DR. D.N. MALHOTRA

v.

KARTAR SINGH

JANUARY 29, 1988

[A.P. SEN AND B.C. RAY, JJ.]

East Punjab Urban Rent Restriction (Amendment) Act, 1985: Sections 2(hh), 13A and 18A—'Specified landlord'—Who is—When entitled to recover possession from tenant—Landlord letting out premises after his retirement—Whether entitled to maintain eviction petition under Section 13A.

The respondent—landlord filed an application in the Court of the Rent Controller under Section 13–A of the East Punjab Rent Restriction (Amendment) Act, 1985, seeking eviction of the appellant–tenant on the ground of arrears of rent and for his own use and occupation. It was contended that the respondent retired from the service of the Government of India, Ministry of Defence on 20th May, 1949 and that his service was thereafter transferred to the Ministry of Rehabilitation from where he was discharged on 30th November, 1965 on the abolition of the Ministry, and that as he had no other house within the municipality he wanted the house in question for residence. On receiving the summons of the eviction petition the appellant–tenant sought leave to contest the application on the ground that he was inducted as a tenant in the premises in the year 1968, and that Section 13–A of the Act did not entitle the landlord to maintain the eviction petition.

The Rent Controller after recording the evidence of the parties negatived the contention of the tenant, allowed the application, and directed the tenant to vacate the premises within one month from the date of the order.

The appellant preferred a revision application under Section 18–A of the Act, but the High Court holding that the respondent being a 'specified landlord' at the relevant time i.e. within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 was entitled to get an order of eviction of the tenant from his house, upheld the eviction order of the Rent Controller and dismissed the revision petition.

The tenant appealed to this Court by special leave.

A Allowing the appeal,

HELD: 1. The respondent–landlord did not satisfy the basic requirement of section 2(hh) of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 and so he was not competent to maintain the application under section 13–A of the said Act. [842C]

B

2. Section 13–A of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 in clear terms enjoins that: "Where a specified landlord at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the said Act makes an application to recover the possession of the building or scheduled C building, the Controller will direct the tenant to deliver possession of the said house to him". Therefore to be entitled to have the benefit of Section 13–A of the Act the landlord–respondent will have to fulfil the first qualification i.e. he must be a specified landlord in respect of the house in question on the date of his retirement from the service of the D Union i.e. in 1963. [840F-H]

3. To get the benefit of the summary procedure provided in Section 13–A the ex–servicemen must be a specified landlord at the time of his retirement from service of the Union as provided in Section 2(hh). [842B]

E

4. The respondent–landlord in the instant case, retired from the service of the Union in 1965, and the house in question was let out to the appellant—tenant in 1968. The respondent was thus not a landlord qua the premises and the tenant, on the date of his discharge from service entitling him to avail of the benefit of the provisions of Section 13–A of F the East Punjab Act. [842C-D]

5. The Rent Controller has not at all considered the question whether the landlord is a specified landlord, but simply held that the landlord was discharged from service on the abolition of the Department of Rehabilitation and so he was covered under the definition of G specified landlord as given under section 2(hh) of the Act. The Single Judge of the High Court without considering the provisions of Section 2(hh) of the Act held that the application under Section 13–A by a specified landlord seeking ejectment of a tenant was competent within one year of the commencement of the amended Act even if there existed no relationship of the landlord and tenant on the date of the retirement H of the specified landlord. This view is on the face of it erroneous. The

judgments and orders of the Courts below are set aside. [841F-H; 842A-B, D] A

Sohan Singh **v.** *Dhan Raj Sharma,* **[1983] 2 R.L.R. 465 and** *Bhanu Aththayya* **v.** *Comdr. Kaushal & Ors.,* **[1979] 2 R.C.J. 338, approved.**

Mrs. Winifred Ross and Anr. **v.** *Mrs. Ivy Fonseca and Ors.,* B **A.I.R. 1984 SC 458, distinguished.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2206 of 1987.

From the Judgment and Order dated 4.2.1987 of the High Court C of Punjab and Haryana in Civil Revisions No. 2371 of 1986.

A.S. Sohal, R.K. Talwar and P.N. Puri for the Appellant.

S.M. Sarin and R.C. Misra for the Respondent.

D

The Judgment of the Court was delivered by

RAY, J. This is an appeal by special leave against the judgment and order passed in Civil Revision No. 2371 of 1986 dismissing the revision petition and upholding the order of eviction of the tenant–appellant from the house in question. E

The landlord, Kartar Singh filed an application in the court of Rent Controller, Kapurthala under Section 13–A of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, stating *inter alia* that Dr. D.N. Malhotra is a tenant in respect of his house No. 694–A within Kapurthala Municipality; that he was in arrears of rent since 22nd F December, 1984; that the landlord retired from the service of Government of India, Ministry of Defence on 20th May, 1949 'and his service was thereafter transferred to the Ministry of Rehabilitation from where he was discharged on 30th November, 1965 on the abolition of the Ministry; that he had no other house within the Municipality and that he wanted the house in question to reside and prayed for eject- G ment of the tenant–appellant.

The tenant–appellant on receiving the summons filed an affidavit seeking leave of the Court to contest the application stating *inter alia* that he was inducted as a tenant in the premises in question in the year 1968; that the petitioner had been letting out the premises in question H

A at different intervals to other tenants; that the present application filed by the petitioner–landlord is *mala fide* and the defendant is entitled to the leave to contest the application on the ground that Section 13–A of the said Act does not entitle the petitioner to maintain the present petition. The Rent Controller granted leave to the tenant to contest
B the petition on the following ground:

> Whether the petitioner is a specified landlord as defined in Section 2(hh) of the East Punjab Urban Rent Restriction (Amendment) Act, 1985.

The petitioner–landlord examined himself and he also filed a
C certificate issued to him by Regional Settlement Commissioner who was his appointing authority. This certificate was marked as Exhibit A–1 in the case. The tenant–respondent examined himself and stated that the petitioner could not get the benefit of Section 13–A of the said Act as he was not the landlord of the said house either before or on the
D date of his retirement from service or the Union i.e. in 1965, the house being let out to him in 1968. The Rent Controller negatived the contentions of the tenant–respondent and allowed the application directing the tenant–respondent to vacate the premises within one month from the date of the order.

E The tenant–appellant preferred an application being Civil Revision No. 2371 of 1986 under Section 18A of the said Act. The revision case was dismissed by the High Court of Punjab and Haryana holding *inter alia* that the respondent being a specified landlord at the relevant time i.e. within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 (to be
F hereinafter referred to in short as the said Act) was entitled to get an order of eviction of the tenant from his house. The order of the Rent Controller was upheld. It was further held that the decisions cited at the bar in support of the contention that the respondent was not the landlord qua the tenant–appellant on or before his retirement from service, were not applicable to this case as the provisions of the Acts
G dealt with in those decisions were different from provisions of Section 13–A of the said Act.

It is against this judgment and order the instant appeal on special leave has been filed.

H It is convenient to quote the relevant provisions of the said Act

before proceeding to determine the questions in controversy between the parties.

Sec. 2(hh): 'Specified landlord means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State.

Sec. 13-A Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building as the case may be, for his own occupation there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied) custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts ...."

Sec. 18-A "(1) Every application under Section 13–A shall be dealt with in accordance with the procedure specified in this section.

.....

.....

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building made by the Controller in accordance with the procedure specified in this Section.

A Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this Section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."

B In *Sohan Singh* v. *Dhan Raj Sharma,* [1983] 2 R.L.R. 465, the question was whether the ex-servicemen landlord, Sohan Singh fell within the category of landlord as envisaged in Section 13(3A) of Haryana Urban (Control of Rent and Eviction) Act, 1973 in order to have an order of eviction of the tenant in a summary way. Landlord, Sohan Singh retired from Air Force on 3rd March, 1976 and on 17th November, 1978 he purchased the shop bearing No. 2454 in Block C No. II, Patel Road, Ambala. On 2nd February, 1979 an application was made by him for ejectment of the respondent-tenant from the said shop on the ground that he required the same for his personal use of setting up his own business therein, under Section 13(3A) of the Act. Section 13(3A) provides that "in the case of a non-residential building, a landlord who stands retired or discharged from the armed force D of the Union of India" may apply within a period of three years from the date of his retirement or discharge from service for an order directing the tenant to put the landlord in possession. It was held that the expression landlord would mean a landlord who was a landlord as such qua the tenant and the premises on the date of his retirement. Sohan E Singh who pruchased the disputed shop after his retirement was not landlord of the shop on the date of his retirement. The application for ejectment of tenant was, therefore, dismissed.

In *Bhanu Aththayya* v. *Comdr. Kaushal & Ors.,* [1979] 2 R.C.J. 338, respondent No. 1 who was in Navy retired from service in F February, 1968. Respondent Nos. 1 and 2 who are husband and wife owned the flat in question in a building of the Shankar Mahal Co-operative Housing Society Ltd. Bombay. On 17th July, 1972 respondent No. 2, wife of respondent No. 1 both on her behalf as well as on behalf of her husband gave the flat on leave and licence basis to the petitioner. On 19th November, 1975, the respondent No. 1 secured a G certificate from Vice-Admiral Flag Officer, Commanding-in-Chief, Western Naval Command, under the provisions of Section 13-Al. On 24th November, 1975, respondent Nos. 1 and 2 served a notice on the petitioner to quit and vacate. As the petitioner did not vacate, the respondent No. 1 made an application under Section 13-Al of Bombay Rents, Hotel and Lodging House Rates Control Act, (57 of 1947) as H amended for an order of his ejectment and for giving him possession of

the said flat. The application was ultimately dismissed by the High Court of Bombay on the ground that petitioner was not a landlord qua the tenant and the premises at the time of his retirement from Navy and as such he could not get an order of eviction of the petitioner-tenant from the suit premises under Section 13–Al. A

The question whether a retired army officer who acquired a building after his retirement can be deemed to be a landlord within the meaning Section 13–Al of Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) came up for consideration before this Court in the case of *Mrs. Winifred Ross and Anr.* v. *Mrs. Ivy Fonseca and Ors.*, A.I.R. 1984 SC 458 In this case one Lt. Col. T.E. Ross who was a member of the Indian Army retired from Military service in 1967. The property of which the suit building forms a part originally belongs to his mother–in–law, Mrs. Arcene Parera. She gifted the said property in favour of her daughter Mrs. Winifred Ross, the wife of the plaintiff, on November 9, 1976. The property consisted of some out–houses and the defendant is a tenant in one of those out–houses for a number of years. The said premises consisted of two rooms and a verandah. On June 6, 1977, Mrs. Winifred Ross made a gift of the portion occupied by the defendant as a tenant in favour of the plaintiff. The plaintiff thereafter, made an application for eviction of the defendant and for possession of the said premises under section 13–Al of the said Act, which was introduced by an amendment made in 1975. It was held by this Court that the plaintiff could not avail of the provisions of Section 13–Al to recover from the tenant possession of the building which he acquired after his retirement. The word landlord used in Section 13–Al refers to an officer of the armed forces of the Union, who was a landlord either before or on the date of his retirement from the defence service of the Union. It has been further held that Section 13–Al can not be liberally interpretted to cover all retired members of the armed forces irrespective of the fact whether they were landlords while they were in service or not. Such a liberal interpretation of Section 13–Al is likely to expose it to a successful challenge on the basis of Article 14 of the Constitution. B C D E F

In the instant case Section 13 of the East Punjab Urban Rent Restriction (Amendment) Act No. 2 of 1985 which was published in the Pubjab Gazette Extra–ordinary dated 16th November, 1985 conferred right on the specified landlord to make application at any time within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) G H

A Act, 1985, whichever is later, to the Controller along with a Certificate from the Authority competent to remove him from service for directing the tenant to give him possession of the premises. This Section thus confers right on the ex–serviceman who is a speicified landlord under Section 2(hh) of the said Act to apply after retirement within one year of the commencement of the said Act under Section 13–A of the said B Act for eviction of the tenant. The respondent-landlord who retired from the service of the Union is the owner of the house and he is the landlord at the relevant time i.e. after his retirement within one year of the date of commencement of the said Act i.e. 16th November, 1985 qua the tenant and the premises and the application to the Rent Controller was made for an order directing the tenant–appellant to give C possession of the suit house to him to reside therein as he had no other house within the Municipality. The respondent in order to come within the definition of specified landlord has to satisfy two things:

(a) he shall be a person who is entitled to receive rent in respect of the house in question from the tenant–appellant at his own D account, and

(b) he is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of State.

The petitioner retired from the post of S.D.O. which post he held in E the Rehabilitation Department, Government of India. The petitioner as appears from the statements made in the affidavit of the appellant and also from the certificate Exhibit-lA filed by the landlord that he retired from service in 1963 and the appellant has been inducted as a tenant in respect of the said house in 1968. This clearly evinces that the respondent was not a specified landlord within the meaning of Section F 2(hh) of the said Act as the appellant was inducted as a tenant after his retirement from the service of the Union. Section 13–A of East Punjab Urban Rent Restriction (Amendment) Act, 1985 in clear terms enjoins that "Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the G said Act makes an application to recover possession of the building or scheduled building, the Controller will direct the tenant to deliver possession of the house to him". Therefore to be entitled to have the benefit of Section 13–A of the Act the landlord–respondent will have to fulfit the first qualification i.e. he must be a specified landlord in respect of the house in question on the date of his retirement from the H service of the Union i.e. in 1963. The landlord, as it appears, has not

fulfilled this requirement in as much as after his retirement from service of the Union he has let out the premises to the tenant–appellant. It has been urged before us on behalf of the respondent that at the relevant time i.e. after retirement of the respondent from service within one year of the date of commencement of the said Act he is the landlord of the appellant and as such he falls within the definition of Section 2(hh) of the said Act and he becomes a specified landlord. This submission, in our view, cannot be sustained in as much as the words "specified landlord" as used in section 2(hh) refer to the person in service of the Union who is a landlord at the time of his retirement from the public service or post in connection with the affairs of the Union or of State. It cannot in any manner include an ex–serviceman who was not a specified landlord qua the tenant and the premises on or before the date of his retirement from the service of the Union. This has been very succinctly held by this Court in the case of *Mrs. Winifred Ross and Anr.* v. *Mrs. Ivy Fonseca and Ors.* (supra) which has been referred to hereinbefore.

On a conspectus of the decisions referred to hereinbefore more particularly the decision rendered by this Court in the case of *Mrs. Winifred Ross & Anr.* v. *Mrs. Ivy Fonseca and Ors.* (supra) it is well settled that in order to get the benefit of eviction of the tenant in a summary way the ex–serviceman must be a landlord qua the premises as well as the tenant at the time of his retirement from service. The ex-serviceman is not competent to make an application to the Rent Controller to get possession of his house by evicting the tenant in a summary way unless and until he satisfies the test that he is a landlord qua the premises and the tenant at the time of his retirement or discharge from service.

In the instant case the Rent Controller has not at all considered this question but he simply held that the petitioner was discharged from service on the abolition of the Department of Rehabilitation and so he was covered under the definition of specified landlord as given under section 2(hh) of the Act. The learned Single Judge of the Punjab and Haryana High Court though noticed the decision in the case of *Bhanu Aththayya* v. *Comdr. Kaushal and Ors.* and also in *Sohan Singh* v. *Dhan Raj* but without properly considering the provisions of Section 2(hh) of the Act held that the application under section 13–A of the Act by a specified landlord seeking ejectment of a tenant was competent within one year of the commencement of the amended Act even if there existed no relationship of landlord and tenant on the date of retirement of the specified landlord. The learned Single Judge also

A observed that as there was no provision for a specified landlord after his retirement to make an application for ejectment of his tenant within one year after commencement of the amended Act as occurs in the Punjab Act the ratio of the decision in those cases cited before the Court would not apply. This view of the learned Single Judge in our considered opinion is on the face of it erroneous. We have stated B hereinbefore that to get the benefit of the summary procedure provided in Section 13–A of the said Act, the ex–serviceman must be a specified landlord at the time of his retirement from service of the Union as provided in Section 2(hh) of the said Act. The respondent did not satisfy this basic requirement of Section 2(hh) of the Act and so he was not competent to maintain an application under Section 13–A C of the said Act. It is obvious that the respondent–landlord retired from the service of the Union in 1965 and the house in question was let out to the tenant–appellant in 1968. The respondent was not a landlord qua the premises and the tenant on the date of his discharge from service entitling him to avail of the benefit of the provisions of Section 13–A of the Punjab Act. D

For the reasons aforesaid we allow the appeal and set aside the judgment and orders of the courts below. In the facts and circumstances of the case, there will be no order as to costs.

N.V.K. Appeal allowed.