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to readmit the suit under its original number in the register of civil suits and proceed to determine the suit.

Having regard to the circumstances of the case, I leave the parties to bear their own costs throughout.

Harnam Singh, J.

Parties are directed to appear in the Court of first instance on the 9th November 1953.

Dulat, J.

DULAT, J. I agree.

REVISIONAL CIVIL

Before Kapur, J.

RAM CHANDER,—*Petitioner*

versus

KIDAR NATH AND OTHERS,—*Respondents*

Civil Revision No. 250 of 1953

1953

Oct. 23rd.

The East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13 and 14—"Re-erection" in Section 13(3)(a)(iii) meaning of—Section 14 whether bars a second application under section 13(3)(a)(iii), when the means of the landlord have changed or his circumstances have improved—Constitution of India, Article 227—Scope of ...

Held, that re-erection in section 13 (3) (a) (iii) of the Punjab Urban Rent Restriction Act does not contemplate re-erection which is the result of the building being in a dilapidated condition or requiring re-erection on that ground but what it contemplates is that the landlord can apply for an order directing the possession to be delivered to him if he requires it for re-erection or replacement of the building or erection of other buildings. It is not the state of the building which is the test of re-erection, but it is the desire of the landlord to re-build.

Held, that a landlord may make an application for ejectment on the ground that he bona fide needs the property for the purpose of re-construction and he may not be able to prove that he bona fide did need it. That does not prevent on a subsequent occasion when his means have improved or circumstances have changed to be able to make another application. Merely because he was not able to satisfy the Judge two years ago that he required the premises for re-erection is not a ground that he cannot do so

now, and section 14 is no bar to the second application for ejectment under section 13(3)(a)(iii) of the Punjab Rent Restriction Act.

Held also, that the object of Article 227 of the Constitution is really to canalise the proceedings in inferior courts and tribunals so that there is no overflow of the banks, and if the court or the tribunal has mis-directed itself in regard to the law which is applicable or the scope of that application made, the High Court will interfere under the extraordinary jurisdiction.

Petition under Section 115, C.P.C., read with Article 227 of Constitution of India for revision of the order of Shri J. S. Bedi, District Judge, Ambala, dated the 13th June 1953, reversing that of Shri Parshotam Sarup, Rent Controller, Ambala, dated 17th March 1953. and setting aside the order of eviction in respect of the petitioner.

K. L. GOSAIN, for Petitioner.

A. N. GROVER, for Respondents.

JUDGMENT

KAPUR, J. This is a rule obtained by the landlord against an order of District Judge J. S. Bedi, dated the 13th June 1953, refusing to grant the landlord's prayer for ejectment of the tenant. Kapur, J.

This case has rather an unfortunate history. On the 21st January 1949, the landlord made an application for ejectment of the tenant on the ground that he needed the house for his personal use which was dismissed by the Rent Controller and this Order was affirmed by the District Judge on the 12th July 1949, but in this judgment the District Judge held that the requirement of the landlord for the purpose of reconstruction could not be urged in the appeal for the first time and that the landlord could make a fresh application.

On the 15th October 1949, the landlord made a second application on the ground that he wanted to reconstruct the building. This application was dismissed on the 11th April 1950, and on appeal being taken to the District Judge it was held that one of the walls of the building required repairs but that could be done without ejectment of the

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tenant and the order of refusal to eject was thus affirmed. The learned Judge in that case personally inspected the place and his inspection note is dated the 22nd June 1950, which has been placed on the record of this case by the landlord.

The tenant then made an application on the 30th August 1950, for the wall being built and the Rent Controller Mr. Augustine ordered that the tenant could build the wall in question and deduct the cost thereof from the rent payable.

On an application of the tenant the Rent Controller fixed the fair rent on the 22nd May 1952, at Rs. 10 per mensem.

On the 21st August 1952, the landlord again made an application for ejectment of the tenant on the ground that he wanted to rebuild the whole building which was in a damaged and dilapidated condition. Along with this application he filed a plan which he had got sanctioned from the Cantonment Board. The tenant pleaded that the landlord did not want the house to be rebuilt, that the house was not in a dilapidated condition and he denied that any notice for the purpose of re-erection had been sent to the landlord by the Cantonment Board. He denied other allegations also. He further pleaded that the landlord had made several applications for his ejectment which had been dismissed and it had been held that the house was in such a condition that it did not require rebuilding and all that required reconstruction was the northern wall which had been ordered to be rebuilt by the Rent Controller. The tenant further stated that the landlord was a litigious person and had brought the application mala fide just to trouble the tenant. Several issues were raised before the Rent Controller and he found that the applicant needed the house bona fide for reconstruction. He discussed the evidence produced and held that the circumstances had changed. He also found that the conduct of the tenant amounted to nuisance and on these grounds he ordered ejectment of the tenant.

An appeal was taken to the learned District Judge who once again inspected the spot and found the northern wall of the house bulging out and it

needed repairs badly. He also found that the shop below required repairs and there were depressions at one or two places. After arguments were heard the learned District Judge came to the conclusion that the previous position had not actually changed, that only the northern wall required reconstruction and that could be done without ejectment of the tenant and, therefore, the application was barred by section 14 of the Rent Restriction Act. (It appears that the learned District Judge erroneously said section 13). With regard to the nuisance he found that it was not made a ground of attack and it was an after-thought and that it had not been a ground even in the previous application which is contrary to facts. He took into account the strained relations between the landlord and the tenant and peculiarly enough he was of the opinion that if the tenant had been responsible for nuisance he had already been punished. He, therefore, allowed the appeal and set aside the order of ejectment. The landlord has come up with a petition under Article 227 of the Constitution of India.

It appears to me that the learned Judge has misdirected himself entirely in regard to the points in controversy. The application made by the landlord was that he required the premises under section 13(3)(a)(iii) of the Punjab Urban Rent Restriction Act which provides that landlord may apply "to the Controller for an order directing the tenant to put the landlord in possession in the case of any building, if he requires it for the re-erection of that building, or for its replacement by another building, or for the erection of other buildings." The learned Judge seems to be of the opinion that the re-erection which is mentioned in this section is that which is the result of the building being in a dilapidated condition or requiring re-erection on that ground, but what the section contemplates is that the landlord can apply for an order directing the possession to be delivered to him if he requires it for re-erection or replacement of the building or erection of other buildings. It is not the state of the building which is the test of re-erection, but it

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is the desire of the landlord to rebuild. This question, the learned Judge seems to have entirely ignored. In a judgment of the Calcutta High Court *Bhullan Singh and others* v. *Ganendra Kumar Roy*, (1), the same point had arisen under section 11(1)(f) of that Act and it was held by a Division Bench that that section applied if the landlord required the premises bona fide for re-building. The state of premises, therefore, was not an essential factor in the case. The learned Judge in this case seems to have taken just the opposite view that the essential factor was the state of the premises and not the requirement of the landlord himself.

I am informed by counsel that both the landlord and the tenant have been bound down under section 107 of the Code of Criminal Procedure. It was not the intention of this Act to allow the landlord to be the subject-matter of security proceedings nor was it meant to protect tenants who do not behave properly. In the present case as the learned Judge has taken, in my opinion, an erroneous view of the law, it is a fit case in which I should interfere in the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India, and although the judgment of Lord Justice Denning in *R.* v. *Northumberland Compensation Appeal Tribunal* (2), relates to a case under certiorari, the principles of that apply to the facts of this case. The Lord Justice there said :—

> "But the Lord Chief Justice has, in the present case, restored certiorari to its rightful position and shown that it can be used to correct errors of law which appear on the face of the record, even though they do not go to jurisdiction."

In any case, in this particular case the learned Judge has misdirected himself in regard to the law which is applicable or the scope of the appli-action made.

(1) A.I.R. 1950 Cal. 74
(2) (1952) 1 A.E.R. 122, 128

Mr. Grover has drawn my attention to several cases. His first submission is that the scope of Article 227 is very limited and if the District Judge had jurisdiction to decide the matter, it does not make any difference in what way he decides. He referred me to *Khushi Ram* v. *Amin Chand and others* (1), and has drawn my attention to an unreported judgment, Civil Writ No. 233 of 1951, decided by Falshaw, J., and myself on the 8th July 1952, and there are several other judgments to which reference can be made, but in none of them the learned Judge had failed to decide the case which really arose and had decided a totally different question. The object of Article 227 of the Constitution is really to canalise the proceedings in inferior Courts and Tribunals so that there is no overflow of the banks. Well, if that is the test as was laid down by this Court as well as by the Calcutta High Court, in *Subodh Bala Biswas* v. *The State of West Bengal* (2), this Court can interfere in a case such as this.

Mr. Grover has then submitted that this application is barred by section 14 of the East Punjab Urban Rent Restriction Act. That section provides :—

> "14. The Controller shall summarily reject any application under subsection (2) or under subsection (3) of section 13 which raises substantially the issues as have been finally decided in a former proceeding under this Act."

In the first place, a man may make an application for ejectment on the ground that he bona fide needs the property for the purpose of reconstruction and he may not be able to prove that he bona fide did need it. That does not prevent on a subsequent occasion when his means have improved or circumstances have changed to be able to make another application. Merely because he was not

(1) 1951 P.L.R. 264
(2) 57 C.W.N. 601

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able to satisfy the Judge two years ago that he required the premises for re-erection is not a ground that he cannot do so now.

For the reasons that I have given above I am of the opinion that this petition should be allowed, the order of the learned District Judge set aside and that of the Rent Controller restored.

I would allow the tenant three months' time in which to vacate the premises.

The landlord will have his costs of this petition

REVISIONAL CRIMINAL

Before Khosla and Soni, JJ.

MANI RAM AND OTHERS—*Convict-Petitioners*

versus

THE STATE,—*Respondent*

Criminal Revision No. 452 of 1953

1953

Oct. 26th.

Public Gambling Act (III of 1867)—Section 6—Presumption under—Extent of—Sections 3 and 4—Ingredients of offences under, to be proved.

Held, that section 6 of the Public Gambling Act, 1867, clearly lays down that in certain cases a presumption of guilt arises but that presumption is not conclusive and may in certain circumstances be extremely weak. The presumption, even in the absence of any defence evidence, may be rebutted by bringing out circumstances which go to show that some or all the ingredients which constitute the offence under section 3 or the offence under section 4 are lacking, and in such a case the accused persons will not be held guilty.

Held, that in order to convict a person under section 3 it is necessary to prove—

(1) that the premises are habitually used for gambling;

(2) that the premises are owned or occupied by the accused person;

(3) that the premises are used for gambling with the intention or knowledge of the accused person; and

(4) that the accused derives some gain or profit from the gambling.