

inclined to accept the contention of the learned respondent's counsel that the petitioners had committed continuing offences. Since the offences were not continuing one, the cognizance thereof after the expiry of the period of limitation provided in Section 468 of the Code of Criminal Procedure could not be taken by the trial Magistrate. Hence the impugned complaints and the proceedings taken by the trial Court are hereby quashed.

R.N.R.

Before D. V. Sehgal, J.

JAGDISH SINGH,—Petitioner.

versus

CAPT. RANBIR SINGH JOLLY and others,—Respondents.

Civil Revision No. 1039 of 1986.

July 28, 1987.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13-A—Landlord taking voluntary premature retirement from the defence services on completion of minimum length of service under the Rules—Voluntary premature retirement—Whether amounts to resignation from service or is comprehended within the term 'retirement' in Section 13-A—Specified landlord retiring prematurely—Whether can maintain petition under Section 13-A—Specified landlord as co-owner—Whether can seek eviction for his own personal need and occupation in the face of other co-owners impleaded as respondents and who support the eviction petition.

Held, that the right of premature retirement of the government servant vested in the Government on the one hand and the government servant on the other is mutual and reciprocal. Whether it is compulsory retirement, premature retirement or retirement on superannuation the Government servant is entitled to the retirement benefits in the shape of pension, death-cum-retirement gratuity and payment in lieu of unavailed of leave etc. The Explanation to Section 13-A of East Punjab Urban Rent Restriction Act, 1949, is in fact much wider in scope. It provides that the expression retirement for the purposes of the said Section means termination of service of a specified landlord otherwise than resignation. Thus the only eventuality of cessation of appointment to any public service of the specified landlord which is excluded from the

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expression retirement is resignation therefrom. Therefore, the voluntary premature retirement after rendering service for the minimum prescribed period in accordance with the relevant service rules is retirement within the meaning of the expression in section 13-A of the Act. Hence the specified landlord is entitled to maintain application under section 13-A.

(Para 7).

Held, that it is well settled that one of the co-landlords with the consent of the others can seek eviction of the tenant for his own personal need and occupation of the premises. (Para 8).

Words and Phrases — “own and possess” as used in section 13-A of the East Punjab Urban Rent Restriction Act (III of 1949)—*Meaning of* —*Stated*.

Held, that section 13-A of the Act lays down as a condition for eviction that the specified landlord “does not own and possess suitable accommodation in the local area in which he intends to reside—Words “own and possess” postulate that the specified landlord should not be the owner as well as in possession of any other suitable accommodation. The residence of the specified landlord along with his family in the house owned by his father falls far short of this condition and the specified landlord would be entitled to seek eviction of his tenant. (Para 9).

Petition under section 18-A(8) of the East Punjab Urban Rent Restriction Act against the order of the Court of Shri O. P. Goel, P.C.S., Rent Controller, Ludhiana, dated 25th March, 1986, passing an order in favour of the applicant and against respondent No. 1 for ejection of respondent No. 1 from the demised premises. Respondent No. 1 is given one month's time to give vacant possession of the demised premises to the applicant failing which the applicant shall have a right to get possession by executing the orders.

Vinod Sharma, Advocate, with G. K. Chatrath, R. C. Chatrath and K. S. Dadwal, Advocates, for the Petitioner.

J. N. Kaushal, Sr. Advocate, Vinod K. Sharma and Ashok Jindal, Advocates, for the Respondents.

JUDGMENT

D. V. Sehgal, J.

(1) This revision petition is directed against an order dated 5th March, 1986, passed by the learned Rent Controller, Ludhiana, whereby he allowed an application under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (for short the Act) filed by respondent No. 1 and directed ejection of the petitioner from the premises in dispute requiring him to give vacant possession of the same to respondent No. 1 within one month.

(2) The premises in dispute comprise of House No. B-XVIII-76 situated in Model Town, Ludhiana, described by the boundaries set out in the application under Section 13-A of the Act. It consists of accommodation as depicted in the plan Exhibit A. 2 being one room, one verandah and two demolished sheds. Respondent No. 1 averred therein that his mother Smt. Sushila Devi was the owner of the house in dispute. She died on 20th June, 1968. He and his six brothers and sisters who are impleaded in the application as respondents No. 2 to 7 succeeded to the estate of Smt. Sushila Devi and thus became the owners of the said house. He thus claimed that there is a relationship of landlord and tenant between him and respondents No. 2 to 7 on the one hand and the petitioner on the other. It was mentioned that an application for ejection of the petitioner under Section 13 of the Act had already been filed and the same was pending in the Court of Shri M. S. Chawla, Rent Controller, Ludhiana. The instant application was filed without prejudice to the earlier one.

(3) The respondent No. 1 claimed that he retired from the Indian Army on 27th May, 1985. He is, therefore, a specified landlord qua the petitioner within the meaning of Section 13-A of the Act. He filed the instant application within one year from the date of his retirement from the Army. He attached a certificate of the competent authority in proof of the fact that he retired from the Indian Army on the date above mentioned. He claimed that he does not own and possess any other suitable accommodation in the area of Municipal Corporation, Ludhiana. He intends to reside in the premises in dispute after recovering its possession. Since his retirement from his service, he has been staying with his father in Model Town, Ludhiana, without any right. He averred that he does not

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have any right of possession to House No. 539-R, Model Town, Ludhiana. He submitted that his application was *bona fide* and he needed the demised premises for his self occupation. After occupying the same he would raise further construction in accordance with his needs for which he has already got a plan sanctioned. He filed an affidavit in support of the averments made in the application.

(4) The application was resisted by the petitioner. He raised a number of preliminary objections, *inter alia*, to the effect that the demised premises had been let out for commercial purposes; it is neither a residential nor a scheduled building and, therefore, application under Section 13-A of the Act was not maintainable. He also pleaded that since the earlier ejection application was still pending the proceedings of the instant application were liable to be stayed. Another objection raised by him was that the landlords have other two residential buildings on plots Nos. 539-L and 539-R, Model Town, Ludhiana, within the limits of Municipal Corporation and have sufficient accommodation for their residence. Thus the demised premises could not be allowed to be vacated for the personal need of the landlord-respondent No. 1. It was also contended that respondent No. 1 is not the only owner of the demised premises nor was the property let out by him. After his retirement he has joined service out of Ludhiana and he does not intend to stay and reside at Ludhiana. On merits the relationship of landlord and tenant between the respondent and the petitioner was not denied. However, it was once again reiterated that the premises in dispute was let out for commercial purposes and it is not a residential building. In fact the material averments made were the same as already comprised in the preliminary objections. The learned Rent Controller repelled all the objections so raised and passed the order of ejection under revision. The petitioner thus being aggrieved has approached this Court through the present revision petition.

(5) I have heard the learned counsel for the parties and have also gone through the proceedings and the record of the learned Rent Controller. Learned counsel for the petitioner has raised the following contentions before me:—

- (i) that the premises in dispute is not a residential building. It was let out for commercial purposes i.e. for running a dairy farm. It is thus a non-residential building and the application under Section 13-A of the Act for recovery of possession of the same by respondent No. 1 cannot, therefore, be maintained;

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- (ii) respondent No. 1 had sought and secured voluntary premature retirement from the service in the Indian Army. It cannot, therefore, be said that he is seeking to recover possession of the premises in dispute after his retirement. According to the Explanation to Section 13-A of the Act, the expression "retirement" used in the said Section means termination of service of a specified landlord other than by resignation. He submits that voluntary premature retirement from service secured by respondent No. 1 amounts to resignation from service;
- (iii) respondent No. 1 cannot claim himself to be the specified landlord qua the petitioner in respect of the demised premises within the meaning of Section 2(hh) of the Act in that he was not exclusively entitled on his own account to receive rent in respect of the building in dispute. The right to receive rent also vests in his brothers and sisters, who are impleaded as respondents No. 2 to 7. He is, therefore, merely a co-owner of the premises in dispute; and
- (iv) respondent No. 1 is admittedly living with his father in another residential building in Model Town, Ludhiana. He, therefore, possesses sufficient suitable accommodation for his residence. He does not, therefore, satisfy the essential condition of Section 13-A of the Act and is not entitled to recover possession of the demised premises.

As regards the first submission, all that need to be noticed is that the learned Rent Controller on the basis of the evidence adduced by the parties by a well reasoned order has reached at a firm conclusion that the premises in dispute is a residential building and it was initially let out to the petitioner for the purposes of residence. This finding of fact, I am afraid, cannot be interfered with while exercising the powers of revision under the proviso to sub-section (3) of Section 18-A of the Act. Examining the scope of revision under the aforesaid proviso, I held in *Dr. Dina Nath v. Smt. Santokh Kaur and others* (1), that the power of the High Court under this proviso is not co-extensive with the power of revision under sub-section (5) of Section 15 of the Act. This proviso does not confer

(1) 1987 R.C.R. 363.

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power on the High Court to appreciate the evidence to satisfy itself as to the legality or propriety of the order, which power is vested in it by sub-section (5) of Section 15 of the Act. Under this proviso the High Court can call for the record of the case for the purpose of satisfying itself that the order made by the Rent Controller is according to law. It can interfere with the order if it is without jurisdiction or contrary to law and express provisions of the Act or where the order is perverse resulting in the miscarriage of justice.

(6) Even assuming that the house in dispute was let out to the petitioner for the business of dairy farming that would not change its character. The building being a residential one it could not be converted into a non-residential building without the permission of the Rent Controller under Section 11 of the Act. In spite of its use for non-residential purposes it will continue to be a residential building and the landlord would be entitled to seek ejection of the tenant on the ground of personal requirement. It has been authoritatively so held by a Full Bench of this Court in *Hari Mittal v. B. M. Sikka* (2). I, therefore, find no force in the first submission of the learned counsel for the petitioner.

(7) His second contention again in my view is without substance. Under the service law a Government servant retires from service in any of the four eventualities, namely, on his attaining the age of superannuation, on an order of his compulsory retirement by the Government or the appointing authority provided he has completed the minimum prescribed length of service or has attained the minimum prescribed age, on his premature retirement ordered by the Government or the appointing authority provided he has completed the requisite length of service or has attained the requisite age and lastly on the voluntary premature retirement sought by the Government servant on completion of the stipulated length of service or attainment of the stipulated age. The right of premature retirement of the Government servant vested in the Government on the one hand and the Government servant on the other is mutual and reciprocal. Whether it is compulsory retirement, premature retirement or retirement on superannuation in the shape of pension, death-cum-retirement gratuity and

payment in lieu of unavailed of leave etc. Certificate Exhibit A.5 issued by the Officer Commanding categorically states that the petitioner was granted premature retirement from the Indian Army on 27th May, 1985 after 23 years of service. He did not resign. He is in receipt of pension of his rank. The Explanation to Section 13-A of the Act is in fact much wider in scope. It provides that the expression "retirement" for the purposes of the said Section means termination of service of a specified landlord otherwise than resignation. Thus the only eventuality of cessation of appointment to any public service of the specified landlord which is excluded from the expression "retirement" is resignation therefrom. I am, therefore, firmly of the view that the voluntary premature retirement after rendering service for the minimum prescribed period in accordance with the relevant service rules is retirement within the meaning of the expression "used" in Section 13-A of the Act. Respondent No. 1 is, therefore, entitled to maintain application under Section 13-A of the Act as specified landlord.

(8) The third submission of the learned counsel for the petitioner also need not detain me much longer. Respondent No. 1 is an owner along with respondents No. 2 to 7 of the house in dispute. He is thus the owner of every nook and corner of the said house. He is entitled to recover rent of the said premises on his own behalf. Learned counsel for the petitioner, however, placed reliance on *Smt. Nirmal Jerath and others v. Shri Sadhu Ram Sharma and others* (3) to contend that co-owners who inherit a property on the death of their predecessor-in-interest are tenants-in-common and payment of rent by the tenant to one of them is not a valid discharge of his liability. On the basis of the ratio of *Nirmal Jerath's* case he submits that since respondent No. 1 could not give a valid discharge for the rent received by him on behalf of respondents No. 2 to 7 he could not be held to be a specified landlord within the meaning of Section 2(hh) of the Act. After going through *Nirmal Jerath's* case however, I find that the facts therein were quite different. In that case a widow of the late landlord allegedly accepted rent from the tenant to deprive the other widow, mother and children of the late landlord of their right to receive the rent for the premises. It was in this context that it was held that she could receive rent on her own account but she could not receive rent on behalf of any of the other heirs without any authority of some kind from them. The facts of the present case are quite to the contrary. Respondents

(3) 1972 R.C.R. 680.

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No. 2 to 7 have supported the instant application made by respondent No. 1 and they want that he should recover possession and occupy the house in dispute for purposes of his and his family residence. It is well settled that one of the co-landlords with the consent of the others can seek eviction of the tenant for his own personal need of occupation of the premises. I, therefore, find no substance in this submission also.

(9) In support of his last contention, the learned counsel for the petitioner placed reliance on *Ashok Karam v. A. T. Jotwani* (4) and *Banarsi Dass and another v. Smt. Kaushalaya Devi and another* (5). *Ashok Karam's* case defines the scope of the phrase "has no other reasonably suitable residential accommodation" which occurs in Section 14(1)(a) of Delhi Rent Control Act, 1958 *Banarsi Dass's* case dilates on the meaning of the words "is not occupying any other residential building in the urban area concerned" as embodied in sub-clause (i) of clause (a) of sub-section (3) of section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. The ratio of none of these two cases can, therefore, be of any help to the petitioner. Section 13-A of the Act lays down the condition that the specified landlord "does not own and possess any other suitable accommodation in the local area in which he intends to reside". The words "own and possess" postulate that the specified landlord should not be the owner as well as in possession of any other suitable accommodation. The residence of respondent No. 1 along with his family in the house owned by his father thus falls far short of this condition. I, therefore, hold that there is no substance in the last submission also.

(10) Consequently finding no force in this revision petition, I dismiss the same with costs. The petitioner is, however, allowed three months' time to vacate and deliver vacant possession of the premises in dispute to respondent No. 1 on the condition that he deposits in the Court of the Rent Controller the entire amount of arrears of rent along with future rent for three months within one month from today. On his failure to comply with this condition respondent No. 1 shall be entitled to take out execution and recover possession of the premises in dispute forthwith.

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(4) 1982 (2) R.C.R. 576.

(5) 1982 (2) R.C.R. 374.