

Before V.M. Jain, J

LAJPAT LOK SEVA SAMTI HOSHIARPUR,—*Petitioner / Tenant*

versus

VIJAY SOOD,—*Respondent / Landlady*

C.R. No. 3197 of 1993

30th July, 2002

East Punjab Urban Rent Restriction Act, 1949—S.13-A—Petition for ejection of the tenant on the ground of personal necessity—Trial Court declining the request of the tenant seeking permission to contest the petition and ordering eviction—Tenant alleging that the existing accommodation in possession of the landlady suitable/sufficient for her use & occupation—Whether the landlady not in possession of any suitable accommodation & whether the remaining portion of the building is occupied by her co-sharers—These questions could be determined only by granting leave to the tenant to contest—Petition allowed.

Held, that the Rent Controller was required to consider as to whether the existing accommodation i.e. the remaining portion of the building was in occupation of the landlady and whether it was a 'suitable accommodation'. The Rent Controller was also required to consider whether the landlady was entitled to seek additional accommodation because of her health etc. as alleged. In the petition, filed by the landlady, it had nowhere been alleged as to in what manner her other co-sharers i.e. her sisters were occupying the remaining portion of the building. All these matters were to be determined by the Rent Controller only if the tenant had been given the necessary permission to contest the petition. Thus, it is a fit case where the tenant-petitioner should be granted the necessary relief to defend the petition on merits, especially when it is the definite case of the tenant-petitioner that the landlady was already having three rooms in her possession on the Ground Floor and seven rooms on the First Floor.

(Paras 11 & 14)

Arun Palli, Advocate and Jai Bhagwan, Advocate *for the petitioner.*

S.C. Nagpal, Advocate *for the respondent.*

JUDGMENT

V.M. Jain, J.

(1) This revision petition has been filed by the petitioner-tenant against the order dated 8th September, 1993, passed by the Rent Controller, dismissing the application of the petitioner-tenant, seeking leave to contest the petition and ordering the ejection of the petitioner-tenant from the demised premises, in the petition under Section 13-A of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act), filed by the respondent-landlady.

(2) The facts, which are relevant for the decision of the present petition, are that the respondent-landlady filed a petition under Section 13-A of the Act against the petitioner-tenant, for his ejection from the house in question, on the ground that the landlady was working as a teacher in the Central School, Shimla, and her appointment was in connection with the affairs of the Union of India and was, thus, a "specified landlord" of the building in question. It was alleged that the tenant was holding a portion of the said premises as tenant, under the landlady on a rent of Rs. 400 per month. It was alleged that initially, the tenant had taken the said premises on rent for housing and condensed course of education for adult women, but later on, the tenant-Society started a school for children in the rented portion of the building and was running the same. It was alleged that the landlady was retiring from service on 30th June, 1993 and required the portion, in occupation of the tenant, for her residence. It was alleged that the landlady did not own and possess any other "suitable accommodation" in the local area of Hoshiarpur, where she intended to reside or anywhere else. It was alleged that the remaining portion of the building was in occupation of other co-sharers i.e. the three sisters of the landlady. It was alleged that the landlady was suffering from Gout and required the Ground Floor portion and also the portion on the second floor.

(3) On notice being served, the petitioner-tenant filed an application for permission to contest the petition under Section 13-A of the Act. In the said application, it was alleged that the valid notice had not been served upon the tenant as required under Section 18-A of the Act inasmuch as the summons had not been sent in accordance with the requirement of law. It was alleged that it was only on 29th July, 1993 when the tenant appeared in the Court that the tenant came to know about the filing of the petition under the special provisions of the Act. It was alleged that the summons, received from the Court of Rent Controller, were being attached with the said application. It was alleged that the service of the petition under Section 13-A of the Act was, thus, validly effected only on 29th July, 1993 and as such, the application for permission to contest the petition under Section 13-A of the Act was being filed on 5th August, 1993 and the same was within the stipulated period of 15 days. The petitioner-tenant filed an affidavit along with the said application. It was alleged in the said affidavit that the summons, received from the Court of Rent Controller, were in the ordinary form and were not accompanied by the schedule, where it was required to be stated that the leave to contest must be obtained within 15 days of the service. It was alleged that in the absence of the due service of notice, it was not possible for the tenant to apply for permission to contest the petition earlier. It was alleged that it was only on 29th July, 1993 when the deponent came to know that the petition had been filed under the special provisions under Section 13-A of the Act. It was further alleged that the petitioner-tenant was entitled to get the leave to contest the petition, *inter-alia* on the ground that the landlady was already in possession of sufficient accommodation, which was more than enough for her use and occupation. It was alleged that the landlady was an unmarried lady and she was alone by herself. It was alleged that in the building in dispute, the landlady had three rooms on the Ground Floor out of seven rooms. It was further alleged that the school was being run by the tenant, having four rooms on the Ground Floor. It was alleged that the landlady was also having a bathroom on the Ground Floor, besides these three rooms. It was further alleged that the accommodation consisting of seven rooms on the First Floor was entirely with the landlady and the landlady was not using the same and had simply locked it over the years. It was further alleged that the school had only four rooms on the Second Floor. It was alleged

that the petition, filed by the landlady, was filed with *mala fide* intention as she did not required so much accommodation for her own use and occupation. It was alleged that the petition was motivated for increasing the rent of the premises in dispute. It was alleged that even earlier, the landlady had threatened to file ejection petition for eviction of the tenant and had insisted for increasing the rent. It was accordingly prayed that necessary permission to contest the petition be granted to the tenant.

(4) The landlady filed reply to the application and also filed an affidavit in reply to the affidavit, filed by the tenant. It was alleged that the tenant was served along with copy of the petition under Section 13-A of the Act and as such, the tenant was aware that the petition had been filed under Section 13-A of the Act. It was alleged that the tenant could not take advantage of the defect, if any, in the notice. It was further alleged that the defect, if any, in the notice was cured by supplying the copy of the petition. Similar allegations were made by the landlady regarding notice. With regard to the prayer of the tenant for leave to contest the petition, it was denied by the landlady that she was in possession of sufficient accommodation. It was denied that three rooms in the Ground Floor out of seven rooms, were in possession of the landlady. On the other hand, it was alleged that those rooms were in possession of her three co-sharers i.e. her sisters. It was alleged that even otherwise, the accommodation, as stated in the affidavit, was "not suitable" to reside in. It was alleged that there was no kitchen available. It was further alleged that even otherwise, with the running of the school in the adjoining room, it was not possible to reside in the remaining rooms for the landlady with ailing health. It was alleged that even otherwise, it was not safe for her to live in those rooms as anybody could enter the school. It was further alleged that the accommodation on the First Floor was also with the other co-sharers of the landlady and not with her. It was alleged that the landlady required the premises for her residence. It was denied that the petition had been filed for increasing the rent. It was prayed that the permission to contest the petition should not be granted.

(5) After hearing both the sides and perusing the record, the learned Rent Controller,—*vide* order dated 8th September, 1993, dismissed the application of the tenant, seeking leave to contest and

resultantly, the petition for ejection, filed by the landlady, was accepted and the tenant was ordered to deliver back the possession of the demised premises to the landlady. Aggrieved against this order of the Rent Controller, the tenant filed the present revision petition in this Court. Notice of motion was issued in this revision petition and dis-possession was stayed by this Court. Subsequently, the revision petition was admitted and it was directed that the stay shall continue.

(6) I have heard learned counsel for the parties and have gone through the record carefully.

(7) Learned counsel for the petitioner-tenant submitted before me that it was a fit case where the learned Rent Controller should have allowed the tenant the leave to contest the petition, especially when there was other accommodation available with the landlady in the building in question and the question to be determined was as to whether it was a "suitable accommodation" or otherwise. It was further submitted that the question regarding suitability of the accommodation could be decided only after the tenant was given the necessary permission to contest the petition, especially when it was a case of additional accommodation. Reliance was placed on the law laid down on a Division Bench judgment of this Court, in the case reported as **KGP Pillai versus Subhash Chander Pathania** (1) in which, reference was also made to the case **Ravinder Nath Khanna versus TR Laxhanpal** (2) in which reliance had been placed on a Supreme Court judgment. Learned counsel for the petitioner also placed reliance on *Ravinder Nath Khanna's* case (supra) in which reliance had been placed on a judgment of the Hon'ble Supreme Court, in the case **Dr. SM Nehra versus DD Malik** bearing Civil Appeal 120 of 1990, arising out of SLP (C) No. 236 of 1990, decided on 11th January, 1990. Reliance was also placed on the law laid down by this Court, in the case reported as **NN Jain versus Ved Parkash Sharma** (3). Reliance was also placed on the law laid down by the Hon'ble Supreme Court in the cases reported as **Santosh Devi Soni versus Chand Kiran** (4) and **Inderjit Kaur versus Nirpal Singh**(5).

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- (1) 1990 (2) PLR 514
 - (2) 1990 (2) PLR 140
 - (3) 1995 (1) RCR 455
 - (4) 2001 Haryana Rent Reporter 160
 - (5) 2001 (1) RCR 33

(8) On the other hand, learned counsel for the respondent-landlady submitted before me that the existing accommodation i.e. the remaining portion of the building in question was firstly in occupation of the other co-sharers i.e. the sisters of the landlady and secondly, the same was not suitable for the residence of the landlady. It was further submitted that the learned Rent Controller had rightly refused the permission to the tenant to contest the petition and no case for interference by this Court in the present revision petition was made out. Reliance was placed on the law laid down by this Court, in the cases reported as **Daya Parkash Mahendru versus Darshan Lal** (6) and **Rattan Chand versus Swaran Singh** (7). Reliance was also placed on the law laid down by the Hon'ble Supreme Court, in the case reported as **Lekh Raj versus Muni Lal**(8).

(9) After hearing counsel for the parties and perusing the record, in my opinion, the order dated 8th September, 1993, passed by the learned Rent Controller, must be set aside and the tenant must be granted necessary leave to contest the petition.

(10) As referred to above, the landlady had filed the petition for ejection of the tenant under Section 13-A of the Act, on the ground that she required the portion of the building in occupation of the tenant for her personal use, on the ground that she was going to retire from service of the Central Government and that she was not in possession of any "suitable accommodation" in the local area of Hoshiarpur and that the remaining portion of the building was in occupation of the other co-sharers i.e. her sisters and that she required the Ground Floor portion as she was suffering from severe Gout. The tenant, in his affidavit, filed along with the application, seeking permission to contest the petition, had alleged that the existing accommodation, in possession of the landlady, was more than enough for her use and occupation and that she was living alone by herself and that in the said building, out of seven rooms, she was already having three rooms on the Ground Floor and was also having all the seven rooms on the First with her and she was not using the same and had simply locked the same. In the counter-affidavit, it was alleged by the landlady that the three rooms on the Ground Floor, out

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- (6) 1993 (1) RCR 383
 - (7) 2000 (1) RCR 68
 - (8) 2001 (1) RCR 168

of seven rooms, were in possession of the other co-sharers i.e. her sisters and even otherwise, the accommodation was not suitable to reside in as there was no kitchen available. It was further alleged that the accommodation on the First Floor was also with the other co-sharers of the landlady and not with her.

(11) From a perusal of the above, it would be clear that the Rent Controller was required to consider as to whether the existing accommodation i.e. the remaining portion of the building was in occupation of the landlady and whether it was a "suitable accommodation". The Rent Controller was also required to consider whether the landlady was entitled to seek additional accommodation because of her health, etc., as alleged. In the petition, filed by the landlady, it had nowhere been alleged as to in what manner her other co-sharers i.e. her sisters were occupying the remaining portion of the building. All these matters were to be determined by the Rent Controller only if the tenant had been given the necessary permission to contest the petition.

(12) In 1990(2) Punjab Law Reporter, 140 (supra), this Court had granted leave to defend to the tenant in a petition under Section 13-A of the Act, considering that the landlord was occupying two rooms on the Ground Floor and one room on the Second Floor, at the time of filing of the eviction petition and had got possession of the First Floor during pendency of the proceedings. Reliance was placed on the law laid down by the Hon'ble Supreme Court, in *Dr. SM Nehra's* case (supra). In the case before the Hon'ble Supreme Court, the landlord was occupying the Ground Floor, besides the Second Floor while the tenant was occupying the First Floor. The question was whether the landlord required the First Floor also. Under those circumstances, it was held by the Hon'ble Supreme Court that this question could be properly determined only by granting leave to the tenant to contest. It was also observed that there was no need to take summary procedure since it was a case of additional accommodation. The law laid down by this Court, in *Ravinder Nath Khanna's* case (supra) was upheld by a Division Bench of this Court, in *KGP Pillai's* case (supra). In the reported case, the Rent Controller had declined the leave to contest the ejection petition on the ground that under Section 13-A of the Act, the Court was not to go into the "sufficiency" or "insufficiency" of the accommodation available to the

landlord. However, the case before the Rent Controller was not of sufficiency or insufficiency but was of additional accommodation, as the landlord was already in occupation of the entire Ground Floor of the building in question. It was under those circumstances that the Hon'ble Division Bench had accepted the revision petition, set aside the order of the Rent Controller and had granted the necessary leave to contest the petition to the tenant. Similarly, in 1995 (1) Rent Control Reporter, 455 (supra), a part of the premises was in possession of the landlord. On the facts of the said case, it was found that it was a case of additional accommodation, inasmuch as the landlord was already in possession of a part of the premises in question and wanted the possession of the two rooms in possession of the tenant. Placing reliance on the law laid down in *KGP Pillai's* case (supra), it was *prima-facie* found by this Court that it was a case of additional accommodation, even though it was not alleged that the landlord was living in a part of the accommodation in his possession. Resultantly, the revision petition, against the order of the Rent Controller, was allowed and the tenant was granted the necessary permission to defend the petition.

(13) In 2001 Haryana Rent Reporter, 160 (supra), the short question before the Hon'ble Supreme Court was as to whether in the light of the requirements put forward by the landlady, who was a widow and was in occupation of the First Floor of the building in which the demised premises were situated, necessary leave to defend to the tenant could have been refused. Considering that it was a case of additional accommodation, it was held by the hon'ble Supreme Court that the question of landlady's need was required to be thrashed out on merits by full-fledged trial, in view of the law laid down in the case *Dr. S.M. Nehra's* case (supra) by the Hon'ble Supreme Court. Resultantly, the tenant was granted leave to defend the petition and the case was remanded to the Rent Controller for deciding the matter on merits. In 2001 (1) Rent Control Reporter, 33 (supra) it was held by the Hon'ble Supreme Court that where the tenant was seeking leave to defend, it was enough for the tenant to make out a *prima-facie* case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It was further held that the tenant was not to establish a strong case at that stage. It was further held that leave to defend could not be granted on mere asking or in a routine manner, but at the same time, leave to defend could not be refused

when the requirement (of the landlord) may not be *bona fide*. In the reported case, the landlord, who was a permanent resident of UK, sought ejection of the tenant on the ground that he had come back permanently to settle in India and his son was contemplating to shift to India. The tenant sought leave to defend on the ground that the landlord and all his family members were happily settled in UK and that the landlord had no intention to shift to India. Under those circumstances, the Hon'ble Supreme Court granted the necessary leave to defend to the tenant.

(14) In view of the law laid down by the Hon'ble Supreme Court and by this Court, in the various authorities, referred to above, in my opinion, it is a fit case where the tenant-petitioner should be granted the necessary relief to defend the petition on merits, especially when it is the definite case of the tenant-petitioner that the landlady was already having three rooms in her possession on the Ground Floor and seven rooms on the First Floor. The various authorities, relied upon by learned counsel for the respondent-landlady, in my opinion, would have no application to the facts of the present case. In 1993(1) Rent Control Reporter, 383 (supra), it was found by this Court that sufficiency of accommodation in the hands of the landlord was not a matter which could be gone into under Section 13-A of the Act, though the suitability had to be adjudged. In this authority, the law laid down by the Hon'ble Supreme Court, in *Dr. SM Nehra's* case (supra) had not been considered by this Court. In 2000(1) Rent Control Reporter, 68 (supra), the only question before this Court was whether the landlord was a specified landlord or not. This authority, in my opinion, would have no application to the facts of the present case, inasmuch as in the present case, this question had not been raised by the tenant. In 2001(1), Rent Control Reporter, 168 (supra), the Hon'ble Supreme Court had considered the revisional powers of the High Court under Section 15(5) of the Act and it was held that the High Court had no power to set aside a finding of fact by re-appraisal of evidence, though the High Court could examine the legality or propriety of an order. It was further held that the revisional power of the High Court under the Rent Act was larger than the revisional powers under the Code of Civil Procedure. In my opinion, the law laid down by the Hon'ble Supreme Court in this authority would be of no help to the respondent-landlady.

(15) In view of my detailed discussion above, the present revision petition is allowed and the order dated 8th September, 1993 passed by the Rent Controller, is set aside and the petitioner-tenant is granted necessary leave to defend the petition for ejection, filed by the landlady under Section 13-A of the Act with no order as to costs.

(16) Parties, through their counsel, are directed to appear before the Rent Controller on 26th August, 2002 for further proceedings in accordance with law. Considering that it was a petition for ejection, filed by the landlady under Section 13-A of the Act for ejection of the tenant on the ground of personal necessity, it is directed that the learned Rent Controller shall proceed to decide the ejection petition expeditiously in accordance with law.

J.S.T.

Before M.L. Singhal, J

RAJINDER PRASHAD MALIK,—*Appellant*

versus

SHANTI DEVI MALIK & OTHERS,—*Respondents*

RSA No. 3745 of 1998

31st May, 2002

Benami Transaction (Prohibition) Act, 1988—Code of Civil Procedure, 1908—Suit by sons against their step-mother—Step-mother claiming exclusive title of the properties purchased by her with her own funds—Plaintiffs failing to show that the property was purchased from the income of their father in the name of their step-mother—Being in Govt. service defendant was in a position to purchase the property—Purchase of property by the defendant could not be viewed as purchase by a benamidar—Merely occupation of the property cannot lead the Court to infer that the plaintiffs' father had purchased the same—Courts below finding the defendant real owner of the property—Findings of facts of the Courts below supported by evidence on record are not to be interfered with by the High Court—Appeal liable to be dismissed.