

Ravinder Kumar v. Gian Chand (S. P. Goyal, J.)

and there the plea taken by the tenant was that it was a non-residential building as the main part thereof was being used for business purposes by him as his office and library, he being a practising lawyer at Panipat. As a matter of fact, it was this stand taken by the tenant which compelled the landlady to take the ejectment proceedings against her tenant on the ground that he had changed the user of the building. Under these circumstances, once it is found that he was using the building as office-cum-residence, he is liable to ejectment on the ground that he had changed the user of the building, i.e., he started using the same for a purpose other than the one for which the same had been leased to him. Consequently, this petition fails and is dismissed with costs.

(9) However, the tenant is allowed three months' time to vacate the demised premises provided all arrears of rent, if any, are deposited within one month along with an undertaking in writing that after the expiry of the said period of three months vacant possession shall be handed over to the landlady, and the rent for the said period of three months will be paid regularly in advance by the 10th of each succeeding month.

D. S. Tewaria, J.—I agree.

H.S.B.

Before: S. P. Goyal and Pritpal Singh, JJ.

RAVINDER KUMAR.—Petitioner.

versus

GIAN CHAND.—Respondent.

Civil Revision No. 1161 of 1985

April 29, 1986

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3) (a)(ii)—Landlord seeking eviction of tenant claiming that the rented land was required for starting an independent business for his son—Such ground for eviction—Whether covered by Section 13(3) (a)(ii)—Landlord—Whether can be said to require the rented land for his own use and occupation.

Held, that the words 'own occupation' in Section 13(3) (a)(ii) of the East Punjab Urban Rent Restriction Act, 1949, cannot be extended to the case of the rented land which can only be got vacated

for setting up of a business. The moment an independent business is set up by the son, who till then may have been a member of the family of the landlord, it would not be possible to say that the use of the rented land by the son would be deemed to be by the landlord himself. In the case of residential premises, even when any dependent member of the family is put in occupation, the landlord would be deemed to be himself in occupation though through the dependent member of the family. But the business of the son being independent and the landlord having no share in it the landlord cannot, by any stretch of reasoning, be said to be in occupation of the rented land. Furthermore, if the Legislature has intended that the landlord would be entitled to get the rented land vacated for setting up of a business by his son it would have certainly made a provision to that effect. As such it has to be held that the setting up of an independent business by the son would not be covered by Section 13(3) (a)(ii) of the Act and the tenant would not be liable to be evicted on this ground.

(Para 5)

Santokh Singh and another vs. M/s. Sat Pal Jayanti Parshad
1981(1) R.C.R. 465.

(Over-ruled)

PETITION UNDER SECTION 15 of East Punjab Urban Rent Restriction Act, 1949, for the revision of the order of the Court of Sardar Sharanjit Singh Grewal, Appellate Authority, Jalandhar, dated 8th February, 1985, reversing that of Shri K. K. Kataria, PCS, Rent Controller, Jalandhar, dated 24th January, 1983, passing an order of eviction of the demised premises in favour of Gian Chand and against Ravinder Kumar Pujara. The tenant is, however, given three months time to vacate the demised premises and to hand over the possession to the landlord failing which the landlord be entitled to execute the order of eviction passed in his favour. Leaving the parties to bear their own costs.

S. P. Jain, Advocate with K. K. Gupta, Advocate, for the Petitioner.

H. L. Sarin, Senior Advocate with M. L. Sarin, Advocate and Sukhdev Singh, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.

(1) This revision under Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (for short, called the Act) was referred

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to a Division Bench to resolve the conflict between the decision in *Santokh Singh and another v. M/s. Sat Pal Jayanti Parshad*, (1) and two earlier unreported judgments in (*Kapur Singh v. Bhagwati Parshad*) (2) and (*Kaura Ram v. Ram Chander*) (3).

(2) The respondent-landlord filed a petition for the ejectment of his tenant, the petitioner, on various grounds, but the one which survives for consideration is as to whether the rented land was required by the former for his own use and occupation. The Rent Controller initially did not record a specific finding on this issue, but on report having been called by the appellate authority, reported that the landlord needs the rented land for the *bona fide* need of his son Vijay Kumar for starting coal business. This finding having been affirmed by the appellate authority and the ejectment ordered, the tenant has come up in this revision.

(3) The principal argument raised, to assail the legality and propriety of the impugned order, was that the setting up of an independent business by the son would not be covered by Section 13(3)(a)(ii) as in such a case it cannot be said that the landlord requires the rented land for his own use. In the alternative, it was contended that even if for the argument's sake it may be accepted that the need of a son, dependent on the landlord and living jointly with him, would be the requirement of the landlord himself, in the present case there being neither any pleading nor any evidence to substantiate that the son was dependent and living jointly with the landlord, the setting up of an independent business by the son cannot, by any stretch of reasoning, be taken as the requirement of the landlord. Reliance for this contention was placed by the learned counsel for the petitioner on the two unreported judgments noticed above.

(4) The learned counsel for the respondent, on the other hand, relied on the following observations of D. S. Tewatia, J. in *Santokh Singh's case* (supra) to contend that the requirement of the landlord to settle his son would be the requirement of the landlord himself:—

“In my opinion, the requirement of the landlords to settle their son is the requirement of landlords themselves and

(1) 1981(1) R.C.R. 465.

(2) C.R. 190/59, decided on 30th September, 1959.

(3) C.R. 716/63, decided on 5th March, 1965.

once the landlords had pleaded their own requirement for using the rented land for running a business, it was not necessary that they should have additionally pleaded that they desired their son to be settled in that business."

The facts found in that case were that Santokh Singh and his wife were the joint owners of the rented land. It was pleaded that they wanted to set up their own business and for that required the rented land. Santokh Singh, landlord, at that time was living in Behrain where he was running a similar business. He deposed that the fate of the Indians was not certain in Behrain and he wanted to shift to India. His wife deposed that she would start the business with the help of his son, who was also to be settled in life, till her husband joins her after winding up the business in Behrain. The learned Judge, on these facts, found that the landlords had the genuine requirement to occupy the rented land for their own use. Obviously, it was not a case where the landlord wanted the rented land to start an independent business of his son. The observations relied upon by the learned counsel were, therefore, in the nature of *obiter dicta* and the decision in *Santokh Singh's case* (supra) cannot be relied upon as a precedent for the proposition canvassed by the learned counsel for the landlord.

(5) The learned counsel for the respondent next contended that the words "his own use" would include the use by the members of the family of the landlord as well. The requirement of the landlord to settle his son in business, therefore, would be the personal requirement of the landlord. In support of this contention, the learned counsel has relied on *Mst. Bega Begum and others v. Abdul Ahad Khan*, (4), *Jagdish Kumar Narula v. Niranjan Lal and another*, (5) and *Mohinder Kaur v. Desa Singh*, (6). In all these decisions, the words "own occupation" were under consideration and it was held that the occupation by the members of the family of the landlord would be deemed to be the occupation by the

(4) A.I.R. 1979 S.C. 272.

(5) 1980(1) R.C.R. 563.

(6) 1972 R.C.J. 258.

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landlord himself. We very much doubt whether the interpretation of the words "own occupation" made in these authorities can be extended to the case of the rented land which can only be got vacated for setting up of a business. The moment an independent business is set up by the son, who till then may have been the member of the family of the landlord, it would not be possible to say that the use of the rented land by the son would be deemed to be by the landlord himself. In the case of the residential premises, even when any dependent member of the family is put in occupation, the landlord would be deemed to be himself in occupation through the dependent member of the family. But the business of the son being independent and the landlord having no share in it, the landlord cannot, by any stretch of reasoning, be said to be in occupation of the rented land. However, in the present case, we need not dilate upon this matter any further because it was neither pleaded nor there is any evidence that Vijay Kumar was member of the family of the landlord or dependent upon him. In the absence of any such averment and evidence that Vijay Kumar was member of the family or dependant upon his father, the requirement of the landlord to settle the former in business, even on the authorities cited, would not be covered by the said clause nor can it be reasonably argued that the landlord requires the rented land for his own use. Moreover, as held in the above-noted two unreported decisions, if the Legislature had intended that a landlord would be entitled to get the rented land vacated for the setting up of a business by his son, it would have certainly made a provision like the one made in case of a lawyer or a doctor son of the landlord. We, therefore, approve the rule laid down in *Kapur Singh's* and *Kaura Ram's cases* (supra) and overrule the observation made in *Santokh Singh's case* (supra) that the requirement of the landlords to settle their son would be the requirement of the landlords themselves.

(6) In the result, the revision is allowed, the impugned order of the appellate authority set aside and that of the Rent Controller restored. In the circumstances of the case, the parties are left to bear their own costs throughout.

H. S. B.