

Before J. V. Gupta, J.

SHIVSHANKAR LAL AND ANOTHER, *Petitioners.*

versus

SURENDER NATH,—*Respondent.*

Civil Revision No. 1442 of 1989

September 20, 1989.

Haryana Urban (Control of Rent and Eviction) Act, 1973—S. 13-A—Eviction—Specified landlord—Ejectment application purporting to be under Sec. 13-A however including other grounds of eviction available under S. 13 also—Application filed by landlord two years after institution of proceedings, for orders under Sec. 13-A—Neither notice nor procedure prescribed followed—Eviction Under S. 13-A—Whether can be ordered.

Held, that no eviction order could be passed under S. 13-A of the Haryana Urban (Control of Rent and Eviction) Act, 1973 because the ejectment application was never filed under S. 13-A only as it contained other grounds as well. Not only that even the summons issued were not in the prescribed form to be issued under S. 13-A of the Act. The original application for ejectment was filed on 13th November, 1987 and it remained pending for about two years. It was on 3rd March, 1989 that the landlord moved the application for passing orders under S. 13-A of the Act. Under the circumstances, the tenants could not be taken by surprise when procedure prescribed under S. 13-A of the Act was never followed by the Rent Controller earlier. (Para 5)

Petition under Section 13-A (8) of Haryana Urban (Control of Rent and Eviction) Amendment Act No. 11 of 1986, for revision of the order of the Court of Shri R. K. Bishnoi, Rent Controller, Charkhi Dadri, dated 29th March, 1989 passing an eviction order under section 13-A of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act') as amended and also passing an eviction order in favour of the applicant Surender Nath Retired Lt. Col. directing the respondents to vacate the premises in dispute within two months and entitling the applicant to get the eviction of the respondents through the process of this court and allowing the application of the applicant with cost.

CLAIM.—Application U/S 13-A the Haryana Urban Control of Rent and Eviction Act, 1973.

CLAIM IN REVISION.—For reversal of the order of the Lower Court.

Shivshankar Lal and another v. Surender Nath (J. V. Gupta, J.)

Application under Section 151 CPC praying that the dispossession of the applicants-alleged tenants-petitioners, be stayed ad-interim, during the pendency of the revision petition, in this Hon'ble Court.

R. L. Sarin, Advocate, for the Petitioners.

R. S. Mittal, Sr. Advocate with S. D. Bansal, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This petition is directed against the order of the Rent Controller, Charkhi Dadri dated 29th March, 1989 whereby an eviction order has been passed under section 13-A of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act') as amended.

(2) The premises in dispute were rented out,—*vide* rent note dated 13th March, 1954 on a monthly rent of Rs. 900. Application for eviction was filed on 13th November, 1987 purporting to be under section 13-A of the Act. The premises in dispute were alleged to be residential building. Ejectment was sought under section 13-A, the landlord being a member of the Armed Forces and having retired on 30th November, 1986 as Lt. Col. The other grounds taken were non-payment of arrears of rent and in the alternative even if the premises in dispute are held to be a non-residential building, the landlord having retired from the Armed Forces required the same for his personal use and therefore, was entitled to eject the tenant. Summons were issued to the tenant for 27th January, 1988. On that day, the tenant appeared and on the assessment of the arrears of rent and the costs etc. he tendered the arrears of rent, but the landlord refused to accept the same. The case was then adjourned from time to time. It was on 3rd March, 1989 that the landlord moved an application that eviction order be passed against the tenant under section 13-A as the tenant failed to file affidavit as required under section 13-A(4) of the Act stating the grounds on which he seeks to contest the application for eviction nor obtained any leave from the Rent Controller to contest the same. Notice of this application was given to the tenant. Though the reply to the same was filed but the Rent Controller passed the eviction order on 29th March, 1989 on the short ground that the respondents were required to contest the application after filing the affidavits and

obtaining the leave of this court but uptill now neither affidavit has been filed by the tenant nor leave of this court was obtained and therefore, the Rent Controller had no option but to pass the eviction order.

(3) Learned counsel for the tenant-petitioners submitted that the eviction application was never filed under section 13-A only as it contained other grounds as well including the non-payment of arrears of rent and the plea available under section 13(3-a). Moreover, argued the learned counsel, the summons as prescribed under section 13-A were never issued in the present case and therefore, there was no occasion for the tenants to seek permission as provided under section 13-A(4) of the Act. He also submitted that the premises in dispute is a non-residential building and therefore no eviction order could be passed for a non-residential building under section 13-A of the Act. In support of his contention he referred to *M/s. Delhi Cloth Mills and others vs. Lachhman Dass* (1) and *Joginder Paul of Ludhiana vs. Gurdial Singh* (2).

(4) On the other hand, ld. counsel for the landlord/respondent submitted that the eviction application was filed under section 13-A of the Act though certain other grounds were also taken, therein. The eviction order could be passed under section 13-A and that being so since the tenant failed to seek permission to contest, eviction order has been rightly passed by the Rent Controller.

(5) After hearing the learned counsel for the parties I am of the considered view that no eviction order could be passed under section 13-A of the Act because the ejection application was never filed under section 13-A only as it contained other grounds as well. Not only that even the summons issued were not in the prescribed form to be issued under section 13-A of the Act. The original application for ejection was filed on 13th November, 1987 and it remained pending for about two years. It was on 3rd March, 1989 that the landlord moved the application for passing orders under section 13-A of the Act. Under the circumstances, the tenants could not be taken by surprise when procedure prescribed under section 13-A of the Act was never followed by the Rent Controller earlier.

(6) Consequently, this petition succeeds and the impugned order is set aside and the case is sent back to the Rent Controller for

(1) 1989 (1) RLR 396

(2) 1989 HRR 113.

Union of India v. Gurkirpal Singh (G. R. Majithia, J.)

deciding the matter afresh in accordance with law. The parties have been directed to appear before the Rent Controller on 6th October, 1989. Records of the case be sent back forthwith. It may be made clear that it will be open to the landlord to move an application to the Rent Controller as to whether he wants to proceed with the present application under section 13-A of the Act only and in case such an application is filed, the learned Rent Controller will pass the appropriate orders. If the application is allowed the procedure prescribed under section 13-A of the Act will be followed for disposing of the same. But since the nature of the premises have been disputed, the tenants would be entitled to contest the same.

R.N.R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

UNION OF INDIA,—Appellant.

versus

GURKIRPAL SINGH,—Respondent.

Letters Patent Appeal No. 186 of 1989

October 4, 1989.

Constitution of India, 1950—Art. 16—Equal opportunity— Meaning of—Opportunity to be considered only—No right to an offer of appointment.

Held, that the equality which is guaranteed under the Constitution is the opportunity to make an application for a post and to be considered for it on merits. The right does not extend to being actually appointed. The process of selection and selection for the purposes of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a *mandamus*. No one can ask for a *mandamus* without a legal right.
(Para 5)

Held, that the present case is a case of initial appointment. A person who has been selected has got no legal right to an offer of appointment.
(Para 8).

Letter Patent Appeal under Clause X of the Letter Patent of the High Court against the judgment of Hon'ble Mr. Justice M. R.