Harijans, non-proprietors and co-operative farming societies. Members of the Gram Panchayat are to be elected and there is no choice in this matter vesting in the Consolidation Officer. The members of the Gram Panchayat may in many cases be representatives of the various interests from whom a selection has to be made by the Consolidation Officer. No allegation has been made either in this case or in the petition which was decided by Narula J., about the arbitrary selection or choice of the Consolidation Officer. There is suitable machinery in the Act itself to enable any aggrieved person to attack the provisions of the scheme and the repartition carried out in accordance therewith. There are provisions with regard to appeals and revisions on matters relating to repartition as also the framing of the scheme. The legislation or the statutory rules are not, therefore, open to the vice of the arbitrariness or discrimination.

I see no reason, therefore, to accept the contention of Mr. Wasu that rule 4 should be struck down being in violation of the Constitution or indeed any of the provisions of the Act.

These petitions will, therefore, be dismissed without any order as to costs.

R.S.

REVISIONAL CIVIL

Before Mehar Singh, J.

MILKHA SINGH, AND OTHERS,—*Petitioners.*

versus

MAHARAJ KISHAN KESAR,—*Respondent.*

Civil Revision No. 32 of 1966.

April 4, 1966.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(iv)—Abatement of nuisance at the stage of appeal—Whether can be taken into consideration while deciding the appeal against the order of eviction.

Held, that if an order of eviction is made against the tenant on the ground of nuisance as provided in section 13(2)(iv) of the East Punjab Urban Rent Restriction Act, 1949, the Appellate Authority cannot take into consideration the plea of

the tenant that the nuisance no more exists. The Appellate Authority cannot remand the case to the Rent Controller for the decision of this plea.

Petition under Section 15 *of Punjab Act III of* 1949, *for revision of the order of Shri Banwari Lal, District Judge, Jullundur and Appellate Authority, dated the* 21*st December,* 1965, *reversing that of Shri Ranjit Singh, Rent Controller, Jullundur, dated the* 15*th July,* 1964, *and remanding the case to the Rent Controller to make further enquiries in respect of the issues framed by the Appellate Authority.*

Application under Section 13 *of the East Punjab Urban Rent Restriction Act, No.* 3 *of* 1949 *for ejectment of the respondent.*

H. S. GUJRAL, ADVOCATE WITH SUSHIL MALHOTRA, ADVOCATE, *for the Petitioners.*

D. N. AWASTHY, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, J.—An application for eviction was made by the landlords, applicants in this revision application, against the tenant, respondent, on various grounds, and the Rent Controller allowed the application ordering eviction of the tenant, on the ground of the tenant having been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, within the meaning and scope of section 13(2)(iv) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949).

The tenant filed an appeal to the Appellate Authority from the order of eviction made against him by the Rent Controller. At the time of the hearing of the appeal before the Appellate Authority, it was urged on behalf of the tenant that by that time the nuisance had been abated, and hence the ground of eviction under section 13(2)(iv) of the Act had ceased to exist. It was contended, consistent with the decision in *Surinder Kumar* v. *Gian Chand* (1), that as the appeal before the Appellate Authority was for rehearing of the eviction application by the landlords and as by that time the ground of eviction had ceased, so that application must be dismissed. Their Lordships held in that case that "the hearing of an appeal is under the procedural law of the country in the nature of rehearing and therefore, in moulding the relief to be granted in appeal an appellate court is entitled to take into account even facts and events

(1) 1958 S.C.A. 412.

which have come into existence since the decree appealed from was passed. In determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered." The Appellate Authority on the basis of such argument proceeded, on December 29, 1965, to make an order directing the Rent Controller to make further enquiry whether since the date of order of eviction made by him the nuisance had been abated and whether during the pendency of the appeal there have again been, on the part of the tenant, 'such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood'. The Appellate Authority has called a report of the Rent Controller in that respect. It is against that order of the Appellate Authority that the landlords have come in revision to this Court.

In section 13(2) of the Act are given grounds in regard to which, if the Rent Controller is satisfied, he may proceed to order eviction of a tenant. So for as the present matter is concerned, the first ground is where the tenant has not paid or tendered arrears of rent, to which there is a proviso that on the first date of hearing the arrears may be paid and then the ground ceases to exist. This is clause (i) of sub-section (2) of section 13. In clause (ii) the ground of eviction is where the tenant has transferred his rights or sublet, the whole or part, of the premises. The third ground is in clause (iii) where the tenant has committed acts impairing materially the value or utility of the premises. In clause (iv) the ground of eviction is where "the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood'. The last ground of eviction in this sub-section is when the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause. It will be noticed that in each one of those five grounds, before the landlord comes to seek assistance of the Controller for an order for eviction of the tenant, the act of the tenant is already a completed act, which is a ground for eviction. Only in the case of the first ground, although the act of the tenant is a completed act on the date of the eviction application in that, he is in arrears of rent, the proviso to clause (i) takes away the effect of that completed act of the tenant by making a specific special provision that on payment made before the Rent Controller according to the proviso to clause (i) that effect shall not be there and an order of eviction shall not be made against the tenant. This is the only exception in the five grounds of eviction in sub-section (2) of section 13. The learned counsel for the landlords contends that in view of this the principle

in *Surinder Kumar's case* cannot be invoked in a case like the present. He refers to two reported cases to support his argument. The first case is *Pushpa Bai* v. *A. Salochana Menon* (2), which is a case more or less exactly parallel to the present case. Eviction had been ordered on the ground of nuisance committed by the tenant in keeping a buffalo on the premises, but, at the stage of the revision in the High Court, it was contended that after the order of eviction of the Rent Controller and during the pendency of the appeal before the Appellate Authority the buffalo having been sold by the tenant, the nuisance had ceased to exist, and so at the stage of the appeal the ground of eviction ceased to exist. The learned Judge negatived this argument, and one of his main reasons has been that where the legislature has wanted to provide for relief to the tenant by a subsequent event as by the payment of the arrears of rent in the terms of the statute before the Rent Controller, it has specifically provided so, and as it has not done so with regard to the other grounds of eviction, so that abatement of the nuisance after the date of the order of eviction did not justify the dismissal of the eviction application. The learned counsel for the tenant seeks to distinguish this case from the present case in this manner that in the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, when a ground stated in the Act is made out, the Controller is imperatively required to order eviction of the tenant because the word used is 'shall', but he points out that this is not so in section 13 of East Punjab Act 3 of 1949, because in this section the word used is 'may'. But this seems to provide no distinction because, if my recollection is right, in one of the recent cases of the Supreme Court their Lordships have held that when under section 13 of the Act a ground for eviction is proved, there is no option with the Rent Controller, but to order eviction of the tenant. The second case to which the learned counsel for the landlords makes reference is *Naurang Lal* v. *Suresh Kumar* (3). That was a case in which the tenant had on two previous occasions, earlier to the date of the application for eviction, sublet the demised premises, but the subletting was not there on the date of the application. The learned Judges of the Division Bench held that after the coming into force of East Punjab Act 3 of 1949, once there has been subletting, in other words, once the act of subletting is complete, that gives a ground for eviction and it matters not that the ground does not subsist to the date of the application. Now, in my opinion, *Naurang Lal's case* is a much stronger case than the present

(2) (1959) 1 And. W.R. 363.

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

case. In the present case the ground of eviction, that is to say the existence of the nuisance, continued not only to the date of the application for eviction of the tenant, but also to the date of the order of the Rent Controller directing his eviction, whereas in *Naurang Lal's case* the ground did not exist even on the date of the application. It is the ratio of *Naurang Lal's case* which is binding on me and in view of that decision it must be held that in the present case the abatement of the nuisance at the stage of the case before the Appellate Authority cannot be taken into consideration.

One ground has already been given that if the legislature intended to take away an already existing ground of eviction, then it would have made a similar exception as in the case of the ground of non-payment of arrears of rent. There is, however, another aspect of the matter, and it becomes rather more apparent and prominent in this very case. The argument before the Appellate Authority not only raised the question of the abatement of the nuisance after the date of the order of the Rent Controller, but also with regard to acts and conduct of the tenant in creating a further and new nuisance after the date of the order of the Rent Controller. Ordinarily any such fresh act or conduct of the tenant would give a cause for a fresh application for eviction to the landlord, but if the argument on the side of the tenant was accepted that facts and events happening after the order of the Rent Controller and during the pendency of appeal against that order must be taken into consideration in moulding the relief to be granted in the landlord's application, there seems to be no ground for not taking into consideration new acts and conduct of the tenant which justifies his eviction, while taking into consideration the fact of the ground having become non-existent after the date of the order of the Rent Controller. Both parties will have to be treated in the same manner and subject to the same principle. But, in my opinion, the dictum in *Surinder Kumar's case* does not apply to a case like the present because of the terms of the statute under which the parties are litigating and the anomaly like the above, therefore, cannot possibly arise.

In consequence, the Appellate Authority could not have ordered a further enquiry and called for a report of the Rent Controller with regard to the abatement of the nuisance after the order of eviction made by the Rent Controller or with regard to the coming into existence of fresh nuisance at the instance of the tenant after that date. So the order of the Appellate Authority is set aside and the direction is that it will now proceed to dispose of the appeal of the tenant on

merits. Nothing said in this order decides any question of fact which has been decided by the Rent Controller and is a matter of controversy or is likely to be a matter of controversy before the Appellate Authority. There is no order in regard to costs in this application.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J. and H. R. Khanna, J.

MAYA RAM AND OTHERS,—*Appellants.*

versus

SATNAM SINGH AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 233 of 1965.

April 4, 1966.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Land allotted to displaced person in lieu of ancestral land left in West Pakistan—Whether ancestral—Letters Patent Appeal—Finding that no inquiry was made by vendee as to necessity for the sale—Whether can be interfered with in Letters Patent Appeal.

Held, that the land allotted to a displaced person in India in lieu of the land left in Pakistan which was ancestral, will be deemed to be ancestral *qua* his sons.

Held, that a finding that no enquiry as to necessity for the sale was made by the vendee is a finding of fact which cannot be interfered with in a Letters Patent Appeal.

Letters Patent Appeal under clause 10 of the Ltters Patent from the Court of the Hon'ble Mr. Justice Harbans Singh, dated the 26th day of July, 1965, passed in Regular Second Appeal No. 1440 of 1963, affirming that of Shri Manmohan Singh Gujral, District Judge, Ambala, dated the 14th October, 1963 who affirmed that of Shri Dev Bhushan Gupta, Sub-Judge, 1st Class, Jagadhri, dated the 29th August, 1962, decreeing the plaintiff's suit for possession of the land in suit but dismissing his suit for declaration and leaving the parties to bear their own costs throughout.

G. C. MITTAL, ADVOCATE, for the Appellants.

A. S. AMBALVI AND R. S. AMOL, ADVOCATES, for the Respondents.