

could not be convicted under the Act.

(7) Reference may be made to the decision of J. B. Garg, J. in *Subhash Chander v. State of Haryana* (1), which was a case of purchase of *namkeen Bhujia*. The report of the Public Analyst related to the medium used in the preparation of *bhujia* i.e. mustard oil which was not upto the standard prescribed. It was held that for sale of *namkeen bhujia* for which no standard was prescribed, conviction could not be made.

For the reasons recorded above, this appeal is dismissed.

R.N.R.

Before : V. K. Jhanji, J.

SUNIL KUMAR,—Petitioner.

versus

S. S. SHARMA,—Respondent.

Civil Revision No. 1824 of 1990.

7th June, 1991.

*East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 13-A & 18-A—Sons of specified landlord in occupation of ground floor—Specified landlord not in occupation of any portion nor having any other suitable accommodation—Eviction of first floor sought—Plea in amended petition not supported by an affidavit—Tenant has no right to contest.*

*Held*, that this ground was taken by the petitioner in his amended petition under S. 18-A of the Act but the petitioner has not filed any affidavit in support of this ground. Sub-section (4) of S. 18 of the Act provides that the tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building, as the case may be, unless he filed an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. Petitioner having failed to file an affidavit in support of the additional ground, the learned Rent Controller was justified in not taking into consideration the said ground.

(Para 9)

(1) 1990(2) F.A.C. 127.

Sunil Kumar v. S. S. Sharma (V. K. Jhanji, J.)

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*Appeal from the order of the Court of Mrs. Rekha Mittal, PCS, Rent Controller, Chandigarh dated 21st May, 1990 allowing the petition under Section 13-A of the East Punjab Urban Rent Restriction Act. The respondent/tenant is directed to put the petitioner into vacant possession of the demised premises within one month from today.*

*Claim : Petitioner u/s 13-A of the East Punjab Urban Rent Restriction Act, for the ejection of the respondent from first floor of H. No. 3105, Sector 27-D, Chandigarh.*

*Claim in Revision : For reversal of the order of the lower Courts below.*

*Dated the 7th June, 1991.*

PRESENT

THE HON'BLE MR. JUSTICE V. K. JHANJI

Mr. S. P. S. Bhuller, Advocate, for the Petitioner.

Mr. Arun Jain, Advocate with Mr. Sudhir Aggarwal, Advocate, for the Respondent.

JUDGMENT

V. K. Jhanji, J.

(1) Respondent-landlord S. S. Sharma, retired on 31st May, 1990, as Establishment Officer from the office of the Circle Education Office, Nabha, after attaining the age of Superannuation. Before his retirement, he filed petition under section 13-A of the East Punjab Urban Rent Restriction Act (as applicable to Chandigarh) (hereinafter referred to as the Act) on 14th February, 1990 on the ground that he being a specified landlord requires the first floor for his own use and occupation as he does not own and possess any other suitable accommodation in the urban area of Chandigarh where he intends to settle down after his retirement. He further stated in the petition that the ground floor of the house which comprises of four rooms, kitchen, latrine and bath room is in possession of his two sons namely Kamal Kant and Anil Kumar Sharma. One of his sons Kamal Kant is married and is having one son whereas his other son is of marriageable age and as such the entire ground floor is being used by his two sons. He also stated that he has two married

daughters who visit him frequently and as such the entire ground floor is required by him for his own use and occupation. Along with the petition, he also filed an affidavit to the effect that he does not own and possess any other suitable accommodation in Chandigarh where he intends to reside after his retirement.

(2) The petitioner who is occupying first floor as tenant under the respondent on monthly rent of Rs. 900 filed petition under section 18-A of the Act supported by an affidavit for the grant of leave to defend petition under section 13-A of the Act. In the petition under section 18-A of the Act, the petitioner has not denied that the respondent, at the time of his retirement, was living at Nabha where he was residing in a rented accommodation. He has also admitted that sons of respondent are residing on the ground floor. However, he denied that entire ground floor is in their occupation and alleged that two rooms on the ground floor are in the occupation of respondent. Petitioner also stated that the accommodation in occupation of respondent is more than sufficient especially when two daughters of respondent have been married. While petition under section 18-A of the Act was pending consideration, application for leave to defend was amended in order to take up plea that Barsati portion of the house which was in occupation of one Ved Parkash Sharma has been vacated and is now available with the respondent.

(3) Learned Rent Controller dismissed the petition filed by petitioner under section 18-A of the Act for leave to contest the petition. Consequently petition under section 13-A of the Act was allowed and petitioner was granted one month's time to vacate the premises. Learned Rent Controller, while dismissing the petition, was of the view :—

- (i) that the Rent Controller while deciding petition under section 13-A cannot get into the question of 'sufficiency' and 'Insufficiency' of accommodation;
- (ii) that in a petition under section 13-A of the Act, bona fide need of the landlord cannot be gone into.
- (iii) that there is nothing on the record to show that the respondent is in occupation of two rooms on the ground floor and the remaining two rooms are in occupation of his two sons.

Sunil Kumar v. S. S. Sharma (V. K. Jhanji, J.)

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(4) Petitioner being aggrieved against the order of learned Rent Controller, has filed the present civil revision.

(5) Learned counsel for the petitioner has submitted that the learned Rent Controller acted illegally in exercise of its jurisdiction in not granting leave to petitioner to defend the petition under Section 13-A of the Act. He further submitted that this is a case of additional accommodation and suitability of the landlord can be decided only if the petitioner was allowed to defend the ejection petition. For this proposition, he relied upon Division Bench judgment of this Court in *K. G. P. Pillai v. Subhash Chander Pathania*.

(6) On the other hand, learned counsel for the respondent submitted that it is not a case of additional accommodation because the ground floor is being occupied by the sons of the respondent.

(7) After hearing learned counsel for the parties and going through the relevant record, I do not find that the learned Rent Controller has acted illegally or the impugned order calls for any interference in revisional jurisdiction.

(8) It is not disputed that the house is constructed on 7½ Marla plot. Respondent filed petition under section 13-A of the Act a few months before his retirement. It has not been denied that the respondent, at the time when he was in employment, was residing at Nabha in a rented accommodation. There is nothing on the record to show that the entire ground floor is not in occupation of his two sons especially when one of his sons is married and is having a child and second son of the respondent is of marriageable age. In *K. G. P. Pillai's* case (supra), the landlord was already in occupation of the entire ground floor and ejection was sought from one room on Barsati. In such circumstances it was held as under :—

“The question in the present case was not of ‘sufficiency’ or ‘Insufficiency’ of accommodation but was of additional accommodation as the landlord is already in occupation of the entire ground floor of the building in question.”

However, in the present case, the entire ground floor is in occupation of the sons of the respondent. Respondent is not in occupation of any portion of the house or had any suitable accommodation in the urban area of Chandigarh where he intends to reside at the time of his retirement.

(9) The other argument of learned counsel for the petitioner that Barsati portion which was vacated by Ved Parkash Sharma during the pendency of the petition, is now available with the respondent and is sufficient for his requirement, is also devoid of any merit as in a petition under section 13-A of the Act, the learned Rent Controller cannot go into the question of sufficiency or insufficiency of the accommodation available with the landlord. Even otherwise this ground was taken by the petitioner in his amended petition under section 18-A of the Act but the petitioner has not filed any affidavit in support of this ground. Sub-section (4) of Section 18 of the Act provides that the tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. Petitioner having failed to file an affidavit in support of the additional ground, the learned Rent Controller was justified in not taking into consideration the said ground.

(10) Under the circumstances, the civil revision fails and is dismissed with costs. However, petitioner-tenant is allowed one month's time to vacate the premises provided he deposits the entire arrears of rent with the Rent Controller within fifteen days from today.

*Before : N. C. Jain, J.*

SUMEDHA KALIA (MS.) AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 11980 of 1989.*

22nd January, 1990.

*Constitution of India, 1950—Art. 226 and 227—Maharishi Dayanand University, Rohtak Prospectus for M.B.B.S./B.D.S. Entrance Examination, 1989—Note 1 p. 6, Ch. II, Ch. 5, Reg. No. 4—Admission to M.B.B.S./B.D.S. on the basis of Combined Entrance Test—C.B.S.E. not sponsoring candidates on All India basis—Seats lying vacant—Legal obligation to fill such seats—Because of paucity of time vacant seats to be offered to petitioners on merit.*