

REVISIONAL CIVIL

Before Tek Chand, J.

VIDYA VATI,—Appellant.

versus

HANUMAN PARSHAD,—Respondent.

Civil Revision No. 365-D of 1961.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)
—Ss. 5(3) (b) (i)—Landlord—Whether sole arbitrator of
his requirements.

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Held, that under section 5(3) (b) (i) of the Delhi and Ajmer Rent Control Act, 1952, the landlord is the sole arbitrator of his own requirements provided that he proves that he in fact desires possession and genuinely intends to occupy. This construction is supported by the use of word 'intention' in the proviso, to this section which provides a means whereby a landlord who goes back on his express intention can be penalized. It is not necessary for the landlord to prove some need or some necessity for the premises it is sufficient if the landlord wishes to acquire the possession of the premises.

Application under section 35 of Act 38 of 1952 for revision of the decree of the Court of Shri M. S. Joshi, Additional Senior Sub-Judge, Delhi, with enhanced Appellate Powers, dated 6th day of May, 1961, affirming that of Shri Balwant Singh Sekhon, Sub-Judge, 1st Class, Delhi, dated the 17th February, 1960, dismissing the plaintiff's suit with costs. The lower appellate court also ordered that the parties shall bear their own costs in his court.

R. S. NARULA AND T. K. SETH, ADVOCATES, for the Appellant.

None for the Respondent.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This is landlord's petition for revision under section 35 of Delhi and Ajmer Rent

Control Act (No. XXXVIII of 1952) from the order of the Additional Senior Subordinate Judge dismissing her appeal and maintaining the decision of the trial Court dismissing her suit.

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The brief facts of this case are that the plaintiff who is 50 years old is the owner of the premises bearing No. 3481, situated in Faiz Bazar, opposite Police Station, Darya Ganj, Delhi. The defendant-respondent is the tenant paying monthly rent of Rs. 17-2-0. This lady has been residing with her father and nephews. It is stated in the plaint that one of these nephews is of marriageable age and his attitude towards the plaintiff is not cordial or amiable and he does not like her to continue to stay in the house of her father. She has sought eviction of the defendant from her house on the ground that these premises are required *bona fide* by her or as a residence for herself and her two grand daughters and that she has no other suitable accommodation. The issue framed by the trial Court as to whether the plaintiff *bona fide* requires the premises in dispute as residence for herself and she has no other suitable accommodation was decided by both the courts against her. The Additional Senior Subordinate Judge expressed the view that to succeed in an ejectment action, the landlord has to prove some need or some necessity for the premises and it does not suffice that she wishes to acquire their possession. He then proceeded to say that the facts of this case suggest that the plaintiff does not sincerely intend to leave the fold of her family and the requirement of the suit premises professed by her is not genuine. The respondent has not been represented in this case.

The learned counsel for the petitioner has drawn my attention to a number of decisions of

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this Court, among others, to *Maharaj Jagat Bahadur Singh v. Badri Parshad Seth* (1), by Falshaw J. in which reliance was placed on two English decisions in *Ireland v. Taylor* (2), *Clif v. Taylor* (3). This decision of Falshaw J. has been followed by this Court in a number of succeeding decisions,—*vide inter alia in Lila Tuli and another v. S. Gopal Singh* (4), by Shamsher Bahadur J. There are also two unreported decisions of G. D. Khosla C.J. in *Shri Ram Piara v. Babu Ram* (Civil Revision No. 35-D of 1959) decided on 2nd November, 1961 and in *Gauri Shankar v. Prabhu Dayal* (Civil Revision 177-D of 1959) dated the 26th April, 1954. My attention has also been drawn to a decision of D. K. Mahajan J. dated the 14th of April, 1961 in Civil Revision 524-D of 1959, *Shri Shanti Parshad etc. v. Mst. Khazano Devi*. In the English decision, the Court of appeal in *Ireland v. Taylor* (2), Tucker L.J. at page 311 said “if the landlord in fact desires possession and genuinely intends to use it for this purpose, I can see no ground for saying that he does not ‘require’ it within the meaning of section 5(3)(b)(i), which contains the words ‘the premises are required for occupation for himself’.
* * * * *” The referee had interpreted the word ‘required’ as if it meant ‘needed’, somewhat on the lines of the words ‘reasonably requires’ in the Rent Restriction Acts. The country court judge rightly rejected this construction, but appears to have interposed his own judgment as to the landlord’s ‘requirements’, whereas, in my opinion, in this part of section 5 the landlord must be the sole arbiter of his own requirements, provided that he

(1) I.L.R. 1955 Punj. 724 : 1954 P.L.R. 549.
(2) (1949) I.K.B. 300.
(3) (1948) 2 K.B. 394.
(4) 1962 P.L.R. 441.

proves that he in fact desires possession and genuinely intends to occupy. I think that this construction is strongly supported by the use of the word 'intention' in the proviso, which, it may be observed provides a means whereby a landlord who goes back on his express intention can be penalized. It is also the construction accepted by Hellets J. in *Nuthal (G.C.&E.) (1917) Ltd. v. Entertainments & General Investment Corporation Ltd.* (5). "Somervell L.J. at page 316 observed that" the referee in his report construed 'requires' as meaning 'needs', and came to the conclusion that the landlords did not need this large house. It is unnecessary to refer to the evidence in detail, but neither in the referee's findings nor, as far as I can see, in cross-examination was any doubt thrown on the intention of the landlords to go and live in the house if they get the chance. The Judge did not regard 'requires' as meaning 'reasonably requires' or 'needs', but as a somewhat stronger word than 'intends.' "Further on it was observed by Somervell L.J. that" 'requires' may of course, have different senses in different contexts. In its present context it is, I think, satisfied if a landlord establishes, as the landlords here did, that he wants and intends to occupy the premises. Apart from the Act, that is his common-law right." To the same effect were also the observations of Cohen L.J., at page 317.

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I think the Additional Senior Subordinate Judge was in error when he laid down a different standard, namely, that the petitioner "has to prove some need or some necessity for the premises and it does not suffice that she wishes to acquire their possession. In support of this view the learned Senior Subordinate Judge had placed reliance

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upon *Basant Lal Saha v. P. C. Chakarvarty* (6). In view of the clear enunciation of the law by this court in the decisions referred to above, I cannot accept the view of the Calcutta High Court in the above case as determining the principles which have to be followed in the present case. I may add that section 14 of the Act gives tenant a remedy for recovering possession and for re-entering if the premises are not occupied by the landlord as a residence for herself or for her family within two months of obtaining such possession or the premises having been so occupied by her, are, at any time within 2 months of such occupation, re-let in whole or in part to any person other than the evicted tenant.

For the reasons stated above, the decision of the two courts below appears to me to be contrary to law and is therefore set aside. In the circumstances I would allow the petition. The result is that the plaintiff's suit for ejectment of the respondent is decreed. The landlord shall not, however, be entitled to obtain possession of the premises before the expiration of period of 3 months from today. There will be no orders as to cost.

K.S.K.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J., and Harbans Singh, J.

KEWAL KRISHAN,—Appellant.

versus

GOVERNMENT OF INDIA AND ANOTHER,—Respondents.

Letters Patent Appeal No. 148 of 1962.

Displaced Persons (Compensation and Rehabilitation)
Rules 1955—Rules 30 and 31—Respective scope of—Contest

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(6) A.I.R. 1950 Cal. 249.