Before M. M. Punchhi, J.

RAM LAL SUNDA and others,—*Petitioners.*

versus

SANTOSH KUMARI SOOD,—*Respondent.*

Civil Revision No. 444 of 1978.

March 31, 1981.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(3) (a) (ii) and 15—Landlord requiring ground floor on medical advice—Such advice—to what extent binding on the Rent Control Authorities to determine the personal need of the landlord—Guiding principles—Stated—Statement of the landlord per se—*Whether sufficient to prove personal necessity.*

Held, that normal disease and decay of human body cannot and should not be a ground *per se,* providing pretence to the landlord requiring the demised premises for personal use and occupation unless there exists a genuine element of need. Most often than not, diagnosis of disease by medical experts and the cure suggested thereon is not compulsive but merely advisory or remedial. It has been the age-old ethical practice of the medical profession to advise rest, caution and avoidance of strain to a person complaining of distress or disease. The medical expert's advice that the landlord should avoid climbing stairs cannot be so spelled that he stands prohibited altogether from such climbing or that having so climbed, was obliged to come down stairs frequently. Such opinion of the medical expert would just be cautionary in nature and with a little adjustment in daily life or with adequate medical treatment, the disease could well be lived with or found a cure of. And if caution is not to be observed or cure is to be deferred, as it needs to be cashed upon as a ground for ejectment of the tenant, the Rent Control authorities cannot leave it entirely to the landlord to have the case judged from his point of view, but are required to determine as to whether the course sought to be adopted by him is course with which he cannot well do without. The ground floor tenant population cannot be kept at tenter-hooks in this manner by upper floored landlords, the former perpetually obliged to pray for the good health of the latter. It is noteworthy that the authorities under the Rent Restriction Act do not maintain mere receipt desks to register "points of view" of the landlords but are required to examine and weigh evidence so as to strike a balance. It is no doubt true that the honest need of a reasonable person is not to be weighed judicially in a fine scale to determine, if the honest need of the landlord

appears to the court to be reasonable. But even if the need of the landlord is an honest one, it does not divest the court of the power, as indeed the duty to determine, having regard to the objective conditions and other factors germane to the case. Neither can the Rent Controller abdicate his judicial functions entrapping them to the bare word of the landlord or to the opinion evidence of medical experts, as to the health condition of the landlord or dependent members of his family. (Paras 8 and 9).

Petition under section 15(V) of Act III of 1949 as amended by Act 29 of 1956 for the revision of the order of the court of Shri Trilok Nath Gupta Appellate Authority, Ludhiana, dated 15th February, 1974 confirming the order of the court of Shri Shamsher Singh, Rent Controller, Ludhiana, dated. 2nd September, 1974 accepting the application and order the ejectment of the respondents from the premises in dispute, though they are given two months period from the date of this order to vacate the premises and to deliver their possession to the petitioner and leaving the parties to bear their own costs.

H. L. Sarin, Senior Advocate, R. L. Sarin & M. L. Sarin, Advocates, *for the Petitioners.*

Maluk Singh, Advocate, *for the Respondents.*

JUDGMENT

Madan Mohan Punchhi, J.

(1) This is tenants' revision petition so as to challenge the order of the Appellate Authority, Ludhiana, confirming that of the Rent Controller, Ludhiana, whereby they have been ordered to be evicted from a house situated in the town of Ludhiana at the instance of the landlady.

(2) The facts giving rise to this petition are that Smt. Santosh Kumari Sood is the landlady of the demised premises. She sought eviction of the petitioners from the demised premises on the pleas that the same were unfit and unsafe for human habitation; were required by her for her personal use and occupation and that the same stood sublet by petitioner No. 1 Ram Lal Sunda to petitioners Nos. 2 and 3, who were no others but the brothers of the former; all three being the sons of one Faqir Chand. The petitioners admitted the ownership of the landlady. They claimed their father to be the tenant of the building since 1943 and after his death claimed to have continued living therein since then. They denied that the demised

premises were unfit or unsafe for human habitation and claimed that this matter had been settled in their favour by the Rent Controller in an earlier petition for the purpose. They also disputed the *bona fide* requirement of the landlady for personal occupation. The Rent Controller, on the pleadings of the parties, framed the following issues:—

"1. Whether respondent No. 1 is a tenant under the applicant ?

2. Whether the building in dispute is unfit and unsafe for human habitation, as alleged?

3. Whether the applicant *bona fide* requires the premises in dispute for her personal use and occupation ?

4. Whether the respondent is a statutory tenant, and no notice under section 108 T. P. Act is necessary ?

5. If issue No. 4 is not proved, whether a valid notice under section 106 of T. P. Act has been served on the respondent ?

6. Whether any finding has been earlier given by the Court of Shri Prem Sagar, Rent Controller, Ludhiana, regarding the ground of unsafety and unfitness of the disputed premises for human habitation ? If so, its effect ?

7. Relief.

(3) Finding under issue No. 1 was that Ram Lal Sunda, petitioner No. 1, was the respondent's tenant while his brothers living with him were mere licensees. Under issue No. 2, it was decided that the building was not unfit and unsafe for human habitation. Under issue No. 3, the finding went in favour of the landlady as her *bona fide* requirement for personal use and occupation stood established. Out of the remaining issues, issue No. 4 was decided in favour of the tenants and issues Nos. 5 and 6 in favour of the landlady. Thus primarily on finding on issue No. 3, the order of eviction was passed which was affirmed on appeal by the Appellate Authority, Ludhiana, though challenge was made in appeal to issues Nos. 1, 5 and 6 as well.

(4) During the course of the appeal, the landlady was permitted an amendment in her pleadings so as to add that she was occupying

the first floor of another building within the municipal limits of Ludhiana, but the same was inconvenient for her living and that she had not vacated any other premises within the municipal limits of Ludhiana after the commencement of the Act, This gave rise to the framing of additional issue No. 3-A:—

> Whether the applicant has no other residential house and has not vacated any such house? If so, to what effect.?

(5) The report called for from the Rent Controller returned the finding thereon that the landlady had another residential house, namely, B-II/1851, and had vacated the premises to a commercial concern, without sufficient cause, after the Act came into force. This finding was challenged in appeal by the landlady before the Appellate Authority but the same was dismissed *in limine*, since the main decision of the Rent Controller had remained in her favour, though subject of appeal. The appeal of the tenants, as said before, was dismissed by the reversal of finding under the newly added issue No. 3-A, as well as by confirmation of finding on issue No. 3.

(6) It remained practically undisputed before the Appellate Authority that Ram Lal Sunda petitioner alone was the tenant after the death of his father Faqir Chand and that the other two petitioners were merely his licensees with him. Thus findings on issue No. 1 were affirmed. Similarly, no dispute was raised with regard to issues Nos. 5 and 6 relating to the compulsory service of notice under section 106 of the Transfer of Property Act. Findings on issues Nos. 5 and 6 as well were affirmed as no notice was necessary under section 106 of the Transfer of Property Act before filing an ejectment petition. The controversy thus centered around issues Nos. 3 and 3-A before the Appellate Authority and remains herein this Court as well.

(7) The foundation of the claim of the landlady was that she had been suffering from fibroid uterus and had under medical advice to live on the ground floor wherefor she required the building in dispute for her personal use and occupation in preference to the first floor in another building in which she was currently living. That reason has prevailed with both the Courts below on the strength of the statements of the landlady's witnesses being Dr. D M. Dharni, Dr. Narinder Joshi, Dr. Tejpal Singh and the landlady's husband Madan Mohan, again a doctor. The sum total of the evidence of these

witnesses was that the landlody to whom documents Exhibits A-2 and A-3, the admission registers and outdoor ticket of Dr. B. L. Kapur, Memorial Hospital, Ludhiana, related to, was found to be suffering from fibroid uterus and had remained admitted in the hospital as an indoor patient in September, 1971. It also stood admitted that the said growth in the uterus had not been removed by the time the evidence was recorded. The evidence of the medical witnesses was challenged before the Appellate Authority, as it is now, that the husband of the landlady being himself a doctor could manage the evidence of his co-professionals and thus that evidence should have been discarded by the Courts below. The Appellate Authority held that there would rather be professional jealously *inter se* them and spelled that there could be no chance of the medical experts to have performed their duties for any ulterior motives. It was held that the landlady was suffering from fibroid uterus. The Appellate Authority also held that it was not his function to go into the question why the landlady had not undergone the operation as advised by Dr. Dharni, to see whether or not the disease was really of such kind or magnitude that it would be injurious for her to live on the first floor of the building. The Appellate Authority left that domain exclusively with the landlady giving her the benefit that if she considered that she would be relieved or even convenienced by living on the ground floor, that desire of hers was the final word in the matter. Additionally, the Appellate Authority took the view that by moving up and down stairs, the landlady would have suffered the risk of excessive bleeding and that the mere fact that she had not undergone a surgical operation, perhaps on account of fear of mishap or other psychological reasons, could not weigh against the case of the landlady. It is this view of the Appellate Authority which is subject of serious challenge in this petition.

(8) It arises for consideration as up to what length can human ailment on the side of the landlord be a justifying factor to cause disturbance of the tenant. The East Punjab Urban Rent Restriction Act, 1949 was brought on the statute book at a time when the tenants needed protection from the ever increasing demand of the landlords for higher rents at the pain of which large scale evictions were ensuing. Conditions painfully have not changed thereafter and letting accommodation tends to be scarce and expensive for the growing needs of town population and the social set-up. I should think that the Legislature while bringing the Act on the statute book, in its

wisdom, did not overlook the normal cycle of human life, starting from the womb and ending at the tomb, passing through the stages of birth, growth, disease, decay and death. For the present, it requires determination as to whether disease or consequential decay of the human body of the landlord, or any of his family members dependent on him, would justify disturbance of a tenant, and can that measure of disease and decay be left to be measured by medical experts alone and their views to be accepted by the Rent Control authorities reverentially? It appears to me that normal disease and decay of human body cannot and should not be a ground *per se*, providing pretence to the landlord requiring the demised premises for personal use and occupation unless there exists a genuine element of need. Most often than not, diagnosis of disease by medical experts and the cure suggested thereon is not compulsive but merely advisory or remedial. It has been the age-old ethical practice of the medical profession to advise rest, caution and avoidance of strain to a person complaining of distress or disease. The medical expert's advice that the landlady should avoid climbing stairs to obviate the possibility of extra bleeding cannot be so spelled that she stands prohibited altogether from such climbing, or that having so climbed, was obliged to come downstairs frequently. Such opinion of the medical expert would just be cautionary in nature and with a little adjustment in daily life or with adequate medical treatment, the disease could well be lived with or found a cure of. And if caution is not to be observed or cure is to be deferred, as it needs to be cashed upon as a ground for ejectment of the tenant, the Rent Control authorities cannot leave it entirely to the landlady to have the case judged from her point of view, but are required to determine as to whether the course sought to be adopted by her is a course with which she cannot well do without. Safely, questions such as these could be posed. Must the landlady avoid her operation ? Is the landlady obliged to frequent her climbs and descends in derogation of the advice of the medical experts? Should eviction of the tenant follow just because she does not want to adhere to medical advice ? Must she remain uncured till she lives down-stairs by evicting a tenant? It would seem to me that the intention of the law-framers would clearly be flouted if such a wide discretion is to be left with the landlady. The ground floor tenant population cannot be kept at tenter-hooks in this manner by upper floored landlords; the former perpetually obliged to pray for the good health of the latter. The earlier view of this Court that the landlord is the sole arbiter as to his needs is no longer good law in view of the ruling of the Supreme

Court reported as *Phiroza Bamanji Desai* v. *Chandrakant M. Patel etc.* (1), a Single Bench decision of this Court in *Rattan Chand Jain* v. *Charan Singh* (2), and a decision rendered by me in *R. K. Jain* v. *Khazan Singh* (3). In the latter case, I had observed as follow:—

> "That it requires determination as to what would be the spreading distance of the word "need" and that of the word "excuse". From a given set of facts one Court may spell an element of need and another an excuse, making it speculative. The sphere of the two words is obviously overlapping across their dividing line but an attempt has to be made to demarcate the same between the two. It appears that the element of need would signify the existence of such state of affairs that requires relief which cannot be well done without and it is the want of something which cannot be fulfilled except by the course sought to be adopted. The degree of need, of course, will vary from case to case but the absence thereof would make a sought for ejectment to be a mere excuse. The landlord has to travel a longer distance, much beyond the span of a mere wish, want or excuse, to enter into the field of need for the possession of the demised premises without which he cannot well do".

(9) The findings of the learned Appellate Authority recorded in paragraphs 11 and 12 of his judgment are in direct conflict with the view above expressed as it has been held by him that the need of the landlady has to be judged from her point of view. It is noteworthy that the authorities under the Rent Restriction Act do not maintain mere receipt desks to register "points of view" of the landlords but are required to examine and weigh evidence so as to strike a balance. It is no doubt true that the honest need of a reasonable person is not to be weighed judicially in a fine scale to determine, if the honest need of the landlord appears to the Court to be reasonable. But even if the need of the landlord is an honest one, it does not divest the Court of the power, as indeed the duty, to determinate, having regard to the objective conditions and other

(1) A.I.R. 1974 S.C. 1059.
(2) 1978 (1) R.C.R. 265.
(3) 1980 P.L.R. 142.

factors germane to the case. Neither can the Rent Controller abdicate his judicial functions entrapping them to the bare word of the landlord or to the opinion evidence of medical experts, as to the health condition of the landlord, or dependent members of his family.

(10) The learned counsel for the respondent cited a decision of the Delhi High Court reported as *Satya Pal* v. *Smt. Parsani Devi,* (4), to contend that in that case the landlady was successful in obtaining eviction having regard to her old age and the conditions of her health finding difficult and painful to climb stairs and thus was able to obtain the ground floor premises from the tenant. That decision is a decision on its own facts as found by the first appellate Court, which the learned Single Judge, deciding that case, did not disturb being a finding of fact and binding on him under section 39(2) of the Delhi Rent Control Act, 1958. That case is no guideline for the decision of the present case.

(11) I would have gone on to reappraise the evidence myself on the strength of some decisions cited at the Bar, spelling the power of the revisional Court to examine and go into a question of fact, but as at present advised, I have opted for the course to have a decision on facts again from the Appellate Authority, Ludhiana, in the light of the observations afore-made. The other points raised in the petition have consequential bearing on the decision of the all important questions as to whether the requirement of the landlady for the personal use and occupation of the premises is reflective of her *bona fide* need.

(12) Consequently, the revision petition is accepted. The judgment and the order of the learned Appellate Authority, Ludhiana, is set aside and he is required to re-decide the appeal in accordance with law and give a fresh decision. The parties through their counsel are directed to appear before the Appellate Authority, Ludhiana, on 28th April, 1980. There would, however, be no order as to costs in this petition.

N.K.S.

(4) 1974 R.C.J. 256.