

Before S. P. Goyal, J.

KASTURI LAL SHARMA,—Petitioner.

versus

KARTAR SINGH,—Respondent.

Civil Revision No. 1851 of 1982.

December 23, 1983.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3)(a)(i)—Landlord seeking ejectment of the tenant for his own occupation—Words ‘his own occupation’—Whether could include the requirement of the landlord’s married son and his family who is not dependent upon him.*

*Held, that the words ‘his own occupation’ in section 13(3)(a) of the East Punjab Urban Rent Restriction Act 1949 means occupation of the landlord and the dependent members of his family who are residing with him. The definition of the word ‘family’ though meant for the purposes of clause (i) (a) of sub-section (3) also makes it clear that the words ‘is in occupation’ include only dependent members of the landlord who are ordinarily residing with him. The only exception to this provision is one contained in clause (iv) of sub-section (3) which authorises the landlord to get the tenant ejected if he requires any residential building for use as an office or consulting room by his son who intends to start his practice as a lawyer or a registered medical practitioner or for the residence of a son who is married provided his son has no accommodation in the urban area concerned nor has vacated any other building without sufficient cause. Where the case pleaded by the landlord is that he required the demised premises for his own occupation and no plea had been set up that he required it for the residence of his married son who is not at all dependent upon him, the words ‘his own occupation’ cannot by any stretch of reasoning be understood to include the need of his son and his family.*

(Para 2).

*Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of the Court of Sardar T. S. Cheema, Appellate Authority, under the East Punjab Urban Rent Restriction Act, Gurdaspur, dated 27th May, 1982, reversing that of Shri H. R. Nohria, P.C.S. Rent Controller, Gurdaspur, dated 29th July, 1981, allowing the appeal for eviction. Further ordering that the respondent-tenant is directed to vacate the premises within two months from today provided he pays all the arrears of rent which have accrued till this day within a period of 20 days.*

H. L. Sarin, Sr. Advocate with M. L. Sarin, Advocate, for the Petitioner.

Gur Rattan Pal Singh, Advocate, for the Respondent.

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**JUDGMENT**

S. P. Goyal, J.

(1) Respondent Kartar Singh filed this petition for ejection of the tenant from the half portion of the house in his occupation on the ground of non-payment of rent and personal necessity. As the arrears of rent were duly tendered and accepted on the first date of hearing of the petition, the only ground of ejection which survives is that of personal need of the landlord to occupy the demised premises. The averment made in this regard in the petition is that the landlord is in occupation of only one room and kitchen which is insufficient for his family consisting of himself, his son, daughter-in-law and four grand children. The application was opposed by the tenant who pleaded that the son of the landlord has been adopted by Mangal Singh, sister's husband of the respondent and the landlord along with his son and family were residing from the last many years in the house of his brother-in-law. He further pleaded that Ajit Singh, son of the respondent also owns a house situate at a distance of 100 yards from the house in dispute and that the petition has been filed *mala fide* with the intention to increase the rent. The Rent Controller after recording evidence of the parties held that the landlord alongwith his son and the family was residing with Mangal Singh and moved into the house in dispute just before the filing of the application. Holding further that the landlord has failed to prove that he has not vacated any house in the same vicinity where the house in dispute is situate negated the plea of personal need and dismissed the petition. The Appellate Authority reversed the finding of the Rent Controller holding that the landlord was living in the house of his brother-in-law Mangal Singh only as licensee and the occupation of the premises where the landlord has no right to stay does not debar him to seek the ejection of his tenant if he wants to shift to his own house. As the accommodation in his possession consisting of one room and a kitchen was found to be wholly insufficient for the landlord and the family of his son, his petition was allowed and ejection of the tenant ordered. Aggrieved, thereby the tenant has come up in this revision.

(2) As noticed above, on the consideration of the documentary and oral evidence led by the tenant the Rent Controller found that the landlord and his son Ajit Singh with his family were residing for a number of years in the house of Mangal Singh. Because this

fact was denied by the landlord, so he never pleaded any justification for shifting to his own house. The landlord is admittedly in possession of one room and a kitchen in the house in dispute. This accommodation is certainly sufficient so far he is concerned. On these facts the question which emerges for determination is as to whether he is entitled to get the remaining portion of the house in occupation of the tenant vacated for the occupation of his son who is in employment and not dependent on the landlord. It has been repeatedly held by this Court that the words, "his own occupation" in Section 13(3) (a) of the East Punjab Urban Rent Restriction Act 1949 means occupation of the landlord and the dependent members of his family who are residing with him. The definition of the word, "family" though stated to be meant for the purposes of clause (i) (a) of sub-section (3) makes it also clear that the words, "is in occupation" include only dependent members of the landlord who are ordinarily residing with him. The only exception to this provision is the one contained in clause (iv) of sub-section (3) which authorises the landlord to get the tenant ejected if he requires any residential building for use as an office or consulting room by his son who intends to start practice as a lawyer or as a registered medical practitioner or for the residence of his son who is married provided his son has no accommodation in the urban area concerned nor has vacated any other building without sufficient cause. The case pleaded by the landlord here is that he requires the demised premises for his own occupation and no plea has been set up that he requires it for the residence of his married son. As already stated above, Ajit Singh is not at all dependent on the landlord. The words, "his own occupation" cannot by any stretch of reasoning be understood to include the need of Ajit Singh and his family. The demised premises could be got vacated by the landlord for the occupation of Ajit Singh and his family, if at all, only under clause (iv) referred to above but he never set up a case under that clause. However, on the facts of the present case it was not possible to be set up the need of Ajit Singh under clause (iv) because the landlord would be entitled to seek ejection of the tenant for the need of a married son only if he has been residing with him and the accommodation is needed for his residence soon after his marriage. The provision contained in this clause cannot be interpreted so as to entitle the landlord to claim ejection of the tenant for the residence of his married son who is not dependent upon him and is residing separately for a number of years. Moreover, Ajit Singh son of the landlord admittedly has his own house of equivalent area in the same

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vicinity. Though Ajit Singh in his statement deposed that the house is not fit for human habitation and is being used for tethering cattle but it would not be safe to rely on his *ipsi dixit* as no other evidence was led to establish these facts. The plea of the need of the married son and his family was, therefore, neither set up nor substantiated from the facts proved on the record. The accommodation in possession of the landlord being sufficient for his own need, the Appellate Authority went wholly wrong in ordering ejection of the tenant for the needs of his married son and his family who were neither dependent nor living with him for the last more than 8 years prior to the filing of the ejection petition.

(3) For the reason recorded above, this petition is allowed, the order of the Appellate Authority set aside and that of the Rent Controller restored. No costs.

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N.K.S.