

Before D. V. Sehgal, J.

KARMI and others,—Petitioners

versus

HARNAM SINGH and others,—Respondents.

Civil Revision No. 2217 of 1979.

January 8, 1988.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 12 and 13—Building unsafe and unfit—Ejectment of tenant sought on such ground—Ejectment ordered—Tenant's application for repairs—Said application also allowed—Effect of such order on ejectment.

Held, that an order adverse to the interest of the tenant under section 13(3)(a)(iii), section 12 of the East Punjab Urban Rent Restriction Act, 1949 cannot be invoked by him. It is not correct to say that an order under section 12 of the Act has an over-riding effect over the orders under section 13. The building, if becomes once unsafe or unfit for human habitation, it confers a right on the landlord for eviction of the tenant and that right cannot be defeated by the tenant on his own account or by his seeking an order under section 12 of the Act. (Para 5).

Petition for revision under section 15(5) of the East Punjab Urban Rent Restriction Act against the order of the Court of Shri J. S. Chatha, Appellate Authority, Jullundur, dated 27th August, 1979 reversing that of Shri M. L. Malhotra, P.C.S., Rent Controller, Nawanshahr, dated 29th July, 1978 allowing the appeal and setting aside the order of the learned Rent Controller and further directing the tenant to vacate the premises within one month.

S. P. Jain, Advocate, for the Petitioners.

Y. P. Gandhi, Advocate, for the Respondents.

JUDGMENT

D. V. Sehgal, J.

This judgment will dispose of Civil Revisions Nos. 2217 of 1979 and 1590 of 1980. The former has been filed by the tenant against the order of ejectment passed against him by the learned appellate Authority on the ground that the premises in dispute has become unsafe and unfit for human habitation. The latter has been filed by the landlord against the orders of the authorities below under

section 12 of the East Punjab Urban Rent Restriction Act, 1949 (for short, 'the Act'), on an application filed by the tenant allowing him to carry out necessary repairs to the same premises at the cost of the landlord and to deduct the amount so spent from the rent due from him to the landlord.

(2) The facts in brief are that Harnam Singh was the owner and landlord of a house situated at Banga, district Jalandhar and Jagat Singh was a tenant under him in the said house at a monthly rent of Rs. 8. Harnam Singh filed an application under section 13 of the Act for ejection of Jagat Singh *inter alia* on the ground that the building in dispute has become unsafe and unfit for human habitation. The learned Rent Controller, Nawanshahr before whom this application was made registered the same as Ejection Application No. 53 of 1977. He, however, ultimately dismissed the same,—*vide* his order dated 29th July, 1978 by relying on a judgment of this Court in *Chuhar Mal v. Balak Ram and another* (1) holding that since the landlord had not specifically pleaded that he required the building for reconstruction, the application on his behalf under section 13(3) (a) (iii) of the Act is not maintainable. An appeal filed by the landlord against this order has been allowed by the learned appellate Authority,—*vide* judgment dated 27th August, 1979. It has been held that *Chuhar Mal's case* (supra) was overruled in a subsequent judgment of this Court in *Lalit Behari v. Sant Lal*, (2). Thus the landlord is competent to eject his tenant in case the building is either unfit or unsafe for human habitation without pleading or proving anything more. It further proceeded to hold that it has been established by the landlord that the building in dispute has become unsafe and unfit for human habitation. The learned appellate Court allowed the appeal and setting aside the order of the learned Rent Controller, directed ejection of the tenant from the premises in dispute. Jagat Singh tenant had died in the meantime and his legal representatives including his widow Smt. Karmi were brought on the record. Being aggrieved against the judgment of the learned appellate Authority, they filed Civil Revision No. 2217 of 1979 in this Court.

(3) Jagat Singh tenant, on the other hand, filed an application under section 12 of the Act before the learned Rent Controller

(1) 1964 P.L.R. 503.

(2) AIR 1974 Pb. & Hry. 339.

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Nawanshahr which was registered as Ejectment Application No. 57 of 1977. He pleaded that the building required necessary repairs and Harnam Singh landlord had neglected to carry out the repairs to the building. This application was allowed by the learned Rent Controller,—*vide* order dated 31st January, 1979. He allowed Jagat Singh to raise parda wall and repair the lintels which are alleged to have developed cracks by spending Rs. 100 which amount he shall be entitled to deduct from the rent due to the landlord. Harnam Singh filed an appeal against this order before the learned appellate Authority. In spite of the fact that it had already passed an order of ejectment against the tenant from the same building, it proceeded to deal with the appeal as it was brought to its notice that Civil Revision No. 2217 of 1979 against the order of ejectment has already been admitted in this Court and the ejectment of the tenant has been stayed. The learned appellate Authority observed that it could not be said whether the ejectment order would stand or fall when the aforesaid Civil Revision is ultimately decided. Dealing with the merits of the appeal, it found no force in the same and rejected it,—*vide* its judgment dated 23rd February, 1980. Harnam Singh landlord being aggrieved against this judgment filed Civil Revision No. 1590 of 1980 in this Court. It may be mentioned here that during the pendency of this revision petition, Harnam Singh died on 6th January, 1987 and his legal representatives were brought on the record,—*vide* order dated November 3, 1987, passed by G. C. Mital, J. The fate of Civil Revision No. 1590 of 1980 would depend on the decision of Civil Revision No. 2217 of 1979. I, therefore, proceed to deal with the latter.

(4) On the basis of the evidence brought on the record, it is clear that the building in dispute is in a very bad condition and is not fit for human habitation. The walls are damaged and props have been fixed to keep them standing. The outside wall is also curved. Amar Singh (A.W.3) a draftsman supported the case of the landlord. He stated that there are cracks in the walls and roof. One of the walls is bulging out. The wall of the staircase is already broken. The house is not fit for human habitation. No doubt the roof had not fallen because of the supports given to it. Even the tenant admitted while appearing in the witness box that wall of the staircase has already fallen. There are some cracks in the window. These cracks go right upto the roof. In view of this condition of the building, in my view the learned Appellate Authority rightly relied upon *Dr. Piare Lal Kapur v.*

Smt. Kaushalya Devi and another (3). All that the landlord is required to establish is that the building is in an unsafe condition. The fact that the building can be made fit or habitable by carrying out extensive repairs is irrelevant. The learned Appellate Authority also found that in his written reply the tenant has admitted that a small portion of the wall has fallen down and two small lintels of the door have developed some cracks. The cumulative effect of the evidence persuades me to agree with the finding recorded by the learned Appellate Authority. I, therefore, uphold the same. There is, therefore, no merit in this revision petition which has to be dismissed.

(5) Learned counsel for the tenant contended that an order for carrying out necessary repairs to the building had been passed by the authorities below when the tenant invoked their jurisdiction by filing an application under Section 12 of the Act. Therefore, the tenant should be allowed to carry out these repairs and then the matter should be examined whether or not the building is unsafe and unfit for human habitation as alleged in the ejection application filed by the landlord. I find no force in this submission. It has been held by a Division Bench of this Court in *Balbir Singh v. Hari Ram* (4) while dealing with the analogous provisions under the Haryana Urban (Control of Rent and Eviction) Act, 1973 that a decision under section 13(3)(a)(iii) will be binding on the parties, as it will finally determine the question of fact. If the landlord fails he may not ultimately be able to obstruct the proceedings under section 12 for permission for repairs claimed on behalf of the tenant. If the tenant fails to resist the eviction under this provision, then he has no case for repairs under section 12. After an order adverse to the interest of the tenant under section 13(3)(a)(iii), section 12 cannot be invoked by him. It is not correct to say that an order under section 12 of the Act has an overriding effect over the orders under section 13(3)(a)(iii). The building, if becomes once unsafe or unfit for human habitation, it confers a right on the landlord for eviction of the tenant and that right cannot be defeated by the tenant on his own account or by his seeking an order under section 12, even if the landlord has not come earlier to Court seeking eviction under section 13. I am bound by the dictum in *Balbir Singh's case* (supra). Consequently, I find that the order of necessary repairs passed by the authorities below cannot be

(3) 1970 P.L.R. 41.

(4) AIR 1983 Pb. & Hy. 132.

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sustained in view of the order of eviction already passed at the instance of the landlord against the tenant on the ground that the property has become unfit and unsafe for human habitation. Consequently, Civil Revision No. 1590 of 1980 has to be allowed and the impugned orders passed by the authorities below are to be set aside.

(6) The upshot of the above discussion is that Civil Revision No. 2217 of 1979 fails and is, therefore, dismissed. The order of ejectment passed by the learned Appellate Authority is affirmed. On the other hand, Civil Revision No. 1590 of 1980 is allowed. The orders of the authorities below directing necessary repairs are set aside. There shall, however, be no order as to costs in both the revision petitions.

(7) The tenants are allowed three months' time to vacate the house in dispute and handover its vacant possession to the landlords on the condition that they deposit the entire amount of arrears of rent along with future rent for three months, within one month from today in the Court of learned Rent Controller, failing which the landlords shall be entitled to take out execution of the ejectment order and recover possession from the tenants.

S.C.K.

Before D. V. Sehgal, J.

KAKO,—Petitioner.

versus

UNION OF INDIA and others,—Respondents.

Civil Writ Petition No. 4506 of 1987

January 14, 1988.

Constitution of India, 1950—Art. 14—Indian Air Force Family Pension Scheme, 1964—Para 4(c)(2)—Widow's entitlement to family pension—Marriage contracted after husband's discharge from defence service—Scheme not recognising right of widow from such marriage for benefit of family pension—Para 4(c)(2)—Whether based on reasonable classification and intra vires Article 14.

Held, that while undertaking the liability to pay family pension, the Government in its wisdom has taken into consideration the