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Das Gupta, J.

the Constitution is one of the Articles which came into force on November 26, 1949. For applying the test of being "ordinarily resident in the territory of India, since the date of his migration", it is necessary, therefore, to consider the period up to the 26th day of November, 1949, from the date of migration. It is not, however, even necessary that on the 26th day of November, 1949 or immediately before that date he must have been residing in the territory of India. What is necessary is that taking the period beginning with the date on which migration became complete and ending with the date November 26, 1949, as a whole, the person has been "ordinarily resident in the territory of India". It is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words "ordinarily resident" in the Constitution it is reasonable to take the words to mean "resident during this period without any serious break". The materials on the record leave no doubt that there was no break worth the name in Mangal Sain's residence in the territory of India from at least August 15, 1947, till the 26th November, 1949.

We have, therefore, come to the conclusion that the High Court was right in sustaining Mangal Sain's claim to be deemed a citizen of India under Article 6 of the Constitution and, in that view was also right in allowing his appeal and ordering the dismissal of the Election Petition.

In the view we have taken as regards Mangal Sain's claim to citizenship under Article 6 of the Constitution it is not necessary to consider whether his claim to citizenship under Article 5 of the Constitution was also good.

We, therefore, dismiss the appeal with costs.

B.R.T.

SUPREME COURT.

Before Bhuvaneshwar Prasad Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.

RAM NATH AND ANOTHER.—*Appellants*

versus

M/s. RAM NATH CHHITTAR MAL AND OTHERS,—*Respondents.*

Civil Appeals Nos. 401 to 403 of 1960.

1960

Sept.' 8th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 13(1) proviso (g) and section 15—Suit filed by landlord for eviction of tenant on the ground of re-building—Decree for ejectment by compromise passed whereunder tenant undertook to deliver possession to landlord on or before 4th March, 1953 and landlord undertook to deliver back possession to tenant within six months of that date after rebuilding—Tenant delivering possession on 7th March, 1953—Whether entitled to get back possession.

Held, that the aplication for being put into possession which was filed by the tenant was really under section 15(3) of the Delhi and Ajmer Rent Control Act, 1952 and as the tenant did not deliver possession to the landlord on or before the date specified in the decree the provisions contained in sub-section (3) of section 15 of the Act were not available to him and he was not entitled to be put back into possession of the premises after rebuilding.

Appeals by Special Leave from the Judgments and Orders, dated the 1st March, 1960, of the Punjab High Court (Circuit Bench) at Delhi, in Civil Revision Cases Nos. 166-D, 167-D and 168-D of 1958.

For the Appellants (In all Appeals) : Mr. A. V. Viswanatha Sastri, Senior Advocate (M/s. S. S. Chadha and R. S. Narula, Advocates, with him).

For the Respondents (In C. A. No. 401 of 60): Mr. C. B. Aggarwala, Senior Advocate (Mr. B. Kishore, Advocate, with him).

For the Respondents (In C. As. Nos. 402 and 403 of 60): Mr. C. B. Aggarwala, Senior Advocate (M/s. R. M. Gupta and G. C. Mathur, Advocates, with him).

JUDGMENT

The following Judgment of the Court was delivered by—

Kapur J.

KAPUR, J.—These appeals are directed against three judgments and orders of the Punjab High Court in three Civil Revisions Nos. 166-D, 167-D and 168-D which were brought by the appellants against three of their tenants under section 35 of the Delhi and Ajmer Rent Control Act (XXXVIII of 1952) hereinafter termed the Act. The appellants in all the three appeals are the landlords and the respondents in the three appeals are three different tenants.

The appellants filed three separate suits for the eviction of their three tenants under clause (g) of proviso to section 13(1) of the Act on the ground that the premises were bona fide required for purposes of rebuilding. On February 27, 1953, the parties in all the three suits entered into a compromise in the following terms:

"We have compromised the case with the plaintiff. A decree may be passed for Rs. 82-8-0 on account of rent in suit and for ejectment in respect of the shop in suit in favour of the plaintiff against the defendants. The defendants will vacate the shop by 4th March, 1953, and hand over possession to the plaintiff and the plaintiff will hand over its possession again (second time) to the defendants within six months from 4th March, 1953, after constructing it afresh. We shall pay such rent as this Court will fix."

Thereupon the court passed the following order and a decree followed thereon:—

"In terms of the statements of the plaintiff, defendant and counsel for defendants—a decree for Rs. 82-8-0 on account of rent in suit be passed in favour of the plaintiff against the defendants. Also decree for ejectment be passed in respect of the shop in suit in favour of the plaintiff against the defendants and that the defendants DO give possession of the shop in suit by 4th March, 1953 to the plaintiff and that the plaintiff after constructing it afresh within six months from 4th March, 1953, give it to the defendants. From out of the money deposited, a sum of Rs. 82-8-0 be paid to the plaintiff and the balance returned to the defendants. The defendants shall be responsible to pay the rent fixed by the court."

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According to the decree the possession was to be given to the appellants on March 4, 1953, but it was actually delivered by the three respondents between March 7 and 15, 1953. On the completion of the building the three respondents filed three separate applications under section 15 of the Act for their being put into possession. These applications were filed on October 7, 1953. The High Court held that the compromise did not comprise any matter which was not the subject matter of the suit; that the respondents could enforce the terms of the decree in the proceedings which they took, i.e., under section 15 of the Act; that time was not of the essence of the compromise and, therefore, of the decree and consequently in spite of the possession of the premises having been given by the respondents after the date specified in the decree, i.e., March 4, 1953, the respondents were entitled to enforce the decree by execution and apply for possession being restored to them; at any rate they could apply for restitution under the inherent powers of the Court. Thus the High Court was of the opinion that though section 15(2) of the Act was not applicable to the proceedings they could be treated as Execution proceedings. Against this judgment and order the appellants have come in appeal to this court by special leave.

Under section 13 of the Act the respondents are protected against eviction excepting for the reasons given in the proviso. The appellants had filed the original suits for eviction under section 13, proviso (g) which was as under:—

> Section 13. "Notwithstanding anything to the contrary contained in any other law or any contract, no decree or

order for the recovery of possession of any premises shall be passed by any court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied—

(g) that the premises are bona fide required by the landlord for the purpose of rebuilding the premises or for the replacement of the premises by any building or for the erection of other building and that such building or rebuilding cannot be carried out without the premises being vacated;".

Thus when the suits were brought the provisions of the Act were invoked. The decrees passed were on the basis that the premises were required by the landlord for rebuilding which falls under section 13 and the decrees also incorporated the requirements of section 15, which provides:—

"The Court shall, when passing any decree or order on the grounds specified in clause (f) or clause (g) of the proviso to sub-section (1) of section 13 ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the decree or order

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and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or rebuilding, as the case may be.

(2) If the tenant delivers possession on or before the date specified in the decree or order, the landlord shall, on the completion of the work of repairs or building or rebuilding place the tenant in occupation of the premises or part thereof.

(3) If, after the tenant has delivered possession on or before the date specified in the decree or order the landlord fails to commence the work of repairs or building or rebuilding within one month of the specified date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the premises in accordance with sub-section (2), the Court may, on the application of the tenant made within one year from the specified date, order the landlord to place the tenant in occupation of the premises or part thereof on the original terms and conditions or to pay to such tenant such compensation as may be fixed by the Court."

The compromise, the order and the decree provided (1) that the respondents will vacate their respective shops on March 4, 1953, and hand over possession to the appellants; (2) they elected to

get back possession after rebuilding which the appellants agreed to hand back on September 4, 1953; (3) the rent after such possesion was to be determined by the court. It was contended on behalf of the appellants that the above facts taken with the circumstances that the decree was passed in a suit under section 13(1), proviso (g) show that this was an order passed and a decree made in accordance with the terms of section 15 of the Act. It is significant that the respondents themselves made the applications to the court under section 15 of the Act.

For the respondents it was argued that the decree was not one under section 15 of the Act because the decree was based on a compromise whereby the parties fixed the date of delivery of possession to the appellants; fixed the date for completion of the rebuilding and agreed between themselves as to repossession by the respondents. It was submitted that although the time for giving delivery to the appellants was fixed in the compromise it was not of the essence of the contract.

In our opinion the contentions raised by the appellants are well founded and the appellants must succeed. The suits for eviction were brought within the framework of the Act and were based on the provisions of section 13, proviso (g). No eviction would have been possible excepting when conditions laid down in section 13 were satisfied. The decrees which were passed were substantially in accordance with the provisions of section 15 of the Act and as was contended by the appellants they were decrees under which the premises had to be vacated by the respondents on a specified day. Under that

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section they had the right to elect and did elect to get possession after rebuilding; this possession was to be given by the landlords to the tenants within a reasonable time and six months' period was fixed by consent between the parties and the rent, if the respondents were not put into possession on the same terms as before, was to be settled by court and that is what was done under the terms of the consent decree. The applications for being put into possession which were filed by the respondents were really under section 15(3) of the Act. As the respondents did not deliver possession to the appellants on or before the dates specified in the decree the provisions of section 15 contained in sub-section (3) of that Act were not available to them and they were not entitled to be put into possession as prayed by them.

It was argued that the appellants had taken possession of the premises after the specified date without protest and had even accepted rent up to then and were, therefore, estopped from raising that defence. The appellants had conceded in the courts below that that plea could be raised in a suit if it was brought. In the view we have taken we think it unnecessary to express any opinion on this point.

The High Court was, in our opinion, in error in ordering possession to be delivered to the respondents. The appeals must, therefore, be allowed and the judgments and orders of the High Court set aside. The appellants will have their costs in this court. One set of hearing costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before G. D. Kholsa, C.J., and D. K. Mahajan, J.

THE COMMISSIONER OF INCOME-TAX,—*Petitioner.*

versus

THE SHEIKHUPURA TRANSPORT CO., LTD.—*Respondent.*

Income-tax Reference No. 10 of 1958.

1960

Sept.' 20th.

Indian Income-tax Act (XI of 1922)—Section 10(2)(V)—"Current repair"—meaning of—Replacement of a worn-out body of a lorry—Whether included in the expression current repair.

Held, that it is difficult to define what 'current repair' is, but it means a repair which keeps a vehicle like a lorry in running condition and the replacement of a worn-out body would inevitably fall within the definition of 'current repair', because although the entire engine and the chassis are usable and can be retained, the lorry cannot be maintained and used unless its body is renewed. If the cost of new lorry is much more than the cost incurred on replacing the body, it must fall within the definition of current repair.

Case referred by the Income-Tax Appellate Tribunal, Delhi Bench, under section 66(1) of the Indian Income Tax Act, for the opinion of the High Court of Judicature, for the State of Punjab at Chandigarh, on the following question of law :

> *"Whether on the facts and in the circumstances of this case, the expense of Rs. 14,700, incurred in fitting new bodies in place of old worn-out bodies of six lorries is an expense allowable under section 10(2)(v) of the Indian Income-tax Act ?"*

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Petitioner.

B. R. TULI, J. S. WASU AND K. S. KWATRA, ADVOCATES, for the Respondents.