

In the result, the appeal is allowed in part and the order of the Collector of Central Excise is accordingly modified in terms of the finding given by us. As the parties succeeded and failed in part, they are directed to bear their own cost.

B. R. T.

Amba Lal  
v.  
The Union of  
India and  
others

Subba Rao, J.

REVISIONAL CIVIL

Before D. Falshaw,—J.

DURGA DASS,—Petitioner.

versus

DEVI DASS NAYAR,—Respondent.

Civil Revision No. 49 of 1960

*East Punjab Urban Rent Restriction Act (III of 1949)—  
Section 13 (3)—Whether applies to a scheduled building;*

*Held, that sub-section (3) of section 13 of the East Punjab Urban Rent Restriction Act, 1949 does not apply to a scheduled building and the bona fide requirement by the landlord for his own use is not a ground of eviction from a scheduled building and a tenant of such a building can be only evicted under the grounds contained in section 13 (2) applicable to buildings and rented land of all kinds.*

1960  
October, 6th

*.. Petition Under Section 15 of the Rent Restriction Act for revision of the order of Shri Gurdev Singh District Judge, Ludhiana, dated the 22nd October, 1959, affirming that of Shri Pritpal Singh, Rent Controller, Ludhiana, dated the 22nd June, 1959, dismissing the plaintiffs suit with costs.*

L. D. KAUSHAL, ADVOCATE, for the Petitioner.

T. N. BHALLA, ADVOCATE, for the Respondent.

JUDGMENT

FALSHAW, J.—This is a revision petition by a landlord, Durga Dass, whose suit for the ejection of his tenant, Mr. Devi Dass Nayar, Advocate, was

Falshaw, J.

Durga Dass  
v.  
Devi Dass  
Nayar

—  
Falshaw, J.

dismissed by the Rent Controller and whose appeal was dismissed by the District Judge, Ludhiana, as Appellate Authority under the East Punjab Urban Rent Restriction Act.

The Suit was based on non-payment of rent and on *bona fide* requirement of the premises in suit by the landlord for his own occupation.

The claim based on non-payment of rent was met by prompt deposit of the arrears, and while the trial Court found that the plaintiff did *bona fide* require the premises for his own occupation, the application was dismissed on the ground that the premises in suit were a scheduled building and therefore, not covered by section 13(3) of the Act. The learned District Judge without going into the question of *bona fide* requirement upheld the latter finding.

There can be no doubt from the evidence that the premises in suit fall within the definition of "scheduled building" in section 2(h) of the Act, which reads—

"2(h) 'scheduled building' means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to this Act, partly for his business and partly for his residence."

The defendant is an Advocate and several professional colleagues appeared on his behalf and stated that part of the building was used by him for his residence and part as his office, lawyers being listed at No. 1 in the Schedule to the Act. It was, however, contended on behalf of the landlord that although 'scheduled building' was separately defined, it was merely a sub-species of residential

building which is defined in section 2(g) as meaning "any building which is not a non-residential building." It was accordingly contended that scheduled buildings were not exempt from the provisions of sub-section (3) of section 13 which provides that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession (i) in the case of a residential building, if (a) he requires it for his own occupation, etc. It is pointed out that although "scheduled building" is separately defined in section 2, it is nowhere else mentioned in the Act. It was argued that the definition was introduced with reference to sub-section (3) of section 13 as it formerly stood before the East Punjab Urban Rent Restriction Act of 1949 was amended. Originally sub-section (3) began with the words "(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 a residential or a scheduled building, if (a) he requires it for his own occupation \* \* \* \* \*." It was argued that when the words "or a scheduled building" were left out in amending the Act, it must have been the intention of the Legislature to abolish this as a separate class of residential buildings and that the definition in section 2(h) was inadvertently left in the Act.

Durga Dass  
v.  
Devi Dass  
Nayar

---

Falshaw, J.

On the other hand it was argued on behalf of the tenant that when the Act was amended it was intended to remove "scheduled buildings" from scope of sub-section (3) and to make a tenant of a scheduled building only liable to eviction on any of the general grounds contained in sub-section (2), i.e., non-payment of rent, subletting or using the leased premises for a purpose other than that for which they were leased, impairing the value or utility of the premises, being a nuisance to the neighbours or ceasing to occupy the premises for a

Durga Dass  
v.  
Devi Dass  
Nayar

Falshaw, J.

continuous period of four months without reasonable cause, and now it is argued that the tenant of a scheduled building cannot merely be evicted because the landlord wants the premises for his own use.

It cannot be denied that both these arguments have a certain amount of plausibility and it is not easy to choose between them. On the whole, however, I am of the opinion that the argument advanced on behalf of the tenant must prevail. The omission of the words "or a scheduled building" in the amendment Act was evidently deliberate, and if the Legislature intended to abolish scheduled buildings as a classification altogether, the definition would surely have been omitted from section 2 and it must have been made clear in the Act that there was no longer any distinction between residential buildings in general and residential buildings partly used for residential purposes and partly for professional purposes, and along with the definition the Schedule would also have been omitted. The conclusion must, therefore, be that *bona fide* requirement by the landlord for his own use is not a ground of eviction from a scheduled building and a tenant of such a building can be only evicted under the grounds contained in section 13(2) applicable to buildings and rented land of all kinds. I accordingly dismiss the petition but leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover and D. K. Mahajan, JJ.  
HARDEV SINGH AND OTHERS,—Appellants.

versus

GURDIAL SINGH,—Respondent.

Regular econd Appeil No. 757 of 1955

Custom—Adoption held invalid—Adoptee—Whether can succeed to the non-ancestral property of adoptive father—Adoptive father's collaterals—Whether can sue for