

voting at the Panchayat Samitis. The mandatory or directory nature of the period for convening a meeting fixed in Rule 22(1) (a) would among other points, fall for determination. But be that as it may without pursuing the matter further, in my opinion, the decision of the Returning Officer to disallow sixty-four persons from voting has not been shown by the respondents to be in accordance with any provision of law to which our attention has been drawn. If this exclusion is contrary to law, then obviously the result of the election must be held to have been materially affected, and indeed, I find it exceedingly difficult to hold the election to be in accordance with law. This illegality must, in my opinion, vitiate the election. The present petition, therefore, deserves to succeed on this ground as well.

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Punjab and
others

Dua, J.

For the foregoing reasons, this writ petition succeeds and allowing the same I would set aside the impugned election and direct that respondents Nos. 5 and 6 should not be considered to have been duly elected as Primary Members of the Madlaudha Block Panchayat Samiti and they are also hereby restrained from functioning as such. In these circumstances of the case there would be no order as to costs.

A. N. GROVER, J.—I concur.

Grover, J.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

VIR BHAN,—Petitioner.

versus

AVTAR KRISHAN AND ANOTHER,—Respondents.

Civil Revision No. 523 of 1962.

East Punjab Urban Rent Restriction Act (III of 1949)—
S. 13(3) (a)—Joint landlords—Whether any one of the joint

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landlords can have the premises vacated on the ground of personal requirement.

Held, that where out of a number of persons constituting the body of the landlords one landlord reasonably requires the premises for his own use and occupation, that should be considered to amount to a requirement on the part of all the landlords under section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949.

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of Shri Kul Bhushan, Appellate Authority (District Judge), Gurdaspur, dated 11th August, 1962; affirming that of Shri Harjit Lal Randev, Rent Controller, Batala, dated the 26th July, 1961, passing an order for the eviction of the respondent (Vir Bhan) from the house in question and allowing him time till 10th October, 1961, to vacate it. The appellate authority ordered the tenant to put the landlord in possession of the premises in dispute on or before 11th September, 1962.

AMAR CHAND HOSHIARPURI, ADVOCATE, for the Petitioner.

H. L. SARIN, ADVOCATE, for the Respondents.

JUDGMENT

Falshaw, C.J.

FALSHAW, C.J.—This is a revision petition filed by a tenant Vir Bhan, against whom an ejection order passed by the Rent Controller was affirmed by the Appellate Authority.

The ground on which the ejection order has been passed was personal requirement, the relevant facts regarding which are that the premises in suit consisting of a house in the town of Batala belonging to two brothers Avtar Krishen and Rur Chand, and although the claim in the petition was that both of them required the house for their own occupation it has been found by both the Courts that this was not so in the case of one of the brothers, Rur Cand, who is employed in the

Police at Amritsar. However, the requirement was found to be genuine in the case of the second brother Avtar Krishan, who lives some miles outside Batala, but has to come there every day to work in connection with his interests in two small industrial businesses.

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I do not see any reason for reopening the findings of fact of the lower Courts, but the question which arises is whether on these facts a decree for ejectment could be passed. The learned counsel for the petitioner has contended that the words in section 13(3)(a) of the East Punjab Urban Rent Restriction Act "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" must mean in a case where the landlord comprises more than one individual, that all the landlords jointly must require the house for occupation by all of them, and it is not sufficient if, as in the present case, there are two brothers as landlords and only one of the brothers needs the leased premises for his occupation.

This interpretation does not appeal to me and obviously, if followed to its logical conclusion, it could result in considerable hardship to landlords. For instance there might be ten joint owners of a house and, if this interpretation is correct, it would mean that even if nine of them needed the accommodation leased to tenants, they would not be entitled to get a decree for ejectment.

Indeed I would have rejected the argument summarily, but for the fact that there is an English decision which appears to support it. This is the decision of the Court of Appeal in *McIntyre another v. Hardcastle* (1), in which a somewhat

(1) (1948) 2 K.B. 82.

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similar provision in the English Act was considered and in a case where two sisters, joint owners of a house, sought possession of the house on the ground that the house was required as residence for one of them it was held that the case was not within the paragraph and that no order for possession could be made under it.

There does not appear to be any direct authority of this Court on the point though my attention was drawn to a decision of my own in *Daulat Ram and another v. Raj Rani*, Civil Revision No. 333 of 1961 decided on the 8th of December, 1961. In that case the property was owned by two brothers one of whom was not taking much interest in it since he was working and residing at Gwalior, and the other brother instituted proceedings on the ground of personal requirement and impleaded his absent brother as a respondent. I held that the petitioner in that case could maintain the petition, but I did not specifically consider the question whether in the case of two landlords a decree could be passed for the personal requirement of only one of them and the English case was not cited before me.

That case has, however, been considered by the Calcutta High Court and the case of *Kanika Devi and others v. Amarendra Nath and others* (2), has been cited. This was a Letters Patent Appeal against an order in which the learned Single Judge had refused a decree for ejectment following the principles laid down in the case of *McIntyre v. Hardcastle* (1). It was held by Bachawat and Chatterjee, JJ., who followed to earlier decision by Division Benches of that Court that in matters of this kind the learned Judges of this country should not be guided by the views of the English Judges interpreting the English statutes and that

(2) 65 C.W.N. 1078.

where out of a number of persons constituting the body of the landlords one landlord reasonably requires the premises for his own use and occupation that should be considered to amount to a requirement on the part of all the landlords. With this view I am in respectful agreement and I accordingly dismiss the present revision petition but leave the parties to bear their own costs and allow the tenant two months from today to vacate the premises.

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B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh and A. N. Grover, JJ.

RAM PARTAP,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1738 of 1960.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Ss. 3 and 16—Property tax—Whether can be levied on gains and profits derived from the property—Constitution of India (1950)—Article 265—Whether limits taxation on the same property—Punjab Laws (Extension No. 2) Act (VII of 1957)—S. 4—Extension of Act XVII of 1940 to erstwhile Pepsu area—Whether legal—Conferment of powers on Excise and Taxation Officers to recover arrears of property tax as arrears of land revenue—Whether repugnant to the Constitution—Fiscal statute—Public purpose—Whether necessary to be stated in.

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Held, that there is nothing in the provisions of Punjab Urban Immovable Property Tax Act and in the charging section 3 to show that the levy of the tax is to be only on the gains and profits derived from the property. It is clearly stated therein that the basis of the levy and charge is the "annual value" of the property and the manner of computing annual value is given in section 5 of the Act. Contractual rent cannot be the basis of such levy or charge.