

same conclusion. It is significant that for a period of nearly 21 years that decision has held the field and no attempt has been made either to amend or alter the relevant provisions in the Act. In my view, it is, therefore, too late in the day to contend that the interpretation of the relevant provisions of the Act by Beckett J. is erroneous. I would accordingly dismiss this petition with costs.

Municipal  
Corporation,  
Delhi  
v.  
Capt. Bhawani  
Dass and others  
Mahajan, J.

R. S.

REVISIONAL CIVIL

*Before Daya Krishan Mahajan, J.*

MOHAN LALL AGGARWAL,—Petitioner.

*versus*

GIAN SINGH,—Respondent

Civil Revision No. 461-D of 1961.

*Delhi Rent Control Act (LIX of 1958)—Ss. 13 and 50—  
Excess payment made by tenant to landlord—Claim for  
refund of—Whether entertainable by civil Court.*

1963

Nov. 9th

*Held, that the combined reading of sections 13 and 50 of the Delhi Rent Control Act, 1958, leaves no manner of doubt that the jurisdiction of civil Courts has been expressly taken away with regard to any payments made in excess by the tenant to the landlord and the claim for the refund of the excess amount must be determined by the authorities constituted under the said Act.*

*Petition under Section 25 of Act 9 of 1887 for the revision of the order of Shri H. C. Goel, Additional Judge, Small Cause Court, Delhi, dated the 11th August, 1961. Both the preliminary points were decided against the defendant/petitioner.*

I. M. LALL, ADVOCATE, for the Petitioner.

G. S. VOHRA, ADVOCATE, for the Respondent.

## JUDGMENT

Mahajan, J.

MAHAJAN, J.—This order will dispose of Civil Revisions Nos. 461-D and 462-D of 1961. The point that requires determination in both these petitions is the same, it being whether a refund application by a tenant with regard to any excess payment made by him to the landlord is entertainable by the ordinary civil Courts or must be determined by the authorities constituted under the Rent Control Act.

The contention of the tenant is that he paid certain amounts in excess of what was due from him to the landlord. The tenant is the same in both the cases, but the landlords are different. In C. R. 461-D of 1961, the suit was for recovery of Rs. 135 paid in excess while in C.R. 462-D of 1961, the suit was for recovery of Rs. 60 paid in excess. Objection was taken to the jurisdiction of the civil Courts, for the suits were filed before the Judge, Small Cause Courts, Delhi. The learned Judge came to the conclusion that the jurisdiction of the civil Courts is not ousted and in my view, he has grossly erred in this matter. He has totally ignored the provisions of section 50 of the Delhi Rent Control Act, 1958. Sections 13 and 50 of the Act are in these terms :—

“13. Where any sum or other consideration has been paid, whether before or after the commencement of this Act, by or on behalf of a tenant to a landlord, in contravention of any of the provisions of this Act or of the Delhi and Ajmer Rent Control Act, 1952, the Controller may, on an application made to him within a period of one year from the date of such payment, order the landlord to refund such sum or the value of such consideration to the tenant or order adjustment of such sum or the value of such

consideration against the rent payable by the tenant.”

“50. (1) Save as otherwise expressly provided in this Act, no civil Court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered, by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil Court or other authority.

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and the combined reading of these provisions leaves no manner of doubt that the jurisdiction of civil Courts has been expressly taken away with regard to any payment made in excess by the tenant to the landlord. That being so, these petitions are allowed, the decision of the Subordinate Judge, Small Cause Courts is set aside. It will be open to the plaintiff to pursue his remedy in accordance with law in the proper tribunal. There will be no order as to costs.

B.R.T.

REVISIONAL CIVIL

*Before D. Falshaw, C.J., and S. S. Dulat, J.*

UNION FIRE, ACCIDENT & GENERAL INSURANCE CO.,  
LTD.,—Petitioner

*versus*

O. P. KAPUR, AND ANOTHER,—Respondents.

Civil Revision 493-D of 1960.

*Code of Civil Procedure (Act V of 1908)—S. 115—Order placing onus of issue on one party or the other—Whether can be interfered with in revision by High Court.*

Mohan Lall  
Aggarwal

v.

Gian Singh

Mahajan, J.

1962

Nov., 13th