instance in this respect where certain portions, though forming a part of the "factory" according to the Factories Act, have been excluded for the purpose of giving exemption under sub-clause (1) of this Rule.

The result, therefore, is that this writ petition succeeds and the impugned orders are quashed, but with no order as to costs.

B. R. T.

APPELLATE CIVIL

Before Hans Raj Khanna, J.

SHYAM SUNDER,—*Appellant*

versus

KHAN CHAND,—*Respondent*

S.A.O. 176-D of 1965

1966

January 19th.

Delhi Rent Control Act (LIX of 1958)—S. 14(1)—Object of—Tenant acquiring vacant possession of another residential house on account of the previous one being insufficient—Whether liable to eviction from earlier premises—"Acquire"—Meaning of—Whether means acquisition of ownership or any sort of acquisition.

Held, that if the premises already in his occupation were not sufficient for the requirements of the family of the tenant and he was, on that account, impelled to take on lease other premises, he should have vacated the earlier premises. The underlying object of enacting clause (h) of the Proviso to sub-section (1) of section 14 of the Act was that the tenant should not have more than one premises for his residence in these days of housing shortage. In case the tenant has taken on rent any premises for his residence and he thereafter acquires the vacant possession of another premises also for his residence, the tenant in such an eventuality would have to quit the earlier tenanted premises. He cannot refuse to vacate the same on the ground that the new premises, the possession of which he has acquired for residence, are not sufficient for his requirement. It is not necessary to show that the new place acquired by the tenant is suitable for his needs.

Held, that in cases where the tenant becomes liable to ejectment because of any act or omission or default on his part, he cannot

avoid ejectment except in cases where the statute itself grants some relief and make provision for the condonation of the default.

Held, that one can acquire vacant possession of premises for residence even without becoming owner thereof and there is no warrant for the proposition that clause (h) of Proviso to sub-section (1) of section 14 of the Act would not be attracted if the new premises of which the tenant has acquired vacant possession for residence, have been taken by him on rent and not by purchase.

Second Appeal from the Order of Shri Pritam Singh, Rent Control Tribunal, Delhi, dated 5th May, 1965, affirming that of Shri Asa Singh Gill, Controller, Delhi, dated 23rd December, 1964, passing an order for recovery of possession of the suit premises in favour of the petitioner against the respondent and further ordering that the respondent shall pay Rs 40 as costs to the petitioner.

B. C. MISRA, ADVOCATE, for the Appellant.

RAJ KISHAN, ADVOCATE, for the Respondent.

JUDGMENT.

Khanna, J. KHANNA, J.—This second appeal under section 39 of Delhi Rent Control Act (No. 59 of 1958 hereinafter referred to as the Act) filed by Sham Sunder is directed against the order of Rent Control Tribunal, Delhi, affirming on appeal the order of the Controller whereby an order for ejectment of the appellant from the premises in dispute was made in favour of Khan Chand, respondent.

The brief facts of the case are that the appellant is occupying the premises in dispute, which consist of one room, a tin shed, a store and a terrace; situated in Basti Harphul Singh; Delhi, as a tenant of the respondent on a monthly rent of Rs. 8. The respondent made an application for ejectment of the appellant under section 14 of the Act on the allegation that the appellant had acquired vacant possession of a residence at 9, Kishan Ganj, Delhi.

The application was resisted by the appellant who denied that he had acquired vacant possession of a residence at Kishan Ganj. According to the appellant, he and the other members, of his family including his brother and widowed mother, were residing in the suit premises as displaced persons from 1948. The appellant's brother got married in 1949 and had, three children. The appellant

had four children and the entire family consisted of twelve members. As the premises in dispute consisted of one small room and were insufficient for the members of his family, the appellant got one small barsati in Kishan Ganj for accommodating the family. The whole of the family was in occupation of both the premises. According thus to the appellant the expansion of the members of the family necessitated the getting of additional accommodation, and this fact did not amount to acquiring vacant possession of a residence as contemplated by law.

The Controller held that appellant had acquired vacant possession of a residence and as such ordered his ejectment. The order of the Controller, as stated above, was affirmed on appeal by the Tribunal.

Clause (h) of the proviso to sub-section (1) of section 14 of the Act, under which the order for the ejectment of the appellant has been made, provides that an order for recovery of the premises may be made on the ground—

> "that the tenant has, whether before or after the commencement of the Act, built, acquired vacant possession of, or been allotted a residence."

In the present case, the Controller appointed Shri K. L. Sawhney, as Local Commissioner, to visit the premises at No. 9, Kishen Ganj, Delhi, and he found that the appellant was in possession of those premises which consisted of one living room, one bath room, one kitchen, one latrine and an open space. This is a complete set of residence according to the standard and mode of living of the appellant because the premises in dispute were, if anything, less spacious than the new premises taken on rent by him in Kishen Ganj. The appellant could thus be said to have acquired possession of another place for his residence.

Mr. Misra on behalf of the appellant has argued that the appellant took the premises in Kishen Ganj on rent because his younger brother had got married and as a result of birth of children the strength of the families of the appellant and his brother had gone up to twelve. The necessity of taking the premises in Kishen Ganj on rent arose, it is submitted, because the premises in dispute had become insufficient for the needs of the family of the appellant. In this respect, I am of the view that if the

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premises in dispute were not sufficient for the requirement of the family of the appellant and he was on that account impelled to take other premises, he should have vacated the premises in dispute. The underlying object of enacting clause (h) of the proviso to sub-section (1) of section 14 of the Act, was that the tenant should not have more than one premises of his residence in these days of housing shortage. In case, the tenant has taken on rent any premises for his residence and he thereafter acquires the vacant possession of another premises for his residence, the tenant in such an eventuality would have to quit the earlier tenanted premises.

Mr. Misra, however, points out that the new premises in Kishen Ganj, which the appellant has taken on rent, are not so spacious as to accommodate both the families of the appellant as well as his brother, who used to live with the appellant. Although it is open to question if the family of the brother of the appellant, who is doing independent separate business, can be considered to be part of the family of the appellant, the contention advanced by Mr. Misra, is liable to be repelled on another ground. It is for the tenant when he takes the new place for his residence to see that it is sufficient for his needs. Having taken vacant possession of the new premises for residence, he cannot refuse to vacate the earlier tenanted premises on the ground that the new premises, the possession of which he has acquired for residence, are not sufficient for his requirement. I may in this connection point to the change which has been introduced in the language of clause (h) of the proviso to sub-section (1) of section 14 of the Act reproduced above. This clause replaces clause (h) of the proviso to sub-section (1) of section 13 of the Delhi and Ajmer Rent Control Act (No. XXXVIII of 1952), according to which a tenant was liable to be ejected if—

> "the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted a suitable residence."

The word "suitable" in the corresponding clause of Act XXXVIII of 1952, has been omitted in Act 59 of 1958, and one can take it that this omission by the legislature was deliberate and not without significance. It would consequently be not necessary to show that the new place

acquired by the tenant is also suitable for his needs. The argument on behalf of the appellant that the premises taken by him in Kishen Ganj are not sufficient for the requirement of his family cannot, in the circumstances, be allowed to prevail.

Mr. Misra, then contends that the appellant has, during the pendency of the ejectment proceedings, vacated the premises in Kishen Ganj. This fact, in my opinion, would not make material difference because the appellant became liable to ejectment when he shifted to his new place of residence after having acquired vacant possession of the same. Once that liability to ejectment has been incurred, the same cannot be undone by the appellant surrendering possession of the premises he took on rent in Kishen Ganj. Reliance on behalf of the appellant has been placed upon *Maharaj Jagat Bahadur Singh* v. *Badri Parshad Seth* (1) and *Messrs Gulab Rai-Kishori Lal* v. *Banarsidas Chandiwala Sewa Smarak Trust, Delhi* (2), to show that if the ground of ejectment has ceased to exist, the application for ejectment is liable to be dismissed. In the case of *Maharaj Jagat Bahadur Singh,* the landlord sought the ejectment of the tenant from a cinema building on the ground that he required the building to be vacated in order to carry out the repairs having been directed to do so by the authorities concerned. The Executive Engineer, during the pendency of the ejectment proceedings, reported that satisfactory repairs had been done. It was held that the Rent Controller should have taken into consideration that fact. In the case of *Messrs Gulab Rai-Kishori Lal,* the landlord-trust filed suit for ejectment against its tenants on the ground that it *bona fide* required the tenanted premises for the furtherance of its activities for the setting up of a school therein. When the matter came up in revision it was found that the trust had transferred its property including the premises in dispute to a college, for its income, and that alternatively the landlord-trust was negotiating to sell the property to the Corporation at a price made higher by the fact that the tenants would have been removed. It was held that these facts could be taken into consideration to see as to whether the landlord-trust *bona fide* required the premises for the establishment of a school

(1) 1965 P.L.R. 452.
(2) I.L.R. (1964)2 Punj. 349=1964 P.L.R. 731.

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therein. The above cases, are evidently distinguishable and cannot help the appellant for the liability of the appellant to be ejected arose because of his having acquired vacant possession by taking on rent new premises. A distinction has to be kept in view between the cases where the liability of the tenant for ejectment arises because of some act or omission or default on his part, and those cases where the ejectment of the tenant is sought not because of any act, omission or default on the part of the tenant but for some other reason. In cases where the tenant becomes liable to ejectment because of any act or omission or default on his part, he cannot avoid ejectment except in cases where the statute itself grants some relief and makes provision for the condonation of the default. For example, where a tenant sublets the premises against the terms of the statute and thus incurs the liability to ejectment, the subsequent eviction of the sub-tenant would be no answer to proceedings for ejectment brought by the landlord against the tenant. See in this connection *Naurang Lal* v. *Suresh Kumar* (3).

Lastly, it is argued by Mr. Misra, that the word "acquired" in clause (h) shows that the new premises which are obtained by the tenant should be on a permanent basis like purchase and that in case the tenant acquires new premises for residence by taking them on rent, the clause would not be attracted. There is no force in this contention. The words used in clause (h) reproduced above are not "acquired ownership" of the premises, but "acquired vacant possession". One can acquire vacant possession of premises for residence even without becoming owner thereof and there is no warrant for the proposition that clause (h) would not be attracted if the new premises, of which the tenant has acquired vacant possession for residence, have been taken by him on rent and not by purchase. The same view was taken by Jindra Lal, J., in *Des Raj Goyal* v. *Satya Prakash Gupta* (S.A.O. No. 217-D of 1964, decided on 26th October, 1964).

The appeal consequently fails and is dismissed, but, in the circumstances, I leave the parties to bear their own costs.

R. S.

(3) I.L.R. (1964)2 Punj. 197=1964 P.L.R. 505.