and he vacates those premises, then unless he makes out a case that he has not vacated such premises without sufficient cause, he would not be entitled to seek ejectment of his tenant. Whether sufficient cause is made out or not would be seen on the facts and circumstances of each case. Therefore, the bald argument that the landlord must wait till he is thrown out from the other premises does not arise for consideration at this stage. The aforesaid view of ours finds sufficient support from the observations of D. Falshaw, J., in *Salig Ram* v. *Hari Ram* (supra).

12. In view of the aforesaid decision of ours, the landlord in the present case cannot claim ejectment of the tenant simply on the ground that she does not own any other house in the same urban area as she is occupying another residential premises as a tenant.

13. However, in the instant case, the landlord had taken up a plea in the replication that the house occupied by her is not

commodious and her husband keeps buffaloes and the house is not sufficient for tethering those cattle. This matter was gone into by the Rent Controller but has not been gone into by the Appellate Authority in spite of the fact that the counsel for the tenant had raised the argument that the accommodation in her possession was more commodious and pucca while the demised house was a *kutcha* one and had lesser accommodation and that the house occupied by the landlord consisted of two rooms, a latrine and a bath-room while the demised house does not have any bath-room or latrine. In *Messrs Sant Ram, Des Raj's case* (supra), the Full Bench has already held that section 13(3)(i)(b) of the Act is no bar in the way of the landlord if he can prove that the residential building in his occupation is utterly unsuited to his needs and requirements and does not meet the same and, therefore, the occupation of the other building must commensurate with the requirements or needs of a landlord. Therefore, in view of the aforesaid enunciation of law by this Court, the landlord will have to prove that a case for ejectment has been made out.

14. Since the Appellate Authority proceeded only on the other aspect, for decision on merits of the question of sufficiency or insufficiency of the accommodation and whether the need of the buffaloes kept by the husband of the landlord would be a ground for personal necessity of the landlord and any other allied questions which the parties may wish to raise, which questions require determination on facts and law, it would be appropriate that these matters are decided by the Appellate Authority and for this matter the only reasonable course is to remand the case to the Appellate Authority for fresh decision in accordance with law keeping in view the observations made in this judgment.

15. For the reasons recorded above, I allow this revision, set aside the order of the Appellate Authority, dated 19th of December, 1979, and remand the case to it with a direction that it shall restore the appeal at its original number and decide the same without delay. The parties, through their counsel, are directed to appear before the Appellate Authority, Faridkot, on 12th of May, 1980. The records of the case may be sent to the Appellate Authority forthwith. Since there were conflict of views, there will be no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

S. C. K.