CIVIL MISCELLANEOUS

Before S. S. Sandhawalia and M. R. Sharma, JJ.

J. G. KOHLI,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER, HARYANA, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ No. 4690 of 1975.

August 25, 1975.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—*Sections* 13(3)(*a*)(*i*) *and* 13(4)—*Requirement of a landlord for his own occupation—Whether must be immediate and existing on the date of ejectment application.*

Held, that the language of sub-section 3(2)(i) of section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, shows that the Statute does not either in express terms or by necessary implication prescribe that the requirement of the Landlord for his own occupation must be a present and existing one on the very day of moving the application. There is nothing in this or any other provision of the Act, which may lead to any such conclusion. On the other hand, sub-section (4) of section 13 of the Act shows that the material and relevant time for determining the *bona fide* requirement of the landlord is the date which the Controller may specify when allowing the application of the landlord for ejectment. This provision thus clearly indicates that the crucial date is not the date of the application for ejectment. Indeed, sub-section (4) of section 13 visualises that the material date need not even be the date of the order, but the one which the Rent Controller may fix thereafter because this clause in terms provides that he may direct the tenant to put the landlord in possession of the building on such date as may be specified. This would obviously be a future date and, therefore, the statute does not require that the *bona fide* need for occupation of the premises by the landlord must exist on the date of the application or even on the date of the order passed by the Controller. Hence it is not the requirement of the law that the landlord's need must be immediate and an existing one on the very date of the application for ejectment. Indeed he is entitled to anticipate his requirement in a reasonably foreseeable future. Further, the Controller and the Appellate Authority thereto can legitimately take into consideration any change in the circumstances regarding the requirement of the landlord on the date when the order of ejectment may have to be passed or affirmed.

(Paras 6 and 15).

C. R. No. 145 *of* 1956—*Anant Ram and another* vs. *Ishar Dass and another—decided on October* 17, 1958. *Overruled.*

Petition under Articles 226 of the Constitution of India, praying—

(a) *That filing of certified copy of Annexure P-I and P-II may be dispensed with ;*

(b) *That an appropriate writ order or direction, quashing the impugned order, dated 18th June, 1975 (Annexure P-2), be issued ;*

(c) *That any other appropriate Writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case, be issued ;*

(d) *That all the relevant records of the case may be summoned;*

(e) *That costs of this petition be allowed to the petitioner, and further praying that the dispossession of the petitioner from the house in dispute may be stayed till the pendency of the writ petition in this Hon'ble Court.*

S. P. Goyal, Advocate, *for the petitioner.*

H. L. Sarin, Senior Advocate, *with* M. L. Sarin, Advocate, *for the* respondents.

JUDGMENT

Sandhawalia, J.—(1) Whether the requirement of a landlord for the occupation of the residential building must be immediate and existing on the very date when he moves the application under section 13(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, is the primary question that falls for determination in this case.

(2) This writ petition under Article 226 of the Constitution of India has arisen in the wake of the recent enactment of the statute above-mentioned. Thereunder the powers of the Rent Controller under section 2(b) of the Act within the State of Haryana have now been conferred on the Assistant Collector, 1st Grade, and under section 15, the appellate and the revisional powers have been conferred on the respective Deputy Commissioners and the Financial Commissioner.

(3) Respondent No. 2 Hari Mohan Gauri at the material time was posted as the Deputy Director Administration, Central Hindi

Directorate, Ministry of Education, New Delhi. In anticipation of his retirement (which took place with effect from the 13th of October, 1973) he moved an application on the 10th of January, 1972, under section 13 of the East Punjab Urban Rent Restriction Act, 1949, for ejectment of the writ petitioner from house No. 119-A, New Colony, Gurgaon. The application was resisted on behalf of the writ petitioner on various pleas. It appears that during the course of the proceedings the Haryana Urban (Control and Rent and Eviction) Act came into force on the 27th of April, 1973, and by virtue of section 20-A thereof the pending proceedings were transferred to the Court of Assistant Collector, 1st Grade, who exercised the powers of the Rent Controller. On the pleadings of the parties, the Rent Controller framed only two issues, the first being whether the answering respondent *bona fide* required the building in dispute for his own occupation and the second one being whether the relationship of landlord and tenant existed between the parties. No other issue was claimed during the course of the trial and no grouse about the framing of the issues was ever raised either before the appellate or the revisional authority.

(4) Before the Controller, the parties led their respective evidence and on appraisal thereof he decided both the issues in favour of respondent No. 2 and consequently allowed his application for ejectment by a considered judgment dated the 19th of March, 1974. As already noticed, respondent No. 2 had in fact retired from service long before the date of this order of ejectment. An appeal was carried by the writ-petitioner before the Deputy Commissioner, Gurgaon, and as is evident from the order (annexure P. 1) no challenge was raised against the finding on issue No. 1 regarding the *bona fide* of the requirement of the landlord for his personal occupation. Virtually the solitary challenge was on the point whether the relationship of landlord and tenant existed between the parties. The Deputy Commissioner repelled the arguments raised on behalf of the writ-petitioner and dismissed the appeal *vide* his order dated the 23rd of December, 1974. Aggrieved, the writ-petitioner moved a revision before the Financial Commissioner which also met the same fate *vide* order dated the 18th of June, 1975 (annexure P. 2). The present writ petition is directed against the orders above-said.

(5) Mr. S. P. Goyal submits that on the 10th of January, 1972, when the application for ejectment was presented, respondent No. 2 was as yet continuing in service and was in occupation of Government accommodation and, therefore, did not immediately require the premises for his own use. Counsel contends that the respondent was merely anticipating a requirement in the future and until he actually retired, no right to seek ejectment accrued to him. The core of the argument indeed was that the requirement postulated by the statute must be a present and immediate requirement on the date of the application and further that the non-existence thereof would be fatal to the case of the landlord.

(6) Inevitably a reference must first be made to the relevant portions of section 13 of the Act. Sub-section 3(a)(i) and sub-section (4) of section 13 are in the following terms:—

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

(a) in the case of a residential building if,

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;

* * * * * *

(4) The Controller shall, if he is satisfied that the claim of the landlord is *bona fide*, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

Now a bare reference to the language of sub-section 3(a) (i) would show that the statute does not either in express terms or by necessary implication prescribe that the requirement of the landlord for his own occupation must be a present and existing one on the very day of moving the application. There is nothing in this provision (nor was any other provision brought to our notice) which may lead to any such conclusion. On the other hand sub-section (4) quoted above lends considerable support to the contention raised on behalf of the respondent that the material and relevant time for determining the *bona fide* requirement of the landlord is the date which the Controller may specify when allowing the application of the landlord for ejectment. This would thus clearly indicate that the crucial date is not the date of the application for ejectment. Indeed if a literal construction of sub-section (4) is to be visualised then it is even possible to postulate that the material date need not even be the date of the order but the one which the Rent Controller may fix thereafter because this clause in terms provides that he may direct the tenant to put the landlord in possession of the building on such date as may be specified. This would obviously be a future date. It follows, therefore, that the statute does not require that the *bona fide* need for occupation of the premises by the Landlord must exist on the date of the application or for that matter even on the date of the order passed by the Controller. I am, therefore, inclined to take the view that there is intrinsic evidence in the relevant provision itself which militates against any such technical or harsh construction requiring that the need of the landlord must be a present and an existing one on the date of the application itself.

(7) In the context of the relevant provisions a passing reference to sub-section (6) of section 13 of the Act is also perhaps instructive. This provides a statutory safeguard in cases where a landlord secures possession of residential premises for the purpose of his own or his family's use and occupation but subsequently does not do so. Sub-section (6) entitles the evicted tenant in such a situation to move the Rent Controller for restoration of possession to him and on being satisfied of the requirements of this provision the Rent Controller is obliged to make an order accordingly.

(8) Apart from the statutory provisions, the contention raised on behalf of the writ petitioner does not commend itself to me on principle. Tardy as the processes of litigation have inevitably become it would indeed be harsh, if not unreasonable, to hold that a landlord should not even be allowed to anticipate a certain need arising within a reasonable time in the foreseeable future. Indeed to hold so may tend to substantially defeat the very purpose of the relevant provision entitling the landlord to secure the possession of his residential premises.

(9) Adverting to precedent, there appears to be a consensus in favour of the view canvassed on behalf of the respondent. Though there is a paucity of precedent covering the point directly within this Court (to which a reference will be made hereafter) there are a number of decisions on analogous statutes of different Courts which all tend to the view that the requirement of the landlord need not be related immediately to the date of the application for ejectment in rent matters. A reference may first be made to the observations of Lush, J., in *Harcourt* v. *Lowe*, (1919) 35 Times Law Reports 255 in the context of construing Section 1(3) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915. The learned Judge observed:—

> "* * *. In my opinion, the only time which it is necessary to consider in order to apply the provisions of the subsection is the time when the Court is asked to make the order. It is quite immaterial to consider the time when the notice to quit was given. Even if the conditions do not exist at the time of the trial, the plaintiff is entitled to the judgment if he proves some other ground which may be deemed satisfactory to the Court."

Again in a slightly different context, Lord Justice Somervell in *Burman* v. *Woods*, (1) observed as follows in a rent case :—

> "* *. The Court has to direct its mind to the date of the proceedings and the evidence which it hears at the time, and clearly that is the date on which its order is drawn up; but it is plain that the relevant facts with regard to hardship

(1) (1948) 1 K.B.D. 111.

> may alter at any time the occupier of the house whose hardship is the relevant consideration on January 1 may die on January 2, or, to take a longer period, families may increase, there may be illnesses; or houses may become more plentiful."

(10) Now coming nearer home, the afore-mentioned principle laid down in the English cases have been accepted by the Courts in India as well. In *Petroleum Workers Union* v. *M/s. A. Mohamed and Co.* (2), Venkatadri J., whilst elaborating the reasonable requirements of the landlord under Section 10 of the Madras Buildings (Lease and Rent Control) Act, 1960 has observed :—

> "***. In such a case, it is the duty of the Rent Controller to ascertain the reasonableness and the *bona fides* of the landlord as on the date of the hearing of the petition and not as on the date of the institution of the petition."

Even a more forthright exposition of the law on this point has been made by V. R. Krishna Iyer J., in *A. P. Madhavan* v. *M. P. Ram Chandran* (3). In this case his Lordship was interpreting the concept of the *bona fide* need of the landlord under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act of 1965. The claim of the landlord, who was a School teacher, was based on the allegation that he was expecting a transfer to Pathiripala from Perinathalmanna and in that event he would require the house for his own use. An identical argument, as is being raised here on behalf of the writ petitioner, was repelled with the following observations :—

> "* * *. However, respondent's counsel has argued that, since on the date of the institution of the petition the landlord was a teacher in Perinthalmanna and not at Pathirippala, he had set up only a future and not a present need in his eviction petition and this was fatal. I must point out that the concept of need cannot be narrowly understood or pedantically interpreted but applied in a pragmatic way.

(2) A.I.R. 1967 Mad. 33.

(3) 1970 Rent Control Journal 479.

The petitioner has really been transferred to Pathiripala, even as he had alleged in his petition. He must have reasonably expected a transfer and it might well be said that a need had arisen then. It is not necessary that there should be a current, urgent need. It is enough if it is reasonably likely to arise in the near future. Knowing that between the institution of the petition and the ultimate order from the apex court years pass, it will be as good as repealing the provision for eviction on the ground of *bona fide* need, if courts insist on landlords proving a present need as against the prospective but certain need. Else, when the need confronts him, the building will be years away from him. Proceedings in court should not become tantalising trick."

(11) Within this Court, the case that covers the issue on all fours in favour of the respondent is the unreported judgment of Mehar Singh, J. (as his Lordship then was) in (4) *S. Pritam Singh* v. *L. Kishan Chand.* Therein, the landlord who was employed as a teacher moved the application for ejectment on the ground of personal requirement nearly one year before his due date of retirement. The Courts below accepted the *bona fide* of his requirement and made an order or ejectment in his favour. In revision before the High Court, it was contended on behalf of the tenant-petitioner that the landlord could not anticipate the circumstances a year ahead and seek eviction of the tenant on the ground of impending retirement. Repelling this contention, the learned Judge in forthright language observed—

"As I read the provision referred to, it does not mean that the landlord has to occupy the premises the moment he makes the application, for if that was the meaning in a case like the present, the landlord would first be on the road and would then make an application for eviction which when taken to the stage of revision might take anything upto 3 to 4 years to be decided. The result then will be that the landlord instead of obtaining eviction of the tenant when he immediately requires the premises for his own occupation

(4) C.R. 39/62 decided on Feb. 27, 1962.

> will be deferred from obtaining eviction of the tenant for a number of years. When a man is retiring from service, then his ordinary and normal anticipation is that at the end of his service he will go back and occupy his own house and for that purpose he must have vacant possession of the house and eviction of the tenant some time before he actually superannuates. Since the date of superannuation is definite and an application for eviction is made within a reasonable time of that date, in my opinion that is within the expression 'requires it for his own occupation' as used in section 13 of the Act."

The view abovesaid is in accord with the other judgments to which extensive reference has been made above. With respect, we are wholly in agreement with the abovesaid enunciation of the law.

(12) In fairness to Mr. Goyal, I must, however, notice the observations of Chief Justice Bhandari in (5), *Shri Anant Ram and another* v. *Ishar Das and another*, which do tend to strike the only discordant note on this point. Learned counsel had conceded that apart from this decision, there was no other judgment which he could cite in favour of the proposition he sought to canvass. *In Anant Ram's case* (supra), the facts were slightly different. One of the two landlords in that case had claimed eviction on the ground of personal requirement on the allegations that he was a LL.B. student at the time of presenting the application and required the premises for his own use as soon as he obtained a degree to set up his practice as a lawyer. The Controller and the appellate Court rejected the claim of the landlords apparently on the ground that it was not *bona fide* and perhaps motivated also by the fact that on the date when the application was brought, the landlord was not as yet qualified to set up his practice. In revision it was contended before the High Court that the landlord had since obtained the law degree and was thus qualified to set up his practice in the premises in question. Whilst dismissing and rejecting the claim of the landlord, Chief Justice Bhandari noticed that it was abundantly clear from the evidence on

(5) C.R. 145/56 decided on October 17, 1958.

the record that the claim of the landlord was not *bona fide* and moreover that both of them were already living in a house occupied by the members of a joint family. Though this finding by itself was sufficient to non-suit the landlord, yet the learned Chief Justice made the following passing observations on which particular reliance has been placed on behalf of the writ-petitioner—

> "The language of section 13 of the Act of 1949 makes it quite clear that a landlord can apply to the controller for eviction of his tenant only if the landlord requires the premises for his own use, that is, if he requires the premises for his own use on the date on which he makes the application. It was on this point that both the parties were in issue and this point was decided in favour of the tenant and against the landlords. The Rent Controller and the District Judge came to the conclusion that Dewan Chand did not require the premises for his own use. In A.I.R. 1945 P.C. 62, it was held that the relief claimed in the suit must be confined to matters existing at the date when the suit was instituted. If Dewan Chand did not require the premises for setting up his practice on the date on which the application was brought, it is obvious that learned District Judge was justified in dismissing the application presented by the landlords."

A reference to the judgment would show that the point at issue was not canvassed at length before the learned Chief Justice and the opinion given was one more or less on first impression. There is no adequate discussion on the point and no principle has been cited for the view that the requirement of section 13 must be existing on the date on which the application is made. With respect, if I may say so, this is a gloss on the provisions of section 13, which the language thereof hardly justifies. The earlier case law on the point which is referred to in this judgment was apparently not brought to the notice of the learned Chief Justice. It deserves notice that he had declined interference with the concurrent findings of the two Courts below under Article 227 and expressly observed that power thereunder must be exercised sparingly. Both on the particular facts of that case and from the evidence examined, the conclusion had been arrived at that the landlords need was not *bona fide* and consequently the several

conditions, which were required under sub-section (3) of section 13 of the Act, were not found to be fulfilled. This case, therefore, can hardly be an authority for the proposition which Mr. Goyal had advocated, but in case it deemed to be so I am wholly unable to subscribe to the view expressed in this case and with great respect, deem it necessary to hold that it does not lay down the law correctly.

(13) Viewed from another angle also one has inevitably to arrive at a conclusion in favour of the respondent. It is not in dispute that on March 19, 1974, when the Controller made an order of eviction, the respondent landlord had retired from service and was no longer entitled to Government accommodation as of right. Indeed, it has been averred on his behalf that he was being called upon to pay an exhorbitant economic rent for the said accommodation owing to his failure to vacate the same. Therefore, even if on the date of the application, the requirement of the landlord was not immediate, yet a patent change of circumstance had taken place by the date of the order of the Controller which neither he nor the appellate Court could possibly fail to notice. It is settled law that in India even an appeal is in the nature of re-hearing and a Court of appeal is entitled to take into account facts and events which come into existence after the decree appealed against. Reference in this context may be instructively made to the law laid down in *Lachmeshwar Prasad Shukul and others* v. *Keshwar Lal Chaudhri and others,* (6), which has been subsequently affirmed by their Lordships in *Surinder Kumar and others* v. *Gian Chand and others* (7). The general law apart, in the particular context of the rent jurisdiction, there is a refreshing enunciation of this proposition by Mr. Justice V. Bal Krishna Eradi in *Kathringa* v. *Lonappan and others* (8):—

> "The question is whether it was legally open to the Rent Controller to take note of the subsequent event and pass an order of eviction on that basis or whether it was incumbent on him to reject the petition and drive the landlord to file a fresh proceedings. As has been pointed out by

(6) A.I.R. 1941 Federal Court 5.
(7) A.I.R. 1957 S.C. 875.
(8) 1969 K.L.T. 334.

the Full Bench in the decision already cited (1967 K.L.T. 122) there is a discretion vested in the court to depart from the general rule that the rights of parties must be determined as on the date of the institution of the action in justifiable circumstances, provided such departure will not have the effect of conferring any manifest advantage or disadvantage on either party. Thus, it is not as if there is an absolute, rigid or inflexible rule that under no circumstances the court should take into account subsequent events in determining the rights of parties pending adjudication before it. If there is no manifest injustice resulting therefrom, but on the other hand such course would advance the cause of justice and prevent unnecessary implicit action, there is ample jurisdiction vested in the court to take note of relevant subsequent events in deciding the case and moulding the relief to be granted."

The abovesaid enunciation of the law has been approvingly referred to by V. R. Krishna Iyer, J., in *A. P. Madhavan's case.*

(14) However, the Supreme Court judgment which concludes the matter in this context is reported as *Maharaj Jagat Bahadur Singh* v. *Badri Parshad Seth*, (9). This was also a case under section 13 of the East Punjab Urban Rent Restriction Act of 1949 (the provisions whereof are in *pari materia* with those calling for interpretation here) and Justice Das, speaking for the Bench observed:—

"The learned Attorney General has argued that the learned District Judge wrongly took into consideration facts which had come into existence after the filing of the application under section 13 of the Act. Here again we think that having regard to the scheme and purpose of the legislation it was open to the learned District Judge to take into consideration such facts as existed at the time when the order for vacation was to come into effect. Section 13(3) (b) says that the Controller shall, if he is satisfied that the claim of the landlord is *bona fide,* make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller."

(9) 1963 P.L.R. 452.

(15) I conclude, therefore, that it is not the requirement of the law that the landlord's need must be immediate and an existing one on the very date of the application for ejectment. Indeed he is entitled to anticipate his requirement in a reasonably foreseeable future. Further, the Controller and the appellate authority thereto can legitimately take into consideration any change in the circumstances regarding the requirement of the landlord on the date when the order of ejectment may have to be passed or affirmed.

(16) It was then said on behalf of the petitioner that the relationship of landlord and tenant did not in fact exist between the parties and the authorities below, therefore, did not have any jurisdiction to decide the matter. This question was specifically put in issue before the Controller himself and decided against the writ petitioner. It is settled law that in such a situation, the Controller and the authorities above him have full jurisdiction to decide the issue of the relationship of landlord and tenant. Reference in this connection may be made to the judgment of the Supreme Court reported as *Om Parkash Gupta* v. *Dr. Rattan Singh and another* (10). The above-said case has been relied upon in this Court to hold even further that where the Controller or the appellate authority had once decided the question of the relationship of landlord and tenant arising before them then a statutory bar is created to the jurisdiction of an ordinary civil Court to readjudicate upon the question. Attention in this behalf may be drawn to the Division Bench judgment in *Muni Lal v. Chandu Lal*, (11) and *Ambala Bus Syndicate (P) Ltd.* v. *M/s. Indra Motors Kurali*, (12).

(17) Rather ingeniously Mr. Goyal had then attempted to raise fresh issues of fact and those of mixed law and fact. I wish to emphasise that in the present case the parties went to trial specifically on two issues which were framed by the Controller and decided against the writ petitioner and affirmed in appeal and revision. In case of the present kind which has been through the mill of three

(10) 1963 P.L.R. 543.
(11) 1968 P.L.R. 473.
(12) 1968 P.L.R. 960.

judicial Tribunals, I deem it wholly inexpedient to allow the petitioner to raise altogether fresh points within the writ jurisdiction.

(18) For the aforementioned reasons I dismiss the writ petition but make no order as to costs.

M. R. Sharma, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS

Before D. S. Tewatia and P. S. Pattar, JJ.

TILAK RAJ,—*Petitioner.*

versus

THE CHANDIGARH ADMINISTRATION, ETC.,—*Respondents.*

Civil Writ No. 3223 of 1975 and Civil Misc. No. 2058 of 1975.

September 22, 1975.

Public Premises (Eviction of Unauthorised Occupants) Act (40 *of* 1971)—*Section* 4—*General Clauses Act* (*X of* 1897)—*Section* 3 *Clause* (58)—*Punjab Reorganisation Act* (*XXXI of* 1966)—*Sections* 2(*g*), 2(*m*), 4, 7, 48, 88 *to* 90—*Punjab Public Premises and Land* (*Eviction and Rent Recovery*) *Act* (31 *of* 1959)—*Section* 2(*d*) *and* 3(*b*)—*Union Territory of Chandigarh—Whether a 'State'—Union'—Whether a 'successor State' in regard to the territory comprised in the Union Territory of Chandigarh—Premises passing to the Union after reorganisation—Eviction of unauthorised persons from such premises—Provisions of the Central Act—Whether applicable—Estate Officer issuing eviction notice under section* 4—*Such Officer participating in the meeting in which decision to issue such notice taken—Principles of natural justice—Whether violated.*

Held, that by virtue of section 3 Clause (58) of the General Clauses Act 1897, the Union Territory of Chandigarh is a State and thus a legal entity distinct from the Union Government and that merely from the fact that its administration is to be carried on in the name of the President, it cannot be considered as a part of the Central Government, for the President is its Chief Head not because the President is the Chief Head of the Union Government, but because of the fact that the Constitution of India recognises the President under article 239 of the Constitution as the executive head of the Union Territory as well.

(Para 11).