

Before J. V. Gupta, J.

MANOHAR SINGH SARHADI,—Petitioner.

versus

RAMJI DASS AND ANOTHER,—Respondents.

Civil Revision No. 1476 of 1986

January 9, 1989.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 13, 15(5)—Shop portion given on rent by landlord—Subsequently Chaubara also given on rent—Subletting of Chaubara portion alleged—One application for ejection of entire premises—Such application—Whether competent.

Held, that initially only the shop portion was let out to the tenant. The chaubara portion was let out subsequently on a monthly rent of Rs. 50 whereas the shop was let out on a monthly rent of Rs. 100. It is also the case of the landlord himself that only the Chaubara portion has been sublet by the tenant to Pritpal Singh, respondent No. 2. It is with this background which requires determination as to whether the one application for eviction of the tenant from both the portions i.e., the business premises as well as the residential portion was maintainable or not. Since the rent was fixed separately for both the premises that is Rs. 100 for the shop and Rs. 50 for the Chaubara and in case the Chaubara portion was sublet, no eviction order could be sought against the tenant from the business premises that is the shop. By joining both the premises in the present application, the tenant has been greatly prejudiced. Even if it be assumed that there was subletting as found by the authorities below, the tenant was liable to ejection from the residential portion only and not from the business premises. It is in these circumstances, that the contention of the tenant that the ejection application in its present form as such was not maintainable as it relates to separate tenancies had some merit.

(Para 6).

Petition under section 15 (5) of the Urban Rent Restriction Act for revision of the order of the court of Mr. I. C. Aggarwal, Appellate Authority (Urban Rent Punjab Rent Restriction Act) Bhatinda, dated 8th January, 1986, affirming that of S. Jaswant Singh Korey, P.C.S., Rent Controller, Bhatinda, dated 7th April, 1984, ordering that the application of the applicant under section 13 of the East Punjab Urban Rent Restriction Act for the eviction of the respondents from property No. 4718 consisting one shop, chaubara, Miani Kitchen bathroom etc. situated on the mall road, Bhatinda, fully detailed in

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the head note of the application, is allowed with costs against the respondents. Costs assessed Rs. 100. The respondents are directed to put the applicant in possession of the premises by 7th June, 1984.

CLAIM.—Application under Section 13 of the East Punjab Urban Rent Restriction Act for ejection in respect of house No. 4718 consisting of one shop, Chaubara, Miani, Kitchen, Bath-room, Courtyard and stairs bounded as follows:—

East : House of Pohla Ram Jagdish Rai.

West : Building of Shri Jagdev Chand.

North : Mall Road.

South : Building of Duni Chand situated at Mall Road, Bathinda except shop (room) which is on rent with Surinder Kumar.

CLAIM IN REVISION.—For reversal of the order of lower court.

Harmohinder Singh Sethi, Advocate with Amit Singh Sethi, Advocate, for the Petitioner.

J. R. Mittal, Advocate with Baldev Singh, Advocate, for the Respondents.

Jang Bahadur Singh, Advocate, for Respondent No. 2.

JUDGMENT

J. V. Gupta, J.—

(1) This is tenant's petition against whom the eviction order has been passed by both the authorities below.

(2) Ramji Dass landlord sought the ejection of his tenant Manohar Singh from the property number 4718 consisting of one shop and a chaubara etc., *inter alia* on the ground that it has been sublet by the tenant to Pritpal Singh respondent No. 2. According to the averments in the ejection application out of the demised premises the *chaubara*, Miani and the kitchen as well as the bath room had been sublet to Pritpal Singh respondent No. 2 and, therefore, he was liable to ejection. It is the case of the landlord himself that earlier on 6th February, 1963 only the shop portion was given on rent to the tenant Manohar Singh at the rate of Rs. 50 which was later on enhanced to Rs. 100 in the year 1976 because of certain constructions made therein. Later in the year 1976, the landlord also rented out the *chaubara* portion on a monthly rent of Rs. 50. Thus, according to the landlord the entire premises was on rent with the tenant at a monthly rent of Rs. 150. In the joint

written statement filed on behalf of the tenant as well as by the alleged sub-tenant Pritpal Singh, it was pleaded that the tenant has neither sub-let the first floor nor he has transferred his right under the lease to respondent No. 2. The latter is staying there temporarily only to keep guard on the arms and ammunition at all hours (in the unavoidable absence of respondent No. 1 and his partner) as a worker of respondent No. 1 and his firm. Moreover, respondent No. 2 is a nephew of respondent No. 1 and a brother and members of joint family of Shri Ishat Pal Singh, who is a partner with the tenant in the firm. An additional plea was taken in the written statement that the application as such was not maintainable in its present form as it relates to separate tenancies one for ground floor and the other for first floor. The learned Rent Controller relying upon the judgment of this court reported as *Gobind Ram v. Godha Ram* (1) came to the conclusion that single application for ejection from the entire premises was maintainable. Though it was observed by the Rent Controller that there was no dispute that the lower portion is non-residential part and is being used as shop whereas upper portion was being used as residence as admitted by Pritpal Singh respondent No. 2 in his statement. It was further found by the Rent Controller that the tenant Manohar Singh has sub-let the part of the premises to Pritpal Singh respondent No. 2 and, therefore, he was liable to be ejected. Consequently, the eviction order was passed on 7th August, 1984. In appeal the said finding of the Rent Controller was maintained by the appellate authority.

(3) Learned counsel for the tenant petitioner submitted that the sub-letting by the tenant to Pritpal Singh is alleged to be of the *chaubara* portion only and, therefore, no ejection order could be passed with respect to the shop as there were two separate tenancies. He also argued that one petition with respect to both the tenancies was not maintainable. In support of his contention he referred to *Paras Ram v. Shiv Kumar* (2), *T. N. Unnamalai v. Saminatha Pathar* (3). According to the learned counsel, there was no question of sub-letting as Pritpal Singh was not a stranger to the tenant. He was his real nephew and was looking after his business there at Bhatinda being the brother of one of his partners in the firm. In any case argued the learned counsel there was no cogent evidence of sub-letting as Pritpal Singh had his separate residence and he

(1) 1979(2) RCR 255.

(2) 1987(2) RLR 104.

(3) 1980(2) RLR 770

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was staying there only in order to keep watch on the arms and ammunition stored in the shop.

(4) On the other hand, learned counsel for the landlord submitted that it was one tenancy as the entire building was let out both for residential as well as for business purposes. According to the learned counsel, Pritpal Singh was residing in the residential portion as found by both the authorities below and, therefore, it being a finding of fact should not be interfered with in revisional jurisdiction.

(5) I have heard the learned counsel for the parties and have also gone through the relevant evidence on record.

(6) It is the common case of the parties that initially only the shop portion was let out to the tenant. The *chaubara* portion was let out subsequently on a monthly rent of Rs. 50 whereas the shop was let out on a monthly rent of Rs. 100. It is also the case of the landlord himself that only the *chaubara* portion has been sublet by the tenant to Pritpal Singh respondent No. 2. It is with this background which required determination as to whether the one application for eviction of the tenant from both the portions i.e., the business premises as well as the residential portion was maintainable or not. Since the rent was fixed separately for both the premises that is Rs. 100 for the shop and Rs. 50 for the *chaubara* and in case the *chaubara* portion was sub-let, no eviction order could be sought against the tenant from the business premises that is the shop. By joining both the premises in the present application, the tenant has been greatly prejudiced. Even if it be assumed that there was sub-letting as found by the authorities below, the tenant was liable to ejection from the residential portion only and not from the business premises. It is in these circumstances, that the contention of the tenant that the ejection application, in its present form, as such was not maintainable as it relates to separate tenancies had some merit. The view taken by the authorities below in this behalf relying upon the judgment of this court in *Gobind Ram's case* (supra) was wrong and misconceived. That case was clearly distinguishable and has no applicability to the facts of the present case. In that case the landlord sought ejection of his tenant from two rooms in dispute which were let out on different dates *vide separate rent note* but ejection was sought on the ground that the landlord *bona fide* required the premises for his own use and occupation. The contention therein was that the landlord could not make a single application for claiming eviction of the tenant on the ground of

personal necessity when the premises had been separately rented out. The said contention was repelled with the following observations:—

“So far as the first contention is concerned, I do not find any merit in it. The tenant is one and the landlord is one. It is immaterial whether the premises are rented out by one rent note or by several rent notes. When the entire premises are needed *bona fide* by the landlord for his personal use, the contention raised is wholly besides the point. Therefore, I repel the first contention.”

(7) As observed earlier in the present case, the ground of ejection was sub-letting of the residential portion by the tenant. Since the said portion was let out separately the tenant could not be evicted on that ground from the business premises. In these circumstances the petition succeeds. The impugned orders are set aside and the application for ejection from both the premises is dismissed with no order as to costs. However, the landlord will be entitled to seek ejection of his tenant separately from both the premises on the grounds which may be available to him under the Act.

PCG.

Before J. V. Gupta, J.

SOHAN LAL,—Petitioner

versus

COL. PREM SINGH GREWAL AND ANOTHER,—Respondents.

Civil Revision No. 2380 of 1988

February 28, 1989.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(g), 13-A, 18-A—Specified landlord filing ejection applications against four tenants—Premises used for business and residential purpose—Whether entire building can be termed as residential building—Right of landlord—Entitled to recover possession of one part of residential building.