Single Judge in this appeal is that the appeal of Daljit Singh, appellant is competent as against the order of the trial Court. This appeal will also now go back for disposal on merits.

(9) In the circumstances of the cases, there is no order in regard to costs, in either case.

SHAMSHER BAHADUR, J.—I agree.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

SAT PARKASH,—*Petitioner*

versus

SARBH DAYAL,—*Respondent*

Civil Revision No. 512 of 1967

April 19, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 4 and 5—Landlord obtaining eviction of tenant from house for personal occupation—Leasing out house after reconstructing it to another person—Tenant recovering possession under S. 13(4)—Landlord making application for fixing fair rent—S. 5—Whether applicable—Landlord leading no evidence falling within the ambit of S. 4(2)(a) and (b)—Fair rent—How fixed.

Held, that section 5 of the East Punjab Urban Rent Restriction Act, 1949 is not attracted in the case of a building from which a landlord obtains eviction of the tenant on the ground of requirement of the house for personal occupation, after reconstructing the house, fails to occupy it himself, and then under sub-section (4) of section 13 of the Act has to deliver back possession of the house to the tenant, even though the nature of the premises has changed. The landlord loses advantage of any investment on reconstruction because of his having acted contrary to the provisions of the statute. (Para 5)

Held, that if no evidence having reference to clauses (a) and (b) of sub-section (2) of section 4 of the Act has been led by any party to the fair rent proceedings, the only part to which reference can be made by the landlord in support of his claim is clause (i)(c) of sub-section (3) of the said section, which deals with increase for the purpose of fair rent. (Para 5)

Petition under section 15(5) *of the East Punjab Urban Rent Restriction Act,* 1949 *for revision of the order of Shri Udham Singh, Appellate Authority, Patiala dated* 23*rd May,* 1967, *modifying that of Shri Anokh Singh Pawar, Rent Controller, Patiala* (*B*), *dated the* 30*th November,* 1965 (*fixing the fair rent for the premises at the rate of Rs.* 64 *per mensem from the date of the application*) *and fixing the fair rent of house at the rate of Rs.* 40 *per mensem from the date of the application.*

R. N. SANGHI, ADVOCATE, for the Petitioner.

M. R. AGNIHOTRI, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—The house in question is No. 2887 in Bagichi Mangal Dass at Patiala. Orginally it consisted of a single story comprising of three rooms, one *deohri* and a courtyard. It was let by the landlord, Sarbh Dayal, to the tenant, Sat Parkash, at a rental of Rs. 10 per mensem in the year 1938-39. On an application by the landlord for eviction of the tenant, he obtained an order of eviction and succeeded in dispossessing the tenant on August 18, 1959. The ground for eviction, on which he succeeded, was requirement of the house for his own occupation. After that the landlord reconstructed the house He added three more rooms to the ground storey and then he constructed an upper storey of three rooms with two stairs to come up to the upper storey. The accommodation in the house was thus increased twice the size than it was when the tenant was evicted from the original house.

(2) The reconstruction of the house was completed sometime in 1961. The landlord instead of occupying the reconstructed house himself, proceeded to let it to a tenant. On that the original tenant, Sat Parkash, made an application under sub-section (4) of section 13 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act III of 1949), for being restored possession of the house to him on the ground that although the landlord had obtained his eviction from the house for his personal occupation but that he had not occupied it within a year from the date of his vacating the same. In that application obviously the tenant succeeded and he was put back into possession of the reconstructed house on February 10, 1965.

(3) It was after that that the landlord moved an application for fixation of fair rent. He thought the section that was attracted to his application was 5 but the Rent Controller thought that it was section 4 of the Act. In any event the application having been

opposed by the tenant, the Rent Controller by his order of November 30, 1965, proceeded to fix Rs. 64 as the fair rent for the house. He found that the basic rent was Rs. 10 being the rent during the year preceding January 1, 1939. On that he allowed an increase of Rs. 4. So it came to a total of Rs. 14. He found that the cost of reconstruction of the house was Rs. 6,000 and 10 per cent return on that entitled the landlord to Rs. 50 per mensem. He fortified himself in this respect by the statement of a Municipal clerk that the Municipality of Patiala had assessed the rental value of the house for purposes of house tax at Rs. 600 per annum on December 1, 1962. He therefore, proceeded to fix the fair rent at Rs. 64 per mensem. There was an appeal against his order by the tenant to the Appellate Authority which following *Ati Devi* v. *Amar Nath* (1) remitted the case back to the Rent Controller for report on the question of fair rent in the wake of section 4 of the Act after taking evidence of the parties. The Appellate Authority proceeded to give certain direction to the Rent Controller for this purpose in the wake of the decision in *Ati Devi's case.*

(4) The Rent Controller, after taking evidence of the parties again, reported back on April 5, 1967, that the fair rent should be Rs. 30 per mensem. He proceeded on the basis that the rental value of the building in 1962 for house tax purposes was assessed at Rs. 50 per mensem and if it was worked back to a year prior to January 1, 1939, it would come hypothetically within the range of Rs. 30 per mensem. He was obliged to make this approach because the parties led no acceptable evidence with regard to prevailing rent in the locality in which the house is situate in regard to the same or similar accommodation in similar circumstances during the period of twelve months prior to January 1, 1939. When the appeal of the tenant came for consideration before the Appellate Authority again on May 23, 1967, the learned Judge proceeded to fix the basic rent at Rs. 35 per mensem and allowing an increase of Rs. 5 per mensem, he fixed the fair rent at Rs. 40 per mensem. He proceeded on the basis that the rent for the old accommodation was Rs. 10 per mensem and because of the new amenities provided in reconstructed house and the additional accommodation he was of the opinion that the house as reconstructed could easily have been let at Rs. 35 per mensem in the year prior to January 1, 1939. Obviously the learned Judge was proceeding on nothing else but guess. If the parties had even produced some evidence to show what was the average increase in the

(1) C.R. 592 of 1959 decided on 11th April, 1960.

prevailing rents between the years 1939 and 1962, that might have formed some basis to support the opinion of the learned Judge, but he had absolutely no basis for coming to the conclusion that the house, reconstructed as it is, would have fetched Rs. 35 per mensem as rent in the year prior to January 1, 1939. Against the order of the Appellate Authority both the landlord and the tenant have filed revision applications (Civil Revision Applications 659 of 1967 and 512 of 1967 respectively), obviously the landlord desiring the increase of the fair rent and the tenant, the decrease as against the figure of fair rent fixed by the Appellate Authority.

(5) There is no evidence in this case which satisfies the requirements in clauses (a) and (b) of sub-section (2) of section 4 of the East Punjab Act III of 1949. The only fact that is available is that the old accommodation, before the reconstruction of the house, was let at Rs. 10 per mensem and that was obviously the basic rent a year prior to January 1, 1939. The Act nowhere deals with a peculiar case like the present when a landlord obtains eviction of the tenant on the ground of requirement of the house for personal occupation but, after reconstructing the house, fails to occupy it himself, and then under sub-section (4) of section 13 of the Act has to deliver back possession of the house to the tenant. Obviously in the meantime the nature of the construction of the premises has changed. As I have said there has been an increase of twice the accommodation over and above the original accommodation as let to the tenant at Rs. 10 per mensem. It would, therefore, seem a little unfair that the landlord should not have any increase of the rent in the circumstances. This, however, is no consideration for the decision of these revision applications which have to be decided in the terms of sections 4 and 5 of the Act. The learned counsel for the landlord contends that section 5 of the Act is attracted to this case and in this respect he refers to *Ramji Das* v. *Roshan Lal* (2), but the learned Chief Justice in that case was of definite opinion that section 5 cannot possibly be attracted to a case like the present. After reproducing the provisions of section 5, the learned Chief Justice pointed out that the words 'and it shall not be chargeable until such addition, improvement or alteration has ben completed' at the end of the first proviso to section 5 can only refer to improvements or alterations carried out after the determination of the fair rent under

(2) 1963 P.L.R. 647.

section 4 of the Act, but in this case fair rent has never been determined for the house, not even for the old accommodation as it was before the reconstruction. So section 5 is not attracted to the present case. The landlord then only claims fixation of fair rent according to section 4, but there is no evidence on the basis of which fair rent of the house as it is today can be determined in relation to twelve months prior to January 1, 1939. It has already been pointed out that no evidence on this aspect of the matter having reference to clauses (a) and (b) of section 4 of the Act has been led by any party to these proceedings. So the only part of section 4 to which the landlord can refer in support of his claim is clause (i)(a) of sub-section (3) of section 4 which deals with increase for the purpose of fair rent and it says that "in fixing the fair rent of a residential building the Controller may allow, if the basic rent—(i) in the case of a building in existence before the 1st January, 1939—(a) does not exceed Rs. 25 per mensem, as increase not exceeding $8\frac{1}{3}$ per cent on basic rent." In the present case the only fact available is that during the twelve months prior to January 1, 1939, the rent of the house in question was Rs. 10 per mensem, which, in the absence of any other material, has to be taken to be the basic rent, and on that increase of $8\frac{1}{3}$ per cent can at the most come to Re. 1. So the fair rent of the house in question under section 4 cannot be more than Rs. 11 per mensem. This is a result which is from the consideration of the landlord obviously extremely unsatisfactory, but then it is the conduct of the landlord himself which is responsible for this result. He obtained eviction of the tenant on a ground which obliged him to himself occupy the house. Instead of occupying the house himself, he let it out contrary obviously to the provisions of the statute. He was, therefore, obliged under the operation of the statute [sub-section (4) of section 13] to surrender back possession of the house to the tenant. He loses advantage of any investment on reconstruction because of his having acted contrary to the provisions of the statute.

(6) The result is that the revision application of the tenant (Civil Revision Application 512 of 1967) is accepted and the fair rent of the house in question is fixed at Rs. 11 per mensem and this means that the revision application of the landlord (Civil Revision Application 659 of 1967) is dismissed. In the circumstances of the case the parties are left to their own costs in both the cases.

R. N. M.