

K.D. DEWAN
v.
HARBHAJAN S. PARIHAR

OCTOBER 16, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

Rent and Eviction :

East Punjab Urban Rent Restriction Act, 1949 :

Ss. 2(c) and 13(3)(a)—Landlord seeking eviction of tenant from residential building on ground of personal occupation—"Landlord"—Meaning of—Held, to be a landlord within the meaning of s.2(c) a person need not necessarily be the owner—For purposes of the Act legislature has made a distinction between an owner of a premises and a landlord—The Act deals with the rights and obligations of a landlord only as defined therein—Ownership of premises is immaterial for purposes of the Act—To claim relief u/s. 13(3)(a) a person must be a landlord within the meaning of the terms in s.2(c)—His being owner of premises is neither a pre-requisite nor a relevant factor—Father of respondent having inducted appellant into possession and appellant paying rent initially to father of respondent and on his death to respondent, as such respondent is landlord of the premises and entitled to seek relief under s.13(3)(a)—Rent Controller ordered eviction holding that there existed relationship of landlord and tenant between the parties and landlord satisfied requirement of s.13(3)(a)—Appellante authority dismissed the appeal—No illegality found in the order of High Court dismissing revision of tenant.

M.M. Quasim v. Manohar Lal Sharma & Others, AIR (1981) SC 1113, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4834 of 1999.

From the Judgment and Order dated 6.4.99 of the Punjab and Haryana High Court in C.R. No. 3791 of 1998.

O.P. Sharma, K.R. Gupta, R.C. Gubrelle and Abhishek Atrey for the appellant.

A A. Mariarputham, Maninder Singh, Aruna Mathur, Ms. Pratibha M. Singh and Ms. Kavita Wadia for the Respondent.

The following Order of the Court was delivered :

B This appeal, by special leave, is from the judgment and order of the High Court of Punjab and Haryana in C.R. No. 3791 of 1998 dated April 6, 1999.

C The appellant is the tenant of Suit Premises No. 2235, 1st Floor, Sector 21-C, Chandigarh (for short, 'the Premises') of which one Bhakhtawar Singh was said to be the owner. The father of the respondent, Bagicha Singh, inducted the appellant into possession of the premises in 1965. The respondent was paying rent to him till his death in 1976. Thereafter, the appellant has been paying the rent to the respondent. On the ground that he required the premises for his own occupation the respondent filed Rent Application No. 231/1996 under Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949 D (for short, 'the Act'). The appellant denied that the relationship between him and the respondent was that of the tenant and the landlord and further denied that the respondent required the premises for his personal occupation.

E On considering the evidence produced by both the sides, the learned Rent Controller found that the relationship of landlord and tenant existed between the respondent and the appellant; it was also found that the respondent satisfied the requirement of clause (a) of sub-section (3) of Section 13 of the Act. Accordingly, the learned Rent Controller ordered eviction of the appellant on September 25, 1997. He unsuccessfully challenged that order before the Appellate Authority, Chandigarh, who dismissed the appeal on July 27, 1998. F The appellant then carried the matter before the High Court of Punjab and Haryana by filing Civil Revision No. 3791 of 1998 which was dismissed on April 6, 1999. It is the validity of that order that is challenged in this appeal.

G Mr. O.P. Sharma the learned senior counsel appearing for the appellant, has vehemently contended that having regard to the definition of the term 'landlord' in clause (c) of Section 2 of the Act, the respondent cannot be treated as landlord; he laid emphasis on the words "every person from time to time deriving title under a landlord" and argued that no document has been filed and no material was placed before the Court to show that the respondent derived H his title from the heir of the owner of the premises after his death. Therefore,

he could not be treated as a landlord for purposes of Section 13(3)(a) of the Act. A

Mr. A. Mariarputham, the learned counsel for the respondent, submitted that the Act maintained distinction between an owner of a premises and a landlord of the premises; for purposes of Section 13(3)(a), what is required to be seen is whether the person seeking eviction satisfies the requirement of the definition of 'landlord' and, therefore, all the courts rightly held that the respondent was the landlord and ordered eviction of the appellant. B

The short question that arises for our consideration is, what is the import of the word 'landlord' in clause (c) of Section 2 of the Act?, and whether the respondent has rightly been held to be the landlord and entitled to seek eviction of the appellant. C

The said provisions reads as follows :

"Section 2(c): 'landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;" D E

A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord : (1) any person for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sublets any building or rented land in the manner authorised under the Act and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of 'landlord', Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well F G H

counsel. To understand an observation in a judgment it is necessary to look into the factual context and the provision which has fallen for consideration of the Court. In that case Section 11(1)(c) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947* (for short, 'the Bihar Act') fell for consideration of this Court. Though the definition of the term 'landlord' in Section 2(d) of the Bihar Act is much the same, its ambit is cut down by Explanation I appended to Section 11(1)(c) of the said Act which is in the following terms:

"Explanation I : In this clause the word 'landlord' shall not include an agent referred to in clause (f) of Section 2"

It is plain that in the context of the explanation in that case the meaning of the term 'landlord' is understood by excluding an agent for purposes of recovery of possession by the landlord for his occupation which is reasonable and which is in good faith.

A similar provision is also to be found in Section 14(1)(e) of the Delhi Rent Control Act, 1958 which specifically excludes an agent from the purview of landlord for purposes of recovery of possession from the tenant on the ground of personal occupation.

From the above discussion it follows that such a truncated meaning of the term 'landlord' cannot be imported in clause (c) of section 2 of the Act having regard to the width of the language employed therein and there is no other provision in the Act to restrict its meaning for purposes of Section

* "11. *Eviction of tenants* - (1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 and to those of Section 12, where a tenant is, in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:

- (c) where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord :

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant which portion shall hence forth constitute the building within the meaning of clause (aa) of Section 2, and the rent so fixed shall be deemed to be the fair rent fixed under Section 5.

Explanation. - In this clause the word "landlord" shall not include an agent referred to in clause (d) of Section 2"

- A 13(3)(a) thereof to an owner of the premises alone. The appellant has been paying monthly rent of the premises to the respondent from 1976. The respondent is thus the landlord of the premises under the Act and is entitled to seek relief under Section 13(3)(a) of the Act. In this view of the matter, we find no illegality in the order of this High Court under challenge. The appeal is without merit and it is liable to be dismissed.
- B

Mr. Sharma, however, pleads that some reasonable time may be granted to the appellant to vacate the premises. Having regard to the facts and circumstances of the case, we are of the view that as the appellant has been in possession of the premises for more than 35 years, in the interest of justice he should be granted reasonable time to search an alternative accommodation. We accordingly grant him time till end of April, 2002, subject to his filing an usual undertaking within four weeks from today.

C

The appeal is accordingly dismissed with costs.

R.P.

Appeal dismissed.