REVISIONAL CIVIL

Before R. S. Narula, J.

BALDEV KISHAN,—*Petitioner.*

versus

BIR BHAN AND ANOTHER,—*Respondents.*

Civil Revision No. 183 of 1969

December 18, 1969

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 9 and 13(2)—Tenant agreeing to pay house-tax—Such house-tax—Whether becomes part of rent and comes within the expression "rent due" in section 13(2)—Section 9—Conditions for the applicability of—Stated—Operation of the section—Whether automatic—Landlord not claiming house-tax at the time of assessment thereof or even after paying the same—Whether can add such house-tax to the arrears of rent to claim eviction of the tenant.

Held, that the answer to the question whether the house-tax levied on the demised premises and agreed to be paid by a tenant becomes part of rent and comes within the expression "rent due" in section 13(2) of East Punjab Urban Rent Restriction Act, 1949, depends on the facts of each case. If the figure or amount of house-tax is named in rent-note or the lease-deed in order merely to show the break-up of the total amount which is payable periodically by the tenant to the landlord in respect of the demised premises, it will be a part of the rent. If the amount is not mentioned in the agreement between a landlord and a tenant, but it is clearly stipulated that the rent for the demised premises would be a specified amount plus the house-tax levied on the premises from time to time, the amount of house-tax, if otherwise permitted by the rent control legislation to be recovered, will form part of rent. (Para 17)

Held, that section 9 of the Act is applicable to case in which the following conditions are fulfilled—(1) that the rent agreed to be paid by a tenant to a landlord did not already include the amount of the tax levied by the local authorities in respect of the demised premises; or the tenant had never paid any house-tax to the landlord for a number of years, though rent without house-tax had been continuously accepted by the landlord during that period without any protest; (2) that the tax in dispute was not being levied by the local authorities at the time of the passing of the Act but was levied in respect of the demised premises sometime after the commencement of the Act; and (3) that the landlord wants to add to the existing rate of rent some amount, for payment of which liability has arisen after the tenant entered the premises and the amount of such new liability sought to be foisted on the tenant does not exceed the amount of the new taxes imposed on the landlord in respect of the building. (Para 18)

Held, that section 9 of the Act does not make the payment of house-tax a liability of the tenant and the provision merely permits a lawful increase

in the rent payable by a tenant if the landlord wishes to effect increase. The operation of section 9(1) of the Act is not automatic. It is merely an enabling provision which entitles the landlord to increase rent of premises covered by the Act if a rate, cess or tax in respect of the building is levied after the commencement of the Act. The amount which is recoverable by way of increase from a tenant under section 9 of the Act, can either be made the liability of the tenant by mutual agreement or by serving on the tenant a proper notice of increase of rent. (Para 19)

Held, that the landlord cannot claim house-tax earlier to the date of the demand made by him by the notice served on the tenant as part of the arrears of rent for the purposes of maintaining a ground for eviction of the tenant. If no notice of any kind was served by the landlord on the tenant either at the time of the assessment of the house-tax or even after paying the same, he is not entitled to claim ejectment of the tenant for non-payment of an amount, for the payment of which no liability has so far been incurred by the tenant. (Para 19)

Petition under Section 15(5) of Act III of 1949 and s. 115, Civil Procedure Code for revision of the order of Shri Udham Singh, Appellate Authority (District Judge) Patiala, dated 27th February, 1969 affirming that of Shri Rajinder Kumar Synghal, Rent Controller, (A) Patiala, dated 18th November, 1967.

MOHINDERJIT SINGH SETHI, ADVOCATE, for the petitioner.

H. L. SARIN, SENIOR ADVOCATE, (H. S. AWASTHY, ADVOCATE WITH HIM), for the respondents.

JUDGMENT

NARULA, J.—The following three questions of interpretation and scope of the relevant provisions of the East Punjab Urban Rent Restriction Act, 1949 (Act III of 1949), hereinafter called the Act, have arisen in this case in the circumstances hereinafter detailed—

(1) Whether the expression 'the rent due' used in sub-section (2) of section 13 of the Act includes the amount of house-tax levied on the demised premises under section 61 of the Punjab Municipal Act in case where the tenant had agreed in the rent-deed to pay the house-tax in addition to the rent ?

(2) Whether the provisions of section 9 of the Act would or would not apply to a case where house-tax had been agreed to be paid, but had neither been claimed nor

recovered for about six years though rent was being paid regularly during that period and, thereafter, the house-tax was suspended in the locality but reimposed a few years later and claim for such tax was made for the first time in an application brought under section 13(2) (i) of the Act for eviction of the tenant ?

(3) Whether in a case of the type referred to in Question No. (2) above, it is necessary to furnish to the tenant details of the tax levied and of the claim of the landlord and give the tenant an opportunity to pay the same before filing a claim for eviction on ground of non-payment of rent because of the house-tax not having been paid ?

The present litigation relates to shop No. 1057/4 situated in Sheranwala Gate, Patiala. This shop was let out by Bir Bhan, respondent No.1, hereinafter called the landlord on October 31, 1957, with effect from November 1 in that year, on the basis of the rent-deed, exhibit A.W. 2/1, executed by Baldev Kishan petitioner, whom I will call the tenant in this judgment. The period of tenancy was fixed at $11\frac{1}{2}$ months. Clause 2 of the rent-deed, the original of which is in Urdu language and script, when freely translated into English, would read—

"2. The rent has been fixed at Rs. 25/- per month; but the rent is separate from the electricity charges."

Clause 5 of the rent note executed by the tenant, when similarly translated into English, would read—

"5. Property-tax will be paid by the owner. House-tax would be paid by me."

The period of the tenancy contemplated by exhibit A.W. 2/1 came to an end in the middle of September, 1958. Thereafter it continued as a statutory monthly tenancy. Though house-tax was being imposed by the Patiala Municipal Committee at least in 1960-61 (at a rate of calculated on the basis of Rs. 20 having been determined as rental value of the property) no house-tax was, in fact, claimed from or paid by the tenant, though he admittedly continued to pay Rs. 25 per month as rent. With effect from

April 1, 1962, imposition of house-tax in Patiala was suspended. It appears from the evidence on the record (statement of Rajinder Kumar A.W. 1) that the imposition of house-tax was stopped in Patiala in 1962, but the tax was reimposed in 1964-65. According to Mr. Mohinderjit Singh Sethi, learned counsel for the defendant, house-tax had been abolished or suspended in Patiala from April 1, 1962, to March 31, 1965, but was reimposed with effect from April 1, 1965. He is, no doubt, supported in this context by the observation of the learned Chief Justice in paragraph 5 of his Lordship's judgment, dated November 28, 1968, in *Kirpal Kaur* v. *Bhagwant Rai,* (1). The learned Chief Justice has observed there that the house-tax was levied in Patiala between 1956 and 1961, but the city was exempted from the levy of house-tax from 1962 to 1964 and then it was again levied from the year 1965. This is consistent with the pleadings of the parties, the admission in the application for eviction and the evidence produced by the landlord himself at the trial of this suit. Rajinder Kumar A.W.1 has deposed during the course of his statement before the Rent Controller that house-tax had been reimposed in Patiala from 1964-65.

(2) On the re-imposition of the tax, notice for determination of the rental value of the property of the landlord was issued to him on June 8, 1965. In reply to that notice, the landlord filed his written objections, exhibit A.W. 2/2, dated June 28, 1965. The objections were filed in English language. Discrepancies between the annual rent charged by the landlord from his tenants at that time in respect of three different premises including the one in suit and the rent shown in the municipal records were pointed out by the landlord. So far as the shop in dispute is concerned, it was stated that its actual rent was Rs. 25 per month as against Rs. 20/- per month shown in the municipal records. It is significant to note that the landlord himself did not at that time represent to the Municipal Committee that the rent was Rs. 25/- plus the amount of house-tax, but disclosed the rent of the tenant as Rs. 25/- per month only. The total monthly rent of the entire building consisting of the three premises including the shop in dispute was shown by the landlord in his above said objection statement as Rs. 49 per month (Rs. 8+Rs. 16+Rs. 25). The municipality was asked to make necessary corrections in its record. On

(1) 1969 R.C.R. 86 at p. 89.

November 26, 1965, the landlord filed an application for ejectment of the tenant (this date is taken from paragraph 3 of the present petition for ejectment). One of the grounds on which ejectment was sought was non-payment of rent. The main basis of that grievance was that the tenant had not paid, contrary to his stipulation in the rent-deed, house-tax since November 1, 1957. The details of how much house-tax was due from the tenant and on what basis it had been worked out were not given in the petition for eviction. The landlord's abovesaid previous petition was dismissed by the order of the Rent Controller on March 11, 1966. His appeal was dismissed by the appellate authority on February 2, 1967 (these two agreed dates have been furnished to me by the learned counsel for the parties). Neither a copy of the Rent Controller's order nor that of the appellate authority was produced at the trial of the suit.

(3) In the meantime, proceedings for assessment of house-tax were taken up by the Municipal Committee. Report, dated April 6, 1967, was submitted by the House-tax Inspector wherein the objections filed by the landlord were summarised. The report was then put up to the House-tax Sub-Committee by order of the Tax Department, dated April 7, 1967. The House-tax Sub-Committee, by its order dated June 30, 1967, exhibit A.W./1, confirmed the monthly rental value for all the three properties of the landlord, including the one in dispute, at Rs. 49/- per month. This shows that the representation made by the landlord about the monthly rent of the tenant being Rs. 25 per month was accepted by the Municipal Committee. On the basis of the abovesaid decision of the House-tax Sub-Committee, a sum of Rs. 33/75 Paise per annum was determined by the municipal authorities to be payable by the landlord in respect of the shop in dispute on the following basis, as disclosed in the extract from the Municipal Assessment Register, exhibit A.W.1/2—

1. Annual rent @ Rs. 25 per month — Rs. 25x12 = 300
2. Less ten per cent, i.e. $\frac{300 \times 10}{100}$ = 30
3. Balance .. 270
4. House-tax @ $12\frac{1}{2}$ per cent

i. e. $270 \times \frac{25}{2} \times \frac{1}{100}$ .. = 33/75

The landlord actually paid out the house-tax in respect of the shop in dispute for the two years i.e. 1965-66 and 1966-67 at Rs. 33/75 paise per annum. The original receipt, exhibit A.W. 1/3, dated July 27, 1967, produced by the landlord shows that after taking benefit of rebate of Rs. 13/50 Paise out of the total sum of Rs. 67/50 Paise payable for two years, the landlord paid out Rs. 54 to the Municipal Committee.

(4) In the meantime, the landlord had taken two steps. Firstly, on May 12, 1967, he had filed a fresh petition for eviction of the tenant from which the present proceedings have arisen. In paragraph 3 of the petition, he has referred to the earlier proceedings and had stated that he was filing a revision petition in the High Court against the order of the appellate authority. In paragraph 4, he stated that in the previous proceedings the tenant had tendered a sum of Rs. 200 as rent from May 1, 1965, to December 31, 1965, along with Rs. 5 as interest and Rs. 30 as costs of the previous application for ejectment, but that the tenant had not paid any amount of house-tax. In paragraph 5 of the petition, the landlord stated that the tenant had not paid the rent from January 1, 1966, and had "also not paid the house-tax, which has been reimposed from 1st April, 1965". The details of the amount for the non-payment of which eviction was sought were then given in paragraph 6 in the following words—

> "6. That the rent from 1st January, 1966 to 30th June, 1967, amounting to Rs. 450 has become due to the applicant from the respondent No. 1. Moreover, a sum of Rs. 54 as house-tax from 1st April, 1965 to 31st March, 1967 has also fallen due. The respondent No. 1 is not paying this amount in spite of repeated requests."

(5) Once again it is significant that even while pressing for eviction the landlord himself maintained a clear distinction between the liability to pay rent at Rs. 25 per month and the separate liability to pay house-tax. It is also clear that the landlord has specifically admitted that house-tax had been reimposed from April 1, 1965, and that he had, in fact, made the grievance of non-payment of house-tax from April 1, 1965, only.

(6) The second step which the landlord had taken in the meantime was the filing of the revision petition (Civil Revision No. 548

of 1967) in this Court against the appellate order in the first proceedings. What happened on the first hearing of the present case was that on June 3, 1967, the tenant tendered Rs. 450 on account of rent and Rs. 30 as interest as also Rs. 20 on account of costs assessed by the Court, but did not tender any amount on account of house-tax. The landlord accepted the tender under protest. The protest was lodged on the ground that the tenant was "also liable to pay house-tax as part of the rent which he has not tendered today". By his order, dated November 18, 1967, the Rent Controller directed the ejectment of the tenant under section 13(2) (i) of the Act on account of non-payment of house-tax. The order of the Rent Controller having been upheld in appeal on February 27, 1969, the tenant has come up to this court in the present revision petition.

(7) After the appellate order in this case and before the filing of the present revision petition on March 6, 1969, the previous revision petition (Civil Revision No. 548 of 1967) was dismissed by the order of Mehar Singh, C.J., dated February 28, 1969. A copy of the judgment of the High Court in the previous revision petition has been produced before me at the hearing of this case. Mr. Harbans Lal Sarin, the learned counsel for the landlord, objected to the production of the copy of the judgement of the High Court at this stage. Since the judgement has also been cited as a precedent on the question of law, hereinafter referred to, I have considered it proper to allow the judgement being produced, even for the purpose of finding out as to what was held in the previous case. The request of the learned counsel for the tenant to permit him to produce the copies of the order of the Rent Controller and of the appellate authority in the previous proceedings was turned down by me on the ground that those orders were available with the tenant at the trial of the present proceedings and there was no reason why they were not produced at that stage.

(8) To complete the relevant history of the proceedings, it may be mentioned that the point regarding the effect of non-payment of house-tax in the previous proceedings was disposed of by the learned Chief Justice in the following words—

> "There is question of the payment of house-tax. It was agreed between the parties in the initial rent note that the house-tax was to be paid by the tenant. The difficulty that the authorities found was that house-tax, which is

leviable yearly, was not shown by the landlords to be due in what amount over the period of six months for which the tenant was in arrear of rent. Unless the landlord led definite evidence what was the exact amount of the house-tax due, it was impossible for the authorities to proceed to say that the house-tax having become part of the rent had become in arrears. The learned counsel for the applicant says that the appellate authority calculated the house-tax due at Rs. 73.04 Paise and, if that is taken into account, then the respondent has not met the requirements of the proviso to section 13(2)(i) of the Rent Act, but the appellate authority also goes on to show that no evidence has been led what was the exact amount of the house-tax paid on the demised shop by the landlord which the tenant was to pay to him. Some evidence was led with regard to a bigger building but not with regard to this particular shop. A landlord cannot be permitted to take advantage of the tenant in this matter on vague allegations. If he claims ejectment on the basis of arrears, then he must definitely state what the arrears are and for what period and on what account. This was not done in this case. The authorities below had no option but to say that the payment made met the requirements of proviso to section 13 (2) (i) of the Rent Act."

(9) Shri Udham Singh, the appellate authority under the Act at Patiala, has held in his order under revision that the term 'rent' is wide and comprehensive enough to include all payments agreed to between the tenant and the landlord. On that basis, he decided that house-tax must be taken as part of the rent and, as such, it was liable to be paid by the tenant to the landlord in addition to the stipulated rent of Rs. 25 per month. Since the house-tax had not been paid for the entire period during which it had been reimposed and had not even been tendered on the first hearing of the present proceedings, the appellate authority held that the tender made by the tenant was not valid and, therefore, upheld the order for the eviction of the tenant.

(10) Before dealing with the three questions posed in the opening paragraph of this judgment, I may dispose of an argument which was addressed in this case by Mr. Mohinderjit Singh Sethi,

learned counsel for the tenant. This argument relates to issue No. 3 which had been framed by the Rent Controller in the following terms—

> "Whether the application is barred by the principle of *res judicata*?"

(11) In reply to paragraph 3 of the petition for eviction, it has been stated by the tenant in paragraph 3 of his written statement on merits read with paragraph 1 of his additional pleas (described as legal and further objections) that the landlord's application for eviction, dated November 26, 1965, on the same grounds having been rejected and even appeal against the order of the Rent Controller having been dismissed, the present application was barred on the principles of *res judicata*. It was the above-mentioned plea which gave rise to issue No. 3. Shri Rajinder Kumar Synghal, the Rent Controller, observed that inasmuch as the copy of the order passed in the previous application had not been placed on the record, it could not be said as to what were the grounds on which the previous application was filed or what were the reasons for which it was rejected. He, therefore, held that there was no material on the record from which it could be said that the present application was barred by the principles of *res judicata*. The finding of the Rent Controller on issue No. 3 does not appear to have been questioned at the hearing of the tenant's appeal, as I do not find any discussion on issue No. 3 in the appellate order of Shri Udham Singh. I am, therefore, unable to allow the tenant-petitioner to reopen the case on that issue in the revision proceedings. Even otherwise no fault can be found with the order of the Rent Controller in this respect which has been impliedly upheld by the appellate authority, as it would be impossible to decide issue No. 3 without having at least the orders of the Rent Controller and of the appellate authority before the Court. Mr. Sethi has contended that section 14 of the Act, which reads as follows, specifically barred the second application of the landlord which should have been summarily dismissed by the Rent Controller and further submitted that inasmuch as a question of jurisdiction arises in this respect this new plea should be allowed to be entertained at the hearing of the revision petition—

> "14. The Controller shall summarily reject any application under sub-section (2) or under sub-section (3) of section 13 decided in a former proceeding under this Act."

(12) I am not inclined to permit this new point being raised for the first time at the revisional stage. Even if it were to be permitted, the learned counsel for the petitioner would be faced with the same difficulty with which his client was faced at the trial of the petition insofar as it related to issue No. 3. The conditions precedent for invoking section 14 of the Act are that it must be proved—

(1) that the issues on which a decision of the Rent Control authorities is called for in the subsequent proceedings substantially arose in the previous proceedings, and

(2) that those issues were actually decided in the former proceedings.

(13) In the absence of copies of the orders of the Rent Controller and of the appellate authority in the previous proceedings, it is impossible to decide whether section 14 of the Act absolutely barred the present petition or not.

(14) Since I have allowed the production of a copy of the judgment of the learned Chief Justice in Civil Revision No. 548 of 1967, I must add that a perusal of the same shows that the question whether the house-tax does or does not form part of rent agreed to be paid between the parties was neither specifically put into issue nor decided in the previous case. The decision of the Rent Controller and the appellate authority dismissing the landlord's previous petition was upheld by this Court on the ground that no evidence had been led as to the exact amount of house-tax which might have been paid by the landlord in respect of the demised shop and that the evidence led regarding the house-tax assessed related to the whole building and not only to the demised premises. It was, in these circumstances, that the learned Chief Justice held that a landlord cannot be premitted to take advantage over the tenant in a matter of this type on such vague allegations. From whatever angle the matter is looked at, I am unable to hold, on the facts and record of this case, that the present petition was either barred under section 14 of the Act or on the principles of *res judicata*.

(15) Coming to the question whether the house-tax agreed to be paid by a tenant becomes part of rent within the meaning of section 13(2)(i) of the Act or not, I am of the opinion that the answer to this question would depend on the facts of each case. Section 105 of the Transfer of Property Act states that the money, share, service or any other thing to be rendered periodically or on specified occasions to the

transferor by the transferee is called the rent. In *Karnani Properties Limited* v. *Miss Augustine and others* (2)—a case under the West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950)—it was held that the term 'rent' not having been defined in that Act it must be taken to have been used in its ordinary dictionary meaning. It was then observed that the term 'rent' is comprehensive enough to include all payments agreed by the tenant to be made to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. In *Someshwar Dayal Seth* v. *Dwarkadhish Ji Maharaj* (3), the question which arose was whether the agreement to pay municipal taxes was hit by section 4 of the U.P. (Temporary) Control of Rent and Eviction Act (III of 1947) or not. Section 4 prohibited the charging of any amount in addition to rent. It was in that context that the learned Single Judge of the Allahabad High Court held that the municipal taxes agreed to be paid by the tenant are but a part of the rent to be paid by the tenant to the landlord and, therefore, the payment of such taxes is not in the nature of the payment of any premium or any other additional amount within the meaning of section 4 of the U.P. Act. So far as the view of the Allahabad High Court on the precise question which has arisen before me is concerned, it is concluded by a more recent judgment of another Single Judge of the same High Court in *Abdul Latif Khan* v. *Shakil Ahmad*, (4). In that case, it was held that the Bhumi Bhawan Kar is a tax payable to the local-body concerned and is not a payment for the benefit of the landlord at all. On that basis, it was held that though the Bhumi Bhawan Kar was recoverable from the tenant, along with the rent it was not recoverable as rent and consequently when the tenant remitted the rent to the landlord without remitting the Bhumi Bhawan Kar recoverable by the landlord and he failed to accept the same, the tenant did not commit any wilful default in payment of arrears of rent. It was further held that though the landlord was entitled to obtain a decree for the recovery of Bhumi Bhawan Kar from the tenant, he could not claim ejectment of the tenant on the ground of his having committed wilful default in payment of rent as contemplated by section 14 of the U.P. Cantonment (Control of Rent and Eviction) Act, 1962.

(2) A.I.R. 1957 S.C. 309.
(3) A.I.R. 1950 All. 61.
(4) 1969 R.C.R. 616.

(16) Besides referring to the judgment of Seth, J. of the Allahabad High Court in *Someshwar Dayal Seth's case* (3), Mr. Sarin relied on the judgment of Falshaw, C.J. (as he then was) in *Hari Ram Jaggi* v. *Des Raj Sethi,* (5) and on the judgment of the Madras High Court in *Messrs Raval and Company* v. *K. G. Ramachandran (minor) and others* (6). *In Hari Ram Jaggi's case* (5), it was held that fixed monthly charges paid by the tenant as rent of electric fittings and for water charges was a part of rent. That case has no application to the issue before me, as house-tax had not been agreed to be paid by the tenant for any particular additional amenities provided by the landlord and as no fixed amount of house tax was payable as rent. The judgment of Srinivasan, J. of the Madras High Court in *Messrs Raval and Company's case* (6) also does not appear to be in favour of Mr. Sarin. It was therein held that where by a contract the tenant agrees to pay the municipal taxes pertaining to the demised premises, the amount of such taxes is necessarily part of the rent, for the payment of the taxes is also in consideration of the right of the enjoyment of the premises. There is, however, a clear distinction between the Madras case and the one before me. In the Madras case, the tenant had agreed to contribute certain specified amount annually towards repair and municipal taxes in addition to a stipulated amount as rent and it was the total sum of those amounts which were worked out to a monthly payment of over Rs. 400 which was being paid by the tenant to the landlord.

(17) There is also an indication in the judgment of the learned Chief Justice in the previous case between the parties that if the house-tax was agreed to be paid by the tenant to the landlord, a definite amount in that behalf had to be worked out and added to the rent. A consideration of all the cases referred to above leads me to hold that if the figure or amount of house-tax is named in a rent-note or the lease-deed in order merely to show the break-up of the total amount which is payable periodically by the tenant to the landlord in respect of the demised premises, it would no doubt be a part of the rent. I am further inclined to hold that even if the amount is not mentioned in the agreement between a landlord and a tenant, but it is clearly stipulated that the rent for the demised premises would be a specified amount plus the house-tax levied on the premises from time to time, the amount of house-tax, if otherwise permitted by the rent control legislation to be recovered, would form

(5) 1966 P.L.R. 431.
(6) (1968) II M.L.J. 50.

part of rent. In the present case, different considerations apply. The rent was separately specified to be Rs. 25 per month in an entirely distinct stipulation. After the description of various other matters wholly unconnected with the amount of rent, it was mentioned that the property taxes would be paid by the landlord and the house tax by the tenant. It was not even stated in the agreement that the house-tax would be payable by the tenant to the landlord. The submission of Mr. Sethi to the effect that the stipulation in the rent-note was capable of being construed to mean that the amount of house-tax would be paid by the tenant direct to the municipal authorities is also not without force. Be that as it may, the fact remains that the house-tax was neither ever claimed from the tenant right from November 1, 1957, till March 31, 1962, nor ever paid by the tenant. Till then, no grievance in that behalf had ever been made by the landlord against the tenant. As to what is the effect of reimposition of the house-tax with effect from April 1, 1965, and the claim for the amount of house-tax made by the landlord against the tenant in the previous and present proceedings will be considered while dealing with the second question. So far as the first question is concerned, my answer to the same relating to the present case is that, on the facts and in the circumstances of this case, it has been established that the amount of house-tax was not a part of the rent for payment of which the tenant undertook a liability to the landlord.

(18) In order to decide the second question, it appears to be necessary to quote section 9 of the Act. That provision reads—

> "9. (1) Notwithstanding anything contained in any other provision of this Act a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of this Act a fresh rate, cess or tax is levied in respect of the building or rented land by any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the Act :
>
> Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.
>
> (2) Notwithstanding anything contained in any law for the time being in force or any contract, no landlord shall

recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1)."

This section would apply to a case, in which at least the following conditions are fulfilled—

(1) that the rent agreed to be paid by a tenant to a landlord did not already include the amount of the tax levied by the local authorities in respect of the demised premises; or the tenant had never paid any house-tax to the landlord for a number of years, though rent without house-tax had been continuously accepted by the landlord during that period without any protest;

(2) that the tax in dispute was not being levied by the local authorities at the time of the passing of the Act but was levied in respect of the demised premises some time after the commencement of the Act; and

(3) that the landlord wants to add to the existing rate of rent some amount, for payment of which liability has arisen after the tenant entered the premises and the amount of such new liability sought to be foisted on the tenant does not exceed the amount of the new taxes imposed on the landlord in respect of the building.

(19) From the admissions of the landlord himself contained in paragraph 5 of his petition in the present case, and also from the evidence of the municipal clerk, it is clear that the house-tax in respect of which non-payment is being claimed by the landlord was levied by the Patiala Municipal Committee for the first time on and with effect from April 1, 1965. I have already held above that the rent agreed to be paid by the tenant after April 1, 1965, in this case did not include house-tax as such. Nevertheless, the landlord was permitted by section 9 of the Act to enhance the agreed rent of Rs. 25 per month by the amount of house-tax which was levied on him in respect of these premises, that is the proportionate amount for this shop out of Rs. 33.75 Paise per annum less the rebate. After effecting such enhancement in accordance with the provisions of section 9,

the landlord would have been entitled to claim or recover the same from the tenant and in case the tenant failed to pay the same, he could in law be deemed to have been guilty of non-payment of rent within the meaning of section 13(2)(i) of the Act. This Court has already settled the law relating to the manner in which a landlord can take advantage of the provisions of section 9 of the Act. It has been held that the landlord is not entitled to take the tenant by surprise by getting the house-tax assessed or enhanced behind the back of the tenant, by paying the same to the Municipal Committee and by straightaway facing the tenant with a threat of eviction on account of non-payment of that amount. The Division Bench of this Court (Shamsher Bahadur, J., and myself) held in *Puran Chand* v. *Mangal* (7), that section 9 of the Act does not make the payment of house-tax a liability of the tenant and the provision merely permits a lawful increase in the rent payable by a tenant if the landlord wishes to effect increase. This Act was extended to Patiala with effect from November 1, 1956. If house-tax had been levied in Patiala before that day, no landlord could claim enhancement of rent under section 9 from 1956 to 1962. Section 9 would indeed be invoked after and in respect of the reimposition of the tax with effect from April 1, 1965. The operation of section 9(1) of the Act is not automatic. It is merely an enabling provision which entitles the landlord to increase rent of premises covered by the Act if a rate, cess or tax in respect of the building is levied after the commencement of the Act. The amount which is recoverable by way of increase from a tenant under section 9 of the Act, can either be made the liability of the tenant by mutual agreement or by serving on the tenant a proper notice of increase of rent. It was held by the Division Bench that no claim can be made for paying of something for which liability had not been incurred before the making of the claim. Following the Division Bench judgment, Mehar Singh, C.J., had held in *Hirdy Ram* v. *Som Nath* (8), that house-tax cannot be claimed as arrears of rent unless landlord makes the increase a demand according to section 9. Even in *Smt. Kirpal Kaur's case* (1), the learned Chief Justice observed that the landlord could not claim house-tax earlier to the date of the demand made by him by the notice served on the tenant as part of the arrears of rent for the

(7) 1969 R.C.R. 290.

(8) 1969 R.C.R. 411.

purposes of maintaining a ground for eviction of the tenant. Inasmuch as no notice of any kind was served by the landlord on the tenant either at the time of the assessment of the house-tax or even after paying the same, he is not entitled to claim ejectment of the tenant for non-payment of an amount, for the payment of which no liability has so far been incurred by the tenant. There is no doubt that house-tax has been assessed in respect of the property. But it is significant that no house-tax had in fact been paid by the landlord even till the disputed tender was made to him before the Rent Controller on June 3, 1967. The payment was made on July 27, 1967. It may now be open to the landlord, if he so wishes, to prospectively increase the rent of the tenant by the net amount not exceeding that paid by him to the municipal authorities by taking appropriate steps as laid down in the abovequoted cases. If he chooses to do so, the amount by which the rent is increased under section 9 of the Act would become part of the rent payable by the tenant. 'Increase' in its ordinary dictionary meaning denotes—"to make grow in size, number or wealth". The agreed rent is Rs. 25 per month. The agreement to pay house-tax contained in the rent-note was not enforced nor implemented and appears to have been abandoned. In any case, that agreement came to an end with the period of tenancy stipulated in the rent-note. Even otherwise, the house-tax in respect of which the agreement could have spoken was not levied by the Municipal Committee after 1st November, 1956. It was a new levy of the same kind which was reimposed from April 1, 1965. From whatever angle, therefore, the matter is looked at, it appears to me that the orders of the Rent Controller and of the appellate authority passed in this case directing the eviction of the tenant-petitioner are neither legal nor proper. As such the order under revision is liable to be reversed under section 15(5) of the Act.

(20) For the foregoing reasons, I allow this petition, set aside the orders of the appellate authority and the Rent Controller and dismiss the application of the landlord for the eviction of the tenant with costs throughout.

R.N.M.