allowed and that order quashed. The petitioner will have his costs from respondents Nos. 1, 2 and 4. Counsel fee Rs. 100.

Nothing in this order is to be taken as expressing any opinion on the question whether the price of the property paid by the petitioner includes the value of the investment made by respondent No. 3 to which reference has been made by the Chief Settlement Commissioner in the impugned order.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

SIRI KISHAN AND OTHERS,—*Petitioners*

versus

GHANESHAM DASS,—*Respondent.*

Civil Revision No. 347 of 1960

1962

August, 27th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(3)(a)(i)—Juristic person—Whether can have residential building vacated on the ground of requirement for own occupation—S. 15(5)—Powers of revision by High Court—When to be exercised.

Held, that a juristic person like an association, a trust or a limited company, can have its tenant ejected from a residential building on the ground that it is required for its own occupation. The word 'occupation' does not necessarily mean residence nor does it involve a continual personal living in the house. The words "own occupation" used in conjunction with 'his' may well include either a human being or a notional entity like an association or a trust or a limited company.

Held, that the power of the High Court to interfere under section 15(5) of the East Punjab Urban Rent Restriction Act will not be justified unless it is found that the

Rent Controller and the Appellate Authority had not instructed themselves correctly about the law and the order is demonstrably improper. The High Court under the revisional powers cannot re-assess the evidence or circumstances relied upon by the Appellate Authority unless the High Court is satisfied that the conclusion could not have been reached if the law on the point had been properly appreciated or there is reasonable ground to the satisfaction of the High Court regarding the impropriety of the order.

Case referred by Hon'ble Mr. Justice Inder Dev Dua, on 23rd May, 1961, to a larger Bench for decision owing to the importance of the questions of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Shamsher Bahadur, on 27th August, 1962.

Petition under Section 15 (V) of Act 3 of 1949 as amended by Act 29 of 1956 for revision of the order of Shri Gurdev Singh, District Judge, Ludhiana, dated the 14th March, 1960, reversing that of Shri Gurnam Singh, Rent Controller, Ludhiana, dated the 31st August, 1959, and dismissing the application for ejectment.

H. L. SARIN AND ATMA RAM AND K. K. CUCCRIA, ADVOCATES, for the Petitioners.

J. N. KAUSHAL, ADVOCATE, for the Respondent.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—Three Civil Revisions, *Siri Kishan* v. *Ghansham Dass* (Civil Revision No. 347 of 1960), *Siri Kishan* v. *Madan Gopal* (Civil Revision No. 389 of 1960), and *Tirath Ram* v. *Basant Ram* (Civil Revision No. 397 of 1960) which are being disposed of by this judgment involve two questions, one of law, which is common to all, and the other of fact. All these three cases have been referred by a learned Single Judge (Dua J.) for decision by a larger Bench.

The question of law raised in these cases is whether a juristic person like a trust can enforce an order of ejectment against a tenant in respect of residential building under the provisions of the East Punjab Urban Rent Restriction Act, 1949 ? The question of fact involved in each of the three petitions is whether the requirements of the landlord are *bona fide* ?

The learned District Judge, as the Appellate authority in each of the three cases, has decided both the questions of law and fact against the landlord whose petition for ejectment of the tenant has been dismissed. The aggrieved landlord has filed a petition for revision in each case and the order of Dua J. recommending to the Chief Justice the constitution of a larger Bench for disposal has been recorded in Civil Revision No. 347 of 1960 (*Siri Kishan* v. *Ghansham Dass*). In the other two cases which were heard together, Dua J., has passed a brief formal order to this effect and reference is made to his detailed order in Civil Revision No. 347 of 1960.

It is common ground that the applications for ejectment must fail and the petitions for revision dismised if the finding of the Appellate Authority with regard to the *bona fide* requirement of the landlord is affirmed. The question of law would arise only if this Court is disposed to take a different view on the finding with regard to the *bona fide* requirement of the landlord.

As in our view the finding of the Appellate Authority on the question of the *bona fide* requirement of the landlord is correct, the question of law does not really arise, but in deference to the elaborate argument addressed before us we would also advert to the question of law but before doing so it would be well to state the facts in each of the three cases.

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In *Siri Krishan* v. *Ghansham Dass*, (Civil Revision No. 347 of 1960), the dispute relates to a house bearing No. 30 B. III, in Purana Bazar, Ludhiana, which was taken on lease by the respondent Ghanesham Dass in the year, 1942, from the owner Shri Mohan Lal. By a registered deed (Exhibit A. 3) of 8th of February, 1958, the property is purported to have been transferred by Shri Mohan Lal, to a trust known as the Dharmik Industrial School Trust, Ludhiana. The present ejectment application was filed by the trustees on 19th of August, 1958, on various grounds including default in payment of rent, impairment of the value and utility of the premises by removal of a roof, sub-lease and above all requirement of the suit property for the trust's own use. The principal pleas raised on behalf of the tenant were that the trust was both void and fictitious as the house formed part of the co-parcenary property which Shri Mohan Lal, was incompetent to alienate. The plea in the forefront was that the trust had been created to circumvent the provisions of the East Punjab Rent Restriction Act to obtain eviction of the tenant. It was pleaded also that the building being non-residential could not be got vacated for starting of an industrial school. The other allegations of the trust were traversed.

As many as ten issues were raised, but it is not necessary for purposes of this petition to set them out in detail. The Rent Controller having held that the tenant had no *locus standi* to challenge the validity of the trust which required the premises for its own use, namely, the location of the industrial school, ordered the ejectment as prayed for on 31st of August, 1959. Mr. Gurdev Singh, (now Gurdev Singh, J.), as the Appellate Authority, while affirming most of the findings of the Rent Controller, that the building was residential and the tenant could not challenge the validity of the

trust, held that the trust being a juristic person could not conceivably require the property for its own residential purposes. The Appellate Authority further held that the requirement of the landlord was not *bona fide*—a question on which no finding had been given by the Rent Controller. It may be observed at this stage that under sub-section (3) of section 13 of the East Punjab Urban Rent Restriction Act, the Controller before granting an order of ejectment to a landlord in respect of residential building in case of requirement for "his own occupation" has to satisfy himself under clause (b) that "the claim of the landlord is *bona fide*" and if he is not so satisfied "he shall make an order rejecting the application".

The learned Appellate Authority did not consider that the claim of the landlord was made in good faith, the reasons being that the trust was created by Shri Mohan Lal after he had failed to obtain ejectment of the tenant under the Rent Restriction Act and it was a transference made with the avowed object of ejecting the tenant. No fund had been created for the trust and apart from the paltry rent of Rs. 39-8-0, there was no other source of sustenance for the trust. The appellate Authority was also influenced by the fact that in the trust deed itself the trustees had been authorised to sell the building in dispute to carry out the purposes of the trust. No donations appear to have been received by the trust so far. No scheme had been drawn up for running of the school. These are weighty considerations and a Court of Revision would always be slow to interfere with a finding with regard to the existence of good faith. It is true that this Court under sub-section (5) of section 15 of the East Punjab Urban Rent Restriction Act, is empowered to satisfy itself as to the "legality or properiety" of the impugned order, but we cannot say that the

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finding of the Appellate Authority on the question of *bona fide* requirement of the landlord is vitiated in any manner. As held by their Lordships of the Supreme Court in *Neta Ram and others* v. *Jiwan Lal and another* (1), the power of the High Court to interfere under section 15(5) of the East Punjab Urban Rent Restriction Act, will not be justified unless it is found that the Rent Controller and the Appellate Authority had not instructed themselves correctly about the law and the order is demonstrably improper. While the Rent Controller did not direct his mind at all to this question of *bona fides* of the landlord although he was bound to do so, the Appellate Authority has weighed the matter objectively and fairly.

Turning now to the facts of *Siri Krishan* v. *Madan Gopal*, (Civil Revision No. 389 of 1960), we find ourselves confronted with a similar situation. In this case the respondent Madan Gopal is in occupation of a residential house consisting of six rooms, one *deorhi*, one *tawela*, one *sehan* and one verandah in Purana Bazar, Ludhiana, and like the other house was also taken on rent from Shri Mohan Lal on a monthly rental of Rs 50. In this case a trust of this property was created for the purpose of running a charitable hospital known as Ideal Charitable Hospital Trust, on 7th of February, 1958, and eight persons were appointed as trustees. On 16th of August, 1958, the trustees, along with Mohan Lal, made an application for ejectment under section 13 of the East Punjab Urban Rent Restriction Act, on the grounds of non-payment of rent, and requirement of the premises for starting a charitable hospital. It was pleaded by the tenant that the trust was void and fictitious having been created of co-parcenary property which Mohan Lal,

(1) 1962 P.L.R. 694.

was not in a position to alienate. This plea has been rejected by both the Rent Controller and the Appellate Authority. It has also been held against the tenant by both the Rent Controller and the Appellate Authority that the building is residential and could be vacated. Both the authorities have, however, returned a concurrent finding in favour of the tenant that there was no intention on the part of the trustees to run a hospital in the premises which are sought to be vacated. No fund has been created for the running of a charitable hospital and the trustees are empowered even to sell the building itself to run the hospital. Mohan Lal as a witness admitted that there was no other property with the trust to lay hands on for the running expenses nor did he have any idea of the manner in which funds were to be raised. There is no specific scheme for running the hospital and the only objective of the trust appears to be to have the tenant ejected. There is also an admission of Mohan Lal, as A.W. 3, that according to the legal advice which he received from a counsel of the High Court the only way of securing the ejectment of the tenant was to create a trust of the building.

Now, the considerations which have weighed with the Appellate Authority and the Rent Controller are both relevant and weighty. The finding on this qusetion is concurrent and as held by their Lordships of the Supreme Court in *Neta Ram and others* v. *Jiwan Lal and another* (1), the High Court under section 15(5) of the East Punjab Urban Rent Restriction Act, has no warrant to reverse the concurrent findings without showing how these are erroneous. There is nothing demonstrably improper in the finding of the Appellate Authority and there is really no ground for interference on this score.

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Likewise, in *Tirath Ram* v. *Basant Ram* (Civil Revision No. 397 of 1960), where the respondent Basant Ram had obtained the suit premises consisting of a house, also in Purana Bazar, Ludhiana, from the same landlord Mohan Lal, in the year 1951, the property was transferred to Shri Vidya Parchar Trust by a registered instrument (Exhibit A.1), of 25th of August, 1955. It is common ground, as in the other cases, that the landlord had made an unsuccessful effort to get the tenant ejected and the trust was created soon thereafter "as a mere cloak and device" according to the finding of the Appellate Authority, the obvious purpose being to eject a recalcitrant tenant. The grounds of ejectment are very much the same as in other cases and the same observations apply to the pleas raised on behalf of the tenant. The Rent Controller dismissed the application for ejectment and this order has been affirmed in appeal by the Appellate Authority. On the issues which are relevant for determination in this petition for revision, it has been found that the landlord cannot obtain possession of residential building by ejectment of the tenant on the ground of requirement for "own occupation" by a juristic person like a trust. It has also been found by the Appellate Authority specifically and the Rent Controller impliedly that the requirement of the landlord is not *bona fide*. The circumstances on which reliance has been placed by the Appellate Authority have been summarised in paragraph 11 of the judgment. In the first place, the landlord Shri Mohan Lal, who is himself a petitioner along with the trustees in the application for ejectment, had made an effort to obtain ejectment of the tenant a little while before. The trust was created by the landlord in the wake of his unsuccessful attempt to obtain ejectment. The Appellate Authority further observes that a school already exists in

the Mandir. Shri Mohan Lal may desire to have a better place for the location of the school and this circumstance by itself does not throw any doubt on his good faith. No particular scheme has been drawn up for the running of the school and in the context the statement of the landlord that he created a trust on legal advice with the object of ejecting the tenant is a legitimate consideration in coming to the conclusion reached by the Appellate Authority. There is no substantial ground to interfere with this question of fact as we see nothing illegal or improper in the handling of this particular issue by the Appellate Authority. This Court under the revisional powers cannot re-assess the circumstances to which reference has been made unless we are satisfied that the conclusion could not have been reached if the law on the point had been properly appreciated or there is reasonable ground for our satisfaction regarding the improperiety of the order.

Thus, these three petitions for revision must fail on the ground that the High Court has no substantial ground to interfere under section 15(5) of the East Punjab Urban Rent Restriction Act.

We will now turn briefly to the question of law which has impelled the learned Single Judge to refer these cases for decision by a larger Bench.

Under section 13(3)(a), "a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of *residential building*, if—

(a) he requires it for his own occupation;

(b) he is not occupying another residential building in the urban area concerned; and

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(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;"

The Appellate Authority in each of the three cases has held that in case of a residential building the landlord must require the premises for his own occupation before an order of ejectment can be made and the repeated use of the words "he" and "his" in the sub-clauses of clause (1) is indicative of the legislative intention that the landlord must be a natural person and not a mere juristic entity in the nature of an institution like a trust. It is argued that if a fictional entity like an institution was permitted to adduce proof of its requirement for its occupation it would be destructive of the purpose of clause (i) which enumerates the conditions on which a landlord can apply for ejectment of the tenant from a residential building. The argument of the petitioning landlord, on the other hand, is that the pronoun "he" does not exclude a juristic person. A 'person' as defined in sub-section 40 of section 2 of the General Clauses Act "shall include any company or association or body of individuals whether incorporated or not" and there is nothing to rule out a juristic entity from being a landlord under the Act and its requirement of residential building has always to be taken note of under sub-section 3(a) of section 13 of the East Punjab Urban Rent Restriction Act, 1949. There is some conflict of authority on legal question which has been raised in these petitions for revision. On behalf of the petitioners reliance is placed on a Division Bench judgment of this Court consisting of Chief Justice Khosla and Dulat J. in *Municipal Committee Abohar* v. *Dulat Ram* (2).

(2) I.L.R. 1959 Punjab 1131.

This case was not brought to the notice of the Appellate Authority presumably because it had not been published when the judgment of the Appellate Authority was recorded. In *Municipal Committee Abohar's* case, it was held that the East Punjab Urban Rent Restriction Act covers the case of juristic persons as well as of individual human beings. A juristic person is entitled to enforce his rights in the same manner as an individual human being. Dealing with the specific case it was observed that "if the landlord is an individual human being, then in order to bring his case within the meaning of section 13(3)(a)(ii)(a), he does not have to show that he will live on the rented land himself by erecting a tent upon it. All that he need show is that he requires it for such use as the rented land can be put to. In the case of a municipal committee it may put its property to many uses." It has been contended by the learned counsel for the respondent, Mr. Jagan Nath Kaushal, that what has been said of section 13(3)(a)(ii) cannot apply *mutatis mutandis* to section 13(3)(a)(i). Now, section 13(3)(a)(ii) relates to rented land, but it is pertinent to observe that the three essential prerequisites of a landlord obtaining possession by ejectment of the tenant are precisely the same as are embodied in section 13(3)(a)(i), namely, the requirement for his own use [as against 'occupation' used in section 13(3)(a)(i)(a)], he is not occupying in the urban area concerned for the purpose of his business any other such rented land, and he has not vacated such rented land without sufficient cause. Now, 'rented land' under the definition clause of the Act means "any land let separately for the purpose of being used principally for business or trade". If a juristic person can require rented land for its own use, there is hardly any rational ground to say that it cannot do so in the case of a residential building for occupation of its members or employees.

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The next authority in support of the petitioners' case is a Division Bench judgment of the Mysore High Court in *Ratilal Bros.* v. *The Government of Mysore and another* (3). It was held by Chief Justice Medapa and Venkata Ramaiya J. that the word 'occupation' in the Mysore House Rent and Accommodation Control Order is not synonymous with 'residence' and it is not necessary that the landlord should himself live in the building. Where the landlord is an association and it wants to conduct a school, the building must be in the occupation of the members of the association directly if they themselves conduct it or constructively if it is done through others. Now, if the intention of the legislature was that the landlord should be able to ask for ejectment of his tenant from a residential building only if he required it for his own residential purposes there is no reason why the words "his own occupation" should have been used. The word 'occupation', as held by the Mysore High Court, cannot be equated with 'residence' and the argument employed in the Mysore authority certainly supports the contention of the petitioners' counsel. To the same effect is the decision of a Division Bench of the Patna High Court of Sinha J. (now Chief Justice of India) and Mahabir Prasad J., in *Balmakund Khatry* v. *Narain and others* (4), where it was observed that the word 'occupation' means the actual user of the property for the purpose for which it is meant, and it cannot be restricted in its meaning by makng it synonymous with 'residence'.

The last decision relied upon by the counsel for the petitioners is a Single Bench authority of Bapna J., in *Ramdayal* v. *Ram Narayan* (5), in which it was held that the word 'occupation' must be interpreted in a wider sense and should not be restricted to mean residence of the landlord.

(3) A.I.R. 1951 Mysore 66.
(4) A.I.R. 1949 Patna 31.
(5) A.I.R. 1953 Raj. 125.

On the other hand, the learned counsel for the respondents have relied on a ruling of Venkatarama Aiyar J.. (later Justice of the Supreme Court) in *R. M. V. Seshasayana Rao and others* v. *Manuri Venkatesa Rao and others* (6). An observation was made by the learned Judge that the Madras Buildings (Lease and Rent Control) Act is concerned with actual and physical possession and not with notional and constructive possession; and it will be foreign to the scheme of the Act to hold that occupation by one member should be construed as occupation by another when that other is not in fact in occupation. This authority undoubtedly supports the proposition that the word 'occupation' in section 13(3)(a)(i) should be by a human being and not by a juristic person.

Another authority on which reliance has been placed on behalf of the tenants is a Division Bench judgment of Chief Justice Rajamannar and Rajagopala Ayyangar J. (now Justice of the Supreme Court) in *Azizuddin and Co.* v. *Union of India* (7). In construing the provisions of section 20 of the Code of Civil Procedure, it was observed by Chief Justice Rajamannar at page 346, that "it may be taken as now well established that the word 'resides' must be taken to refer to natural persons and not to legal entities, such as limited companies or Governments". It may, however, be pointed out that this observation was made in the context of section 20 of the Code of Civil Procedure requiring that one of the two considerations for determining the venue of the suit would be the place where the defendant voluntarily resides or carries on business or personally works for gain. Manifestly, "residence" can relate only to a natural person in a case of this kind and if the defendant is a juristic person the place where it carries on

(6) A.I.R. 1954 Mad. 531.
(7) A.I.R. 1955 Mad. 345.

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business would determine the place where the suit is to be brought. Besides, as already observed, the word 'occupation' is distinguishable from residence. The principle of *Azizuddin's* case (7) would not be applicable in the present instance.

It has also been stressed before us that the words "own occupation" exclude by implication the case of juristic persons. In Stroud's Judicial Dictionary, Volume 3 (1953 edition), it is stated that "occupation' does not necessarily mean residence, and "occupation" does not involve a continual personal living in the house. In Shorter Oxford English Dictionary, Volume II, the word "own" when used as an adjective is described as "of or belonging to oneself or itself". This meaning does not exclude the occupation by a juristic person like an association or trust. The use of the words "he", "his" or "him" likewise does not exclude by implication the case of a limited company. The words "own occupation" used in conjunction with 'his' may well include either a human being or a notional entity like an association.

In our opinion, the preponderance of authority is clearly in favour of the contentions raised on behalf of the landlord and even if we were inclined to disagree with the Division Bench authority of this Court in *Municipal Committee, Abohar* v. *Daulat Ram* (2), we would not be disposed to refer this case for decision by a larger Bench as these petitions for revision could be decided on the question of fact which has already been discussed in detail.

In the result, these petitions must fail and would accordingly be dismissed with costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

B.R.T.