

The Indian Law Reports

Before Gokal Chand Mital and K. S. Bhalla, JJ.

GURDARSHAN SINGH MANN,—*Petitioner.*

versus

MANMOHAN SINGH KAPOOR,—*Respondent.*

Civil Revision No. 850 of 1987

28th September, 1988.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(hh) and 13-A—Landlord acquiring the Character of a landlord after his retirement—Such landlord—Whether covered under the definition of specified landlord.

Held, the factual position is not disputed between the parties that the premises were let out to the tenant in the year 1980 whereas petitioner landlord retired from service much before coming into existence of the tenancy in October, 1976. This revision petition is allowed, Order of ejection of the revision petitioner is set aside and application of the respondent landlord for ejection is dismissed.

(Para 1 and 2)

Petition under section 18 of E.P.U.R.R. Act for the revision of the Order of the Court of Shri S. S. Arora, Rent Controller, Amritsar dated 15th January, 1987 allowing the application with costs, directing the respondent to vacate the disputed premises within two months.

Claim.—Application under section 13-A of the East Punjab Urban Rent Restriction Act by a specified landlord as the petitioner is retired Punjab Government employee.

Claim in Revision.—For reversal of the order of the Lower Court.

A. S. Cheema, Advocate, for the Petitioner.

H. L. Sarin, Sr. Advocate with Ashish Handa, Advocate, for the Respondent.

JUDGMENT

K. S. Bhalla, J.

(1) This Civil revision has been referred for the decision of a Division Bench to resolve conflict of single bench decisions of this Court with regard to rights of a specified land-lord for summary eviction under section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act). In the two earlier decisions reported as *Ajmer Singh v. Ranjit Singh*, (1) and *Resaldar Surjit Singh v. T. N. Sood* (2), it was held that for taking benefit of Section 13-A of the Act, a person should be landlord or to be more specific specified landlord at the time of his retirement *qua* premises from which the eviction is sought. In other words, the tenancy must be in existence at the time of petitioner's retirement and if he acquires the character of a landlord in respect of premises *qua* a particular tenant after his retirement, he would not come within the scope of the term 'specified landlord' to have recourse to the remedy of section 13-A of the Act. In *Dr. D. N. Malhotra v. Kartar Singh* (3), which was cited at the time of motion hearing before the Hon'ble Judge making the order of reference dated 30th April, 1987, it was on the other hand held that an application under Section 13-A of the Act by specified landlord for ejection of tenant is competent even if there existed no relation of landlord and tenant between the parties on the date of retirement of specified landlord. The factual position is not disputed between the parties that the premises were let out to the tenant in the year 1980 whereas petitioner landlord retired from service much before coming into existence of the tenancy in October, 1976. However, after referral, the latter view was upset by the Supreme Court in appeal,—*vide Dr. D. N. Malhotra v. Kartar Singh* (4), as under:—

“In order to get the benefit of the summary procedure provided in section 13-A of the said Act, the ex-serviceman must be a specified landlord at the time of his retirement from service of the Union as provided in section 2(hh) of the said Act. The respondent-landlord retired from the service of the Union in 1965 and the house in question was

(1) 1986(2) PLR 666.

(2) 1987(1) PLR 326.

(3) 1987(1) PLR 521.

(4) 1988(1) SC Cases 656.

The Commissioner of Income Tax, Jalandhar v. M/s Leader Engg. Works, Jalandhar (G. C. Mital, J.)

let out to the tenant-appellant in 1968. Thus, the respondent was not a landlord *qua* the premises and the tenant on the date of his discharge from service entitling him to avail of the benefit of the provisions of section 13-A of the East Punjab Act."

In view of the same the conflict stands already resolved. The earlier view of this Court has been upheld.

(2) The above said Supreme Court decision is on all fours applicable to the facts of this case and in the light thereof as well as the two earlier decisions of this Court referred to above, this revision petition is allowed, Order of ejection of the revision petitioner is set aside and application of the respondent landlord for ejection is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

P.C.G.

Before Gokal Chand Mital and S. S. Sodhi, JJ.

THE COMMISSIONER OF INCOME TAX, JALANDHAR,—
Applicant.

versus

M/S LEADER ENGG. WORKS, JALANDHAR,—*Respondent.*

Income Tax Reference No. 45 of 1982

Dated 23rd February, 1989.

Income Tax Act (XLIII of 1961)—Sections 154, 214, 244(1), 244(1A)—Deposit of Advance Tax by the assessee—Excess amount refunded to assessee after adjustment—Whether—The assessee entitled to interest.

Held, we are of the opinion that the advance tax loses its identity the moment it is adjusted towards the tax liability created under the regular assessment and takes the shape of payment of tax in pursuance of order of assessment. Section 214 provides for payment of interest to an assessee on excess amount of advance tax with effect from the first day of April next following the said financial year to