

Dharam Paul

THE HIMACHAL PRADESH

URBAN RENT CONTROL ACT,

1971

Act No. 23 of 1971

(Incorporates latest CITATIONS of the Supreme Court of India, the High Court of Himachal Pradesh, the Delhi High Court, Punjab and Haryana High Court and other High Courts dealing with similar Provisions.)

By

DHARAM PAUL SOOD & KAPIL DEV SOOD,

ADVOCATES

HIGH COURT OF HIMACHAL PRADESH

SIMLA

copy
1971

(ALL RIGHTS RESERVED)

Printed by

PH
347
So 62 U

THE BHAVANI STEREOTYPIC PRESS, SIMLA.

Price Rs. 3.00



Library

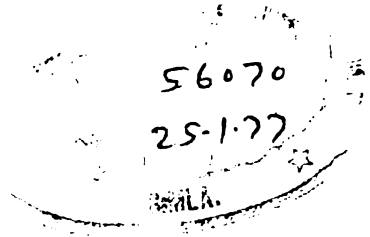
IAS, Shimla

PH 347 So 62 U



00056070

PH
347
So 62 U



56070

25-1-77

SHIMLA

CONTENTS

Pages

	Table of Abbreviations and Corrigendum	1
	Predominant Features of the Act — ...	2
	Objects and reasons 	2
SECTIONS	1. Short title, extent and commencement — 	2
	2. Definitions — 	3
	3. Exemptions 	5
	4. Right of tenancy to the widow or minor 	5
	5. Determination of fair rent 	6
	6. Increase in fair rent in what cases admissible 	9
	7. Landlord not to claim anything in excess of fair rent ...	9
	8. Fine or premium not to be charged for grant, renewal or continuity of tenancy 	9
	9. Rent which should not have been paid may be recovered ...	9
	10. Increase of rent on account of payment of rates, etc., of local authority, but rent not to be increased on account of payment of other taxes etc. 	10
	11. Cutting of or withholding essential supply or service ...	11
	12. Conversion of a residential building into a non-residential building — 	12
	13. Landlord's duty to keep the building or rented land in good repairs 	12
	14. Eviction of tenants 	13
	15. Decision which has become final not to be reopened ...	24
	16. Leases of vacant buildings 	25
	17. Receipt to be given for rent paid 	25
	18. Deposit of rent by the tenant 	26
	19. Time limit for making deposit and consequences of incorrect particulars in application for deposit 	27
	20. Savings as to acceptance of rent and forfeiture of rent in deposit ...	27
	21. Vesting of appellate authority on officers by State Government ...	28
	22. Powers to summon and enforce attendance of witnesses ...	29
	23. Execution of orders — 	30
	24. Landlord and tenant to furnish particulars 	30
	25. Penalties — ...	30
	26. Controller to exercise power of a magistrate for recovery of fine ...	30
	27. Power to make rules — ...	31
	28. Repeal and savings 	31
	Schedule 	31
	Appendix (Notfications etc.) 	32

TABLE OF ABBREVIATION USED IN THIS COMMENTARY.

A. I. R.	All India Reporter.
D. L. T.	Delhi Law Times.
D. B.	Division Bench.
H. L. R.	Himachal Law Reporter.
P. L. R.	Panjab Law Reporter.
Pb.	Panjab.
R. C. R.	Rent Control Reporter
R. C. J.	Rent Control Journal.
S. L. J.	Simla Law Journal.
S. C. C.	Supreme Court Cases.
S. N.	Short Note.
F. P.	Full Bench.
S. C.	Supreme Court.

CORRIGENDUM

1. On page 2, in Line 2, for "Act No. 28" read "Act No. 23."
2. On page 2, in Line 15, insert the word "RENT" in between the words "URBAN" and 'CONTROL."
3. On page 5, in Line 16, for the words "so far as it is inconsistent with" read "so far as it is NOT inconsistent with."
4. On page 8, in Line 19, add the words "since twelve months prior to 15th of August, 1947" after (under H. P. Act 23 of 1971).

Predominant Features of the Act

1. The act has prospective effect excepting that of section 4 which gives relief to widows (till re-marriage or death) and minor children of statutory tenants in whose cases the same has been made heritable vide Secs. 4 & 28 (2) Proviso.
2. The Act also provides the landlords to increase the basic rent by the Controller taking into consideration the rent prevailing for twelve months prior to 15th of August 1947 instead of 1st January, 1939. In Simla earlier the rent which could not be increased beyond basic rent which proviso now stands deleted in the new Act (vide Section 5).
3. The Act also provides relief to the tenants to deduct a sum upto the extent of 1/12th of the yearly rent, by himself effecting the repairs in case the landlord neglects or fails to make or carry out the same within a reasonable time after notice in writing from the tenant. Even the extensive repairs for making the building habitable for the tenant can be ordered by the CONTROLLER and the amount to the extent of THREE months can be ordered to be deducted or recoverable by the tenant (vide Section 13);
4. The Act provides an additional relief to the tenants to pay the amount of arrears within 30 days from the date of ejection on the ground of non-payment of the rent consequent to the compliance of which the order becomes inexecutable vide second proviso to Section 14(2)(i);
5. The Act gives to the landlords additional grounds for eviction of the tenants if he bonafide requires the building or the rented land for carrying out repairs which cannot be carried out without the building or the rented land being vacated or that the building/rented land is required bonafide by him for building or additions or alterations vide Sec. 14(3)(iii);
6. The Act provides additional ground to the landlord to get the rented land vacated for his own use for the purpose of his business or for establishment of industry or the tenant has rented out his land to someone else on higher rent vide Sec. 14(3)(2);
7. It also provides a drastic curtailment of landlord's right to keep the tenanted premises vacant for a period of more than 3 months in which case ANY PERSON can apply to the Controller for its lease in his favour if such person is not in occupation of any building either as an owner or as a tenant vide Section 16;
8. It also entitles the tenants to get the certificate of the receipts in respect of the rent paid through the Controller on an application made to him within two months of the date of payment if the landlord or his authorised agent refuses or neglects to deliver to the tenant such receipts vide Sec. 17.
9. To overcome the difficulty created by the judgement of the Supreme Court in case Re: Vidya Prachar Trust Versus Pandit Basant Ram 1969 R. C. R. 343 that deposit of rent under Section 31 of the Relief of Indebtedness Act does not amount to a valid tender under the Old Act, section 18 of the New Act authorises the tenant to deposit the same with the Controller in the manner prescribed therein. However, section 19 places restrictions for making a valid deposit contemplated by section 18.

THE HIMACHAL PRADESH URBAN RENT CONTROL ACT, 1971

ACT No. 28 of 1971

Received the assent of the Governor Himachal Pradesh on 5th November, 1971, and was first Published in the H. P. Government Gazettee (extra-ordinary) of 17th November 1971).

Statement of **Object and reasons** of the Himachal Pradesh Urban Rent Control Bill, 1971 No. 21 of 1971 (as introduced in the Legislative Assembly).

“At present in the areas transferred to Himachal Pradesh under Section 5 of the Punjab Re-organisation Act, 1966, the East Panjab Urban Rent Restriction Act, 1949, is in force in the old area of Himachal Pradesh by virtue of Himachal Pradesh (Application of Laws) Order, 1948. The Law on the subject is required to be unified.

It is necessary to restrict the increase of rent of bulidings and rented lands situated within the limits of urban areas and to give protection to the tenants against mala fide attempts by the landlords to procure their eviction after the death of a tenant.

This Bill seeks to achieve the aforesaid objects.”

THE HIMACHAL PRADESH URBAN CONTROL ACT, 1971

AN

ACT

to provide for the control of rents and evictions within the limits of urban areas.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-second year of the Republic of India as follows :—

SHORT TITLE, EXTENT AND COMMENCEMENT.

1. (1) This Act may be called the Himachal Pradesh Urban Rent Control Act, 1971.
- (2) It extends to all urban areas in Himachal Pradesh.
- (3) It shall come into force at once.

COMMENTARY

1. Applicability and Enforcement : The Act extends to all the urban areas in Himachal Pradesh w. e. f. 5th Nov. 1971, the date on which it received the assent of the Governor, Himachal Pradesh.

2. Object : The Act being social legislation provides for the control of rents and evictions within the limits of urban areas in Himachal Pradesh. Rent Control Legislation does not give a new right to the landlords to evict tenants but places additional restrictions on their rights. 1970 R. C. R. 532 Re: Batto Mal Vs. Rameshwar Nath (Delhi High Court (D. B.) AIR 1971 Delhi 98. The Rent Restriction Acts were passed in view of the shortage of houses and the high rents which were being charged by landlords 1962 P. L. R. 664 (S. C.) Re: Neta Ram and others Vs. Jiwan Lal and another. The purpose of Rent Legislation being to resrrict the increase of rents of the house in the urban area and eviction of tenants, this legislation is a piece of amelioration legislation in the interest of tenants 1967 P. L. R. 83 (S. C.) Re: Attar Singh Vs. Inder Kumar.

3. Interpretation of Statutes : Where the language of the statute is clear and plain it must be given effect to irrespective of any inconvenience or hardship and the question of interpretation does not arise. It is equally true that it is not open to the court to fill up any lacuna or deficiency in the words used by the legislature on hypothetical assumptions. **IT IS ONLY WHEN SUCH WORDS ARE CAPABLE OF TWO CONSTRUCTIONS** that the question of giving effect to the policy or object of the Act concerned can legitimately arise. 1970 R. G. J. 77 Re: Keshavdayal Sharma Vs. Harish Chandra.

DEFINITIONS

2. In this Act unless there is anything repugnant in the subject or context,—

- (a) "building" means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith but does not include a room in a hotel or boarding house;
- (b) "Controller" means any person who is appointed by the State Government to perform the functions of a Controller under this Act;
- (c) "landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person from time to time deriving title under a landlord;
- (d) "non-residential building" means a building being used solely for the purpose of business or trade :

Provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a "non-residential building" to a residential building;

- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "rented land" means any land let separately for the purpose of being used principally for business or trade;
- (g) "residential building" means any building which is not a non-residential building;
- (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;
- (i) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter house or of rents for shops has been framed out or leased by a municipal, town or notified area committee, or municipal corporation, or cantonment board; and
- (f) "urban area" means any area administered by a municipal corporation, a municipal committee, a cantonment board, or a notified area committee or any area declared by the State Government by notification to be urban for the purpose of this Act.

COMMENTARY

2(a) **BUILDING** means the building let out whether whole or part thereof and it applies only to the demised premises and not to the premises in occupation of the landlord. AIR 1962 Pb. 204 Re: Sadhu Singb S. Mula Singh Vs. District Board Gurdaspur: 1963 Pb. I M/S. Sant Ram Des Raj Vs. Karam Chand Mangat Ram. Building would include a part of the building 1971 S: L. J. 77 (D. B.) Re: Dhani Devi Vs. Krishan Kumar and another.

2(b) **CONTROLLER** The Controller and Appellate authority under the Act are Civil Courts for purposes of 125(1)(b), 476 and 479-A of Criminal Procedure Code but they are not Civil Court for the purposes of Section 115 C P. C. 1971 R. G. J. 308 (F. B.) Punjab & Haryana High Court AIR 1971 P. & H. 150(F. B.) Re: Smt. Vidaya Devi Vs. Firm Madan Lal Prem Kumar. The provisions of the Code of Civil Procedure being in consonance with the principle of natural justice; can be made applicable to Rent Controller 1971 S. L. J. 29 (Himachal Pradesh) Re: M/S. Lim & Co., Vs: Lt. Col. K. M. Sayeed. Rent Controller has inherent powers to allow amendment of pleadings, 1965 Current Law Journal 214 (Pb) Piara Singh Vs. Mahant Gurmukh Dass. Rent Controller has inherent power to set aside ex-parte order: 1957 P. L. R. 38 Re: Manohar Lal Vs. Mohan Lal. 1957 P.L.R. 45 Re: Mathura Das Vs. Om Prakash. Question of ownership of the building is to be decided by the Civil Court 69 P. L. R. 177. See also notes under section 22 of the Act.

2 (c) **Landlord**:—The meaning of the term “LANDLORD” as defined in Section 2 (c) of the Act, has a wider meaning than in the ordinary law. (1968) 70 P.L.R 960 (D.B.) re:—Ambala Bus Syndicata Private Ltd. vs. Indra Motors, Kurali. It includes a person entitled to receive the rent for the time being for or on behalf of owner and includes a trustee, guardian, receiver, executor and administrator and a tenant who sublets the premises with the written consent of the landlord.

2 (d) and 2 (g) **“Non-residential building” and “Residential Building”**: Meaning and distinction. If a building has been used for residence at any point of time, it cannot be considered as non-residential building. 1971 H. L. R. 41 ≡ 1971 R.C.R. 33, re: M/s; John Tinson & Co, Ltd. Simla vs Sh. Amar Chand Sood; 1969 R.C.R. 626, re: Krishan Gopal vs. Lekh Raj; (1968) 70 P.L.R. 973, re: Smt Niranjana Kaur vs. Dr. Siri Ram.

2 (f) **“Rented Land”**:—It is land which is “let separately”. For determination of the nature of “premises” let out at the initial stage, it has to be seen as to what was actually let by the landlord in a particular case. Thus where the landlord had only leased out a VACANT piece of land, the mere fact that the temporary constructions had been raised by the tenant for his own use, would not in any way, convert the same into building. AIR 1969 Pb. 270 at 281 (Pr. 13), Re: Dhan Devi vs. Bakshi Ram. Also see short note at No. 246 of Supreme Court Notes at P. 171 Re: A. R. Saleh Mohammed Sait etc. vs. Jaffar Mohd: Sait’s Memorial Dispensary Charity, Civil Appeals Nos. 880 & 881 of 1968 decided on March 25, 1968 (SC).

2 (h) **“Schedule Building”**:—Explained in 1970 RCR 423 (SC), re: Dr. Sewa Singh vs. Smt. Rajinder Kaur; 1971 R.C.R. 33-1971 H.L.R 41, re: M/S John Tinson & Co. Ltd., Simla vs. Shri Amar Chand Sood Building will be a scheduled building if a person engaged in the trade, uses it partly for residence and partly for his business. Similarly room in a residential building let out as a godown, will be held to be a non-residential building. 1970 R. C. R. 923, Re: Rattan Lal Vs. Laxmi Devi.

2 (i) **Tenant**:—It means any person by whom or on whose account rent is payable for a building. If rent as such is not payable, he does not become a tenant. 1971 H. L. R. 66, Smt. Rajkumari Soni Vs. The State of Himachal Pradesh. The tenant in this section has a wider meaning and even certain classes of persons some of whom

might come within the meaning and scope of the word "tenant", are particularly excluded. (1968) 70 P. L. R. 960 (DB), Re: Ambala Bus Syndicate Private Limited Vs. M/s. Indra Motors, Kurali.

EXEMPTIONS

3. (1) The State Government may direct that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands.

(2) The provisions of this Act shall not apply to any building or rented land owned by the Government.

COMMENTARY

Scope :—Government buildings have been exempted from the application of this Act but qua other buildings no notification has yet been issued. However under section 23 of H. P. Act No. 16 of 1969 (H. P. General Clauses Act) whereby if any Himachal Act is repealed and re-enacted without any modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, shall so far as it is inconsistent with the provisions re enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted. As such the notifications issued under the East Punjab Urban Rent Restriction Act, 1949 so far as applicable to Himachal Pradesh and which are not inconsistent with the provisions of the new Act, continue to apply. A. I. R. 1922 Lah. 474, Re: Jalal Din Vs. Nath Ram (D.B.).

RIGHT OF TENANCY TO THE WIDOW OR MINORS

4. (1) Notwithstanding anything contained in any other law, it shall be lawful after the death of a tenant for **his widow to retain possession** of the building or rented land as tenant of a landlord **till she dies or remarries** on the same terms and conditions on which the tenancy was held by her husband and all the provisions of this Act shall apply to such a case.

(2) After the death or remarriage of the widow or where after the death of a tenant there is no widow, then in such a case, notwithstanding anything contained in any other law, it shall be lawful **for minor sons or daughters** of such a tenant to retain possession of any building or rented land of a landlord **till the age of majority of the sons or till the daughters get married**, on the same terms and conditions on which the tenancy was held by their father.

COMMENTARY

Scope :—This section has brought about a drastic change by extending relief to the widows and minor children of the deceased statutory tenant. That is, statutory tenancy has been made inheritable in cases where the deceased tenant leaves behind widow, minor sons and unmarried daughter till such widow dies or remarries and the minor sons attain majority and daughters are married. They are entitled to retain the premises on the same terms and conditions as was held by the deceased tenant.

DETERMINATION OF FAIR RENT

5. (1) The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit.

(2) In determining the fair rent under this section, the Controller shall fix a basic rent taking into consideration.—

- (a) the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 15th August, 1947; and
- (b) the rental value of such building or rented land if entered in property tax assessment register of the municipal corporation, municipal town, notified area committee or cantonment board, as the case may be, prevailing at the time mentioned in clause (a).

(3) In fixing the fair rent of a residential building the Controller may allow, if the basic rent :—

(i) in the case of a building in existence before the 15th day of August, 1947;—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 10 per cent on such basic rent;
- (b) exceeds Rs. 25 per mensem, but does not exceed Rs. 50 per mensem, an increase not exceeding 15 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 25 per cent on such basic rent;

(ii) in the case of a building constructed between 15th August, 1947 and 15th August, 1966 :—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 25 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 40 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 50 per cent on such basic rent.

(iii) in the case of a building constructed between 16th August, 1966 and 15th August, 1971 :—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 40 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 65 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 75 per cent on such basic rent.

(4) In fixing the fair rent of a scheduled building the Controller may allow, if the basic rent:—

(i) in the case of a building in existence before 15th August, 1947:—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 15 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 20 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 30 per cent on such basic rent.

(ii) in the case of a building constructed between 15th August, 1947 and 15th August, 1966:—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 30 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 45 per cent on such basic rent ;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 55 per cent on such basic rent.

(iii) In the case of a building constructed between 16th August, 1966 and 15th August, 1971:—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 45 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 70 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 80 per cent on such basic rent.

(5) In fixing the fair rent of a non residential building or rented land, the Controller may allow, if the basic rent :—

(i) in the case of a building in existence before the 15th August, 1947 or in the case of rented land—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 30 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 50 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 60 per cent on such basic rent;

(ii) in the case of a building constructed between 15th August, 1947 and 15th August, 1966—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 40 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 60 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 100 per cent on such basic rent;

(iii) in the case of a building constructed between 16th August, 1966 and 15th August, 1971 :—

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 50 per cent on such basic rent;
- (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 70 per cent on such basic rent;
- (c) exceeds Rs. 50 per mensem, an increase not exceeding 140 per cent on such basic rent.

(6) The provision of this section shall not apply to buildings constructed between 16th August, 1971 and 15th August, 1976.

(7) Nothing in this section shall be deemed to entitle the Controller to fix the fair rent of a building or rented land at an amount less than the rent payable for such building or rented land under a subsisting lease entered into before the 15th day of August, 1947.

COMMENTARY

The provisions of H.P. Act No. 23 of 1971 are similar to that of the Punjab Act No. III of 1949 in this respect. The provisions of section 5 are mandatory and not directory. The controller is bound to fix the fair rent. Distinction in the Delhi & Punjab Rent Control Act explained in 1970 R.C.R. 26, re: Pt. Madho Lal vr. Rup Chand. In determining the fair rent, the Rent Controller has first to fix the basic rent (1970) 72 PLR 623, re: Jagdish Prasad vs. Raghubar Dayal. The object of the rent Restriction Legislation would be defeated if the parties are allowed to fix the fair rent with the consent of the parties (1966) 68 PLR 733 (DB), re: Baijnath vs. Firm Monga Lal Murari Lal. Thus where Rent Controller fixed fair rent in agreement of the parties, such order contravenes the mandatory provisions of law 1971 R. C.R. 697, re: Rajkumar Jain vs. Girja Shanker. The import of the word 'similar circumstances' is that when the area in which the building has since changed since 1938 (under H. P. Act 23 of 1971 and developed, then it could not be treated to be in "similar circumstances", A.I.R. 1966 Punjab 387 (FB), re: Chanan Singh vs. M/s. Sewa Ram Sukh Dayal; Also Gopal Dass vs. Harbans Singh, CR 56/68 decided on 29-10-1970 by Hon'ble Mr. Justice Prakash Narain of Delhi High Court, Himachal Bench at Simla.

Where evidence led by parties is defective, jurisdiction of Controller still is to fix fair rent 1969 RCR 630 (DB) Re: Ram Parkash vs. Raghbir Singh. The Controller is bound to hold such enquiry as he deems fit himself (1966) 68 PLR 733 (DB), re. Baij Nath vs. Firm Monga Lal Murari Lal. Controller cannot fix the fair rent of premises which have all along been and still continue to be in possession of the landlord. (1969) 71 PLR 205 (DB), re: Lt. Col. Michel A.R. Skinner vs. The Municipal Committee, Hansi. Fair rent is to be fixed taking into consideration both the clauses (a) and (b) of section 5 (2) of the Act. If the said clauses are not satisfied then the Controller cannot continue an enquiry into extraneous circumstances. re. Ram Lck versus Aisha Bibi, CR No. 22 of 1967 decided on 12-6-1967 by Hon'ble Mr. Justice H. Hardy of Delhi High Court, Himachal Bench at Simla.

INCREASE IN FAIR RENT IN WHAT CASES ADMISSIBLE

6. When the fair rent of a building or rented land has been fixed under section 5, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out at the landlord's expense and if the building or rented land is then in the occupation of a tenant, at his request :

Provided that the fair rent as increased under this section shall not exceed the fair rent payable under this Act for a similar building or rented land in the same locality with such addition, improvement or alteration and it shall not be chargeable until such addition, improvement, or alteration has been completed :

Provided further that any dispute between the landlord and tenant in regard to any increase claimed under this section shall be decided by the Controller :

Provided further that nothing in this section shall apply to any periodical increment of rent accruing under any subsisting agreement entered into before the 15th day of August, 1947.

LANDLORD NOT TO CLAIM ANYTHING IN EXCESS OF FAIR RENT

7. (1) Save as provided in section 6, when the Controller has fixed the fair rent of a building or rented land under section 5 :—

- (a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;
- (b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void.

(2) Nothing in this section shall apply to the recovery of any rent which became due before the 15th day of August, 1947.

FINE OR PREMIUM NOT TO BE CHARGED FOR GRANT, RENEWAL OR CONTINUANCE OF TENANCY

8. (1) Subject to the provisions of this Act, no landlord shall claim or receive any rent in excess of the fair rent, notwithstanding any agreement to the contrary.

(2) No landlords shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any building or rented land claim or receive the payment of any premium, pegree, fine, advance or any other like sum in addition to the rent.

(3) Nothing in this section shall apply to any payment under any subsisting agreement entered into before the 15th day of August, 1947.

RENT WHICH SHOULD NOT HAVE BEEN PAID MAY BE RECOVERED

9. (1) Where any sum has, whether before or after the commencement of this Act, been paid which sum is by reason of the provisions of this Act not payable, such sum shall, at any time within a period of one year after the date of the payment, or in the case of a payment made before the commencement of this Act, **within one year after** the commencement thereof, be recoverable by the tenant by whom it was paid or his legal representative from the landlord who received the payment or his legal representative, and may without prejudice to any other method of recovery be deducted by such tenant from any rent payable within such one year by him to such landlord.

(2) In this section the expression "legal representative" has the same meaning as in the Code of Civil Procedure, 1908 and includes also, in the case of joint family property, the joint family of which the deceased person was a member.

COMMENTARY

Scope :— This section gives right to the tenant to effect recovery of the amount paid in excess, either before or after the commencement of this Act, within one year from the date of such payment either under this section without prejudice to any other method of recovery. However, the right of recovery by DEDUCTION is barred at the same time as the right of recovery by suit because, if the amount is incapable of recovery because of the bar of limitation, it cannot be recovered by deduction vide A. I. R. 1969 S. C. 37, *Re: Maganlal Chhotabhai Desai Vs. Chandrakant Moti Lal*.

INCREASE OF RENT ON ACCOUNT OF PAYMENT OF RATES, ETC., OF LOCAL AUTHORITY, BUT RENT NOT TO BE INCREASED ON ACCOUNT OF PAYMENT OF OTHER TAXES ETC.

10. (1) Notwithstanding anything contained in any other provisions of this Act, a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of this Act, fresh rate, cess or tax is levied in respect of the building or rented land by Government or any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the Act:

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or any contract, no landlord shall recover from his tenant the amount of any tax or portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1).

COMMENTARY

Scope :—This section entitles the landlord to increase the rent of a building or rented land in case fresh rate, cess or tax is levied on such building or rented land or such increase exists on or after the commencement of this Act, by Government or Local authority to the extent of amount of such increase only. But increase in rent on account of imposition of house tax or taxes imposed by the Government or local authority is not automatic. Notice demanding such amount must be served on the tenant and enhanced rent commences from the date of notice of demand. AIR 1969 Pb. 367 (DB) ≡ 1969 Cur. L. J. 415 (DB) ≡ (1969) 71 P. L. R. 571 (DB), Re: Puran Chand Vs. Mangal. (1969) 71 P.L.R. 238, Re: Smt. Kirpal Kaur Vs. Bhagwant Rai; (1969) 71 P.L.R. 30, Re: Hari Krishan Vs. Dwarka Dass; (1969) 71 PLR 779 Re: Hirday Ram Vs. Som Nath; (1970) 72 PLR 354, Re: Baldev Krishan Vs. Bir Bhan. **But see 1971 R.C.R. 153 (SC)**, Re: Gauri Shankar Chhitarmal Gupta Vs. Smt. Gangabai under the Bombay Rents, Hotels & Lodging House, Rates Control Act (57 of 1947), wherein it was held that the landlord is entitled to charge permitted increase without prior intimation to the tenant.

CUTTING OF OR WITHHOLDING ESSENTIAL SUPPLY OR SERVICE

11. (1) No landlord either himself or through any person purporting to act on his behalf shall without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the building or rented land let to him.

(2) If a landlord contravenes the provisions of sub-section (1), the tenant may make an application to the Controller complaining of such contravention.

(3) If the Controller is satisfied that the essential supply or service was cut off or withheld by the landlord with a view to compel the tenant to vacate the premises or to pay an enhanced rent, the Controller may pass an order directing the landlord to restore the amenities immediately, pending the inquiry referred to in sub-section (4).

Explanation.—An interim order may be passed under this sub-section without giving notice to the landlord.

(4) If the Controller on inquiry finds that the essential supply or service enjoyed by the tenant in respect of the building or rented land was cut off or withheld by the landlord without just and sufficient cause, he shall make an order directing the landlord to restore such supply or service.

(5) The Controller may in his discretion direct that compensation not exceeding one hundred rupees,—

- (a) be paid to the landlord by the tenant, if the application under sub-section (2) was made frivolously or vexatiously ;
- (b) be paid to the tenant by the landlord, if the landlord had cut off or withheld the supply or service without just and sufficient cause.

Explanation I.—In this section, “essential supply or service” includes supply of water, electricity, lights in passages and on staircases, conservancy and sanitary services.

Explanation II.—For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority.

COMMENTARY

1. **Scope and Object :** The object of making provisions for maintenance of essential supply and service is to prevent the overgrowing tendencies on the part of greedy landlords to exploit and harass their tenants by resorting to extra legal ways of cutting or withholding the services so as to interfere in the peaceful enjoyment of the accommodation and thereby to compel them to vacate the premises. To check and prevent such illegal interference as by the landlord in the enjoyment of accommodation for example to close the privy passage, sources of air and light and also to disconnect water and electric supply, the legislature have enacted the different Rent Control Acts by making it an actionable and culpable action under the special statute. **Re:— Gulab Chand v. Emperor** (A.I.R. 1948 Nagpur 414). The provisions are intended to be an additional guarantee to the tenant of his continued enjoyment of the rights created in his favour by the contract of tenancies apart from his rights under the general law. **Re: Kanaiya Lal v. Indumati** (A.I.R. 1958 Supreme Court 444).

2. **Essential Supply or Service :** These terms are now nowhere defined in the Act. However, these expressions mean such supply or service which are essential in order to enable the tenant to enjoy the premises, i.e. which have connection or relation to the demised property. Thus, it would also include supply or service rendered with the aid of fittings in the premises from inside as also from outside such as water tap, etc. Service would include supply of hot water, heaters, cleaning of common halls and passages, removal of refuse, lighting, heating of lounge etc. **Re : Palser v. Grinling** (1948 A. C. 291). Explanation I to this section is not exhaustive.

“Amenity” “meaning of :—The term “Amenity” is not defined in the Act. In the absence of a statutory definition, the dictionary meaning of the term must be considered. The expression “amenity” in relation to immovable property signifies pleasant circumstances, or features or advantages. In the absence of a statutory definition, the terms should be understood widely. Having regard to the purpose of the letting namely to run the building as a hotel, to the purpose for which the drain was constructed and enjoyed for over 10 years and circumstances leading to its construction, the drain must be regarded as an amenity within the meaning of the Buildings (Lease and Rent) Control Act, Kerala (1965). 1969 R.C.R 408 Mariakutty Uman vs Moosakutty Haji and another.

What is or is not an amenity is a question which should be determined on the facts of each case. A bathroom is an amenity. So also for a tenant owning a cow, a cow-shed forming part of a leased building is an essential amenity. A. I. R. 1958 Mysore 77, Ullal Dinkar Rao vs. Ratna Bai.

3. **In respect of the building or rented land:—**In this respect see **Kanaiya Lal Vs. Indumati** (A. I. R. 1958 Supreme Court 444).

4. **Cutting off or withholding** : The expression "withholding" will include not only the direct acts of the landlord but also includes all acts and omissions attributable to the landlord. Thus when the Municipality cuts off the water supply of a house as a result of Landlords application or on account of the default in payment of municipal dues, the landlords will be liable under this provision. Re: **Gulab Chand v. Empror** (A. I. R. 1948 Nagpur 414), **Kanaiya Lal v. Indumati** (A. I. R. 1958 S. C. 444). Thus vide Explanation II, any interference direct or indirect either by act of omission or commission, either personally or through other agency would be covered by the aforesaid expression.

5. **Tenant's Relief** : The Act entitles the tenants to file an application to the Controller praying restoration of the amenities withheld or stopped. The Controller on being satisfied that such essential supply or service was cut off or withheld with a view to compel the tenant either to vacate the premises or to pay an enhanced rent, is empowered to order restoration and also to order compensation to the extent of rupees one hundred. If the application is found to be frivolous or vexatious, the landlord can be compensated to the same extent. The Controller is also empowered to issue interim order **ex parte** without giving notice to the landlord.

CONVERSION OF A RESIDENTIAL BUILDING INTO A NON-RESIDENTIAL BUILDING

12. No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.

COMMENTARY

This section restricts the conversion of residential building in to a non-residential building by any person except with the WRITTEN PERMISSION OF the Controller. The expression PERSON includes the Land lord as also the tenant as envisaged by this Act. However, no such permission of the Controller is required for conversion of non-residential building in to a residential building.

Section does not apply to any property not occupied by a tenant. The owner can put the building even to non-residential purposes. 1965 P. L. R. 87 (D B); 1965 Cur. L. J. 143 (D. B.) Chatter Singh vs Jamba Parshad. Using of residential building for storing stocks and "durries" by the landlord does not amount to converting the residential building into non-residential building. 1963 P. L. R. 1124 (D. B) Triguna Nand vs Mahabir Dal.

LANDLORD'S DUTY TO KEEP THE BUILDING OR RENTED LAND IN GOOD REPAIRS.

13. (1) Every landlord shall be bound to keep the building or rented land in good and tenantable repairs.

(2) If the landlord neglects or fails to make, within a reasonable time after notice in writing, any repairs which he is bound to make under sub section (1), the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

(3) Where any repairs without which the building or rented land is not habitable or useable except with undue inconvenience are to be made and the landlord neglects or fails to make them after notice in writing, the tenant may apply to the

Controller for permission to make such repairs himself and may submit to the Controller an estimate of the cost of such repairs, and, thereupon, the Controller may, after giving the landlord an opportunity of being heard and after considering such estimate of the cost and making such inquiries as he may consider necessary, by an order in writing, permit the tenant to make such repairs at such cost as may be specified in the order and it shall there- after be lawful for the tenant to make such repairs himself and to deduct the cost thereof, which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed 3 month's rent payable by the tenant :

Provided further that if any repairs not covered by the said amount are necessary in the opinion of the Controller, and the tenant agrees to bear the excess cost himself, the Controller may permit the tenant to make such repairs.

COMMENTARY

The Rent Controller cannot direct reconstruction. If a roof is leaking the landlord may be called upon to stop the leaks. But where a portion of the roof is likely to collapse, the Rent Controller cannot order its reconstruction. *Lakhi Ram vs Sagar Chand*, C. R. 495 of 1962 decided on 23-5-1963 by Shamsheer Bhadur J. of the Punjab and Haryana High Court. relying upon A. I. R. 1956 Calcutta 187, *Soorajmull Nagarmul vs Indian National Drug Co. Ltd.* The expression "necessary repairs" will include the replacement of a roof for making the roof habitable. 1967 P. L. R. (Short Note 36) *Chandu Lal vs Har Lal*.

EVICION OF TENANTS

14. (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant is satisfied—

- (i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable :

Provided that if the tenant on the first hearing of the application for ejection after due service pays or tenders the arrears of rent and interest at 6 per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid :

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him, shall not be evicted as a result of his order, if tenant pays the amount due within a period of 30 days from the date of order, or

- (ii) that the tenant has after the commencement of this Act, without the written consent of the landlord—

- (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof, or
- (b) used the building or rented land for a purpose other than that for which it was leased, or
- (iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or
- (iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or
- (v) that where the tenant has ceased to occupy the building or rented land for a continuous period of twelve months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application :

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

- (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 a residential building, if—
 - (a) he requires it for his own occupation ;
 - (b) he is not occupying another residential or scheduled building as the case may be, owned by him, in the urban area concerned ;
 - (c) he has not vacated such a building without sufficient cause within five years of the filing of the application, in the said urban area ;
 - (d) it was let to the tenant for use as a residence by reason of his being in service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment :

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord;

- (e) the landlord is a member of the Armed Forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act or is posted in a non-family station.

Explanation:—For the purpose of this sub-clause—

- (1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions, or is posted in a non-family station;
- (2) “family” means parents and such relations of the landlord as ordinarily live with him and are dependant upon him;
 - (f) the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of or been allotted, a residence.
 - (ii) in the case of a rented land, if—
 - (a) he requires it for his own use;
 - (b) he is not occupying in the urban area concerned for the purpose of his business any other rented land;
 - (c) he has not vacated such rented land without sufficient cause within five years of the filing of the application, in the urban area concerned;
 - (d) he requires rented land for construction of residential or non-residential building or for establishment of industry; and
 - (e) the tenant lets out his rented land, to some-body else, on higher rent.
 - (iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation or is required bonafide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land are required **bonafide** by him for the puprose of building or rebuilding or making thereto any substantial additions or alterations and that such building or rebuilding or addition or alteration cannot be carried out without the building or rented land being vacated.
 - (iv) in the case of any residential building, if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer, an architect, a dentist, an engineer, a veterinary surgeon or a medical practitioner, including a practitioner of Ayurvedic, Unani or Homoeopathic system of medicine or for the residence of his son who is married, if—
 - (a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and
 - (b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned;

Provided that where the tenancy is for specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period:

Provided further that where the landlord has obtained possession of any building or rented land under the provision of sub-clause (i) or sub-clause (ii) he shall not be entitled to apply again under the said sub-clause for the possession of any other building of the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-clause (iv) he shall not be entitled to apply again under the said sub-clause for the use of, or as the case may be, for the residence of the same son.

(b) The Controller shall, if he is satisfied that the claim of the landlord is bonafide, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(c) Where an application is made under sub-clause (i) (e) of clause (a), it shall be disposed of, as far as may be within a period of one month and if the claim of the landlord is accepted, the Controller shall make an order directing the tenant to put the landlord in possession of the building on a date to be specified in the order and such date shall not be later than fifteen days from the date of the order.

(4) Where a landlord who has obtained possession of building or rented land in pursuance of an order under sub-section (3) does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under sub-clause (i) (e) of clause (a) of sub-section (3), his family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under sub-clause (iv) of clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under sub-clause (iii) of the aforesaid clause (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

(5) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding five hundred rupees be paid by such landlord to the tenant.

COMMENTARY

Scope:—

The Rent Control Act has put restrictions on the rights of the landlord to eject the tenant by providing the grounds for eviction with the basic idea of curtailing the indiscriminate eviction of the tenant. Thus the landlord cannot, now, evict the tenant except upon the proof of the existence of any of the grounds

as envisaged by this Section. The Act, now, has further imposed an additional restriction on the rights of the landlord to eject the tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him to the effect that a tenant shall not be evicted as a result of the order, if the tenant pays the amount due within a period of 30 days from the date of the said order. The object is to protect the rights of the tenants against the merciless eviction by the landlords. In this sense, it is a disabling provision and restrictive piece of legislation. The provisions of this section regarding grounds for eviction are impediment to the institution of the suit or passing of the decree for eviction against the tenant. Thus any decree for the eviction of a tenant, passed before or after the commencement, of this Act or otherwise and whether before or after the termination of the tenancy, cannot be executed. The tenant, thus, cannot be evicted except in accordance with the provisions of this section

“EVICTION”—Meaning of :—The term “eviction” according to Aiyer’s law Lexicon means expulsion by the assertion of a paramount title and by process of law; an ouster, act of the landlord with the intention and having the effect of depriving the tenant of the enjoyment of the demised premises. In other words it means to dispossess by law or expel by legal process. The term “eviction” has not been defined in the Act. Thus wherever a word is not defined in a statute, the ordinary natural and grammatical meaning is to be given. (Siri Ram Vs State of Maharashtra, A.I.R.1961 S.C.674; Hariprasad Vs. A.D. Divalkar, A I.R.1957 S.C.121; Jugal Kishore Vs. Raw Cotton Co, A.I.R.1955 S.C.376.

INSTITUTION AND CONTINUATION OF EJECTMENT SUITS:—

The section does not oust the jurisdiction of civil courts to pass a decree for ejectment, but it merely controls the execution of such a decree prescribing a special procedure where eviction is sought. The wording of the Section is not such as to oust the jurisdiction of civil courts to entertain and decide suits for eviction. AIR 1951 Pb 52 (F.B.) Sham Sunder Vs Ram Das; AIR 1961 S.C.1596, Shah Bhoj Raj Kaviraj and others Vs Subhash Chander Yograj Sinha.

“NOT TO BE EVICTED THERE FROM IN EXECUTION OF A DECREE PASSED BEFORE OR AFTER THE COMMENCEMENT OF THIS ACT”:—

No eviction in execution of a decree:— The section prohibits all courts from making any order of evicting any tenant in execution of decrees passed before the Act. 1951 P.L.R. 159; AIR 1951 Pb. 52 (F.B)

CONSENT DECREE

Act being ameliorative piece of legislation, provision justifying ejectment of tenant must be limited within circumscribed limits of the Section vide AIR 1969 Pb 270 (DB) re:—Smt Dhan Devi and another Vs Bakshi Ram and another. Thus ejectment of tenant on the basis of compromise simpliciter is illegal vide AIR 1970 S.C. 794 re:—Farozi Lal Jain vs. Man Mal & others and AIR 1970 S.C. 838 Re:—Smt. Kaushalya Devi & others vs. K. L. Bansal Decree of ejectment passed on compromise—validity—Decree is a nullity as it does not indicate that any of the statutory grounds in Section 3 of Delhi and Ajmer Rent Control Act, 1952 existed. 1969 R.C.R. 703≡A.I.R. 1970 S.C. 794; 1969 R.C.R. 15 (S.C.) A I.R. 1970 S.C. 838 1970 DLT 532 Bahadur Singh Vs Muni Subret and another. Also see 1971 R.C.R 41 (Mysore)Subhana Vs B. See thanana.

RENT PROCEEDINGS AND CLAIM OF COMPENSATION:—

In proceedings for eviction of a tenant and recovery of possession of premises, claim for compensation for improvements cannot arise for consideration in such proceedings. Vide AIR 1971 S.C. 942 re:— M/s Panchamal Narayana Shenoy Vs Basthi Venkatsha Shenoy.

APPLICATION OF SECTION 14 TO EVACUEE PROPERTY:—

In cases of Rent Control Act which is made applicable to the Evacuee Property, if the "tenant" has sublet the premises without the permission of the landlord either before or after the coming into force of the Act, tenant is liable to be evicted in accordance with the provisions of Rent Control Act. Thus where a tenant sublets evacuee property forming part of compensation pool and exempted from the operation of Act during such period, then the purchaser of such property can evict the tenant notwithstanding the fact that the Act prohibiting such subletting was not in force when the premises were sublet vide A.I.R. 1970 P&H 60 re:—Bishambar Dutt Roshan Lal and others Vs Gian Chand Charan Dass; A.I.R.1969 S.C.1291, re: Goppu Lal Vs. Thakurji Shrijee Shriji Dwarka Dheeshji.

DETERMINATION OF RELATIONSHIP OF LANDLORD AND TENANT

The denial of the relationship of landlord and tenant by the tenant in his written statement determines the tenancy forthwith thus giving a right to the landlord of Property Act before filing the application, does not affect its maintainability and another; AIR 1971 Pb. and H 434 re:—Smt. Suhag Rani and another Vs. Sukhdev and another; AIR 1970 Pb. 511; AIR 1969 R.C.R.904 (Pb)

SECTION 14 (2) (1) RENT MEANING AND WHAT IS INCLUDED IN IT.

Where the House Tax is fixed, it is included in the term rent and failure to pay the said tax by the tenant, ejection, is to follow. In re:—1971 R.C.J. 15, Kanahiya Lal Vs. Sugar Chand; 1970 R.C.R. 249 Baldev Kishan -vs- Vir Bhan. The Municipal taxes agreed to be payable by the tenants are but part of rent. A.I.R.1950 Allahabad 61. Similarly where fixed monthly charges for payment of electricity and water, are agreed, it is a part of rent. Re:—1966 P.L.R. 431, Hari Ram Jaggi, Vs. Das Raj Sethi. The Supreme Court in the case 1971 R.C.R. 318; A.I.R. 1971 Supreme Court 287. Re: Chhote Lal Vs. Keval Kishan has held that where electricity charges are not fixed and can only be ascertained at the end of each month after the electricity consumed is known, while rent is payable in advance, the electricity charges do not form part of the rent. The case of Hari Ram Jaggi was distinguished.

ARREARS OF RENT UPTO WHICH DATE TO BE CALCULATED:—

The arrear of the rent have to be paid on the first hearing and is to be counted upto the date of the filing of the ejection petition and not upto the date of first hearing, as has been held in Re. Lachman Dass Vs. Satya Pal, 1966 Cur-rent L.J. 530. And (1961) 1 Panjab 314, Ishar Dass Tara Chand Vs. Harcharan Dass. Even time-barred rents has to be tendered to avoid the ejection as was held by the Full Bench of the Panjab High court in the case of Rullia Ram Hakim Rai Vs. S. Fateh Singh, AIR 1962 Panjab 256. (F.B).

INTEREST UPTO WHICH DATE PAYABLE

Interest has to paid upto the date of the first hearing on the principal due as was held in 1967 P.L.R (S.N.7) Re. Shri Sunder Singh Vs. Madhusudan Singh. It is the duty of the tenant to pay the interest and calculate the same 1968 Current L.J. 261. Sat Pal Vs. Kesar Singh.

WHOSE DUTY TO ASSESS:—

It is the duty of the Controller to assess the costs of the application which the defaulting tenant has to deposit. But it does not mean that he is bound to fix any sum of cost if he considers that the landlords' conduct is such that costs would ordinarily be granted. A penal consequence arising only against the interest of the tenant which he fails to comply with the terms of costs assessed by the Controller. Where the Controller refuses to assess costs of the application, the tenant is helpless and cannot be penalised. But where the Controller makes an omission to assess costs and the tenant does not invite him to do so, the case is different and the tenant cannot have the benefit of disobedience in the one case and his failure of compliance of the Controller to assess the costs as was held in *Gulshan Rai Vs. Devi Dayal*, 1966 P L R. 668.

EFFECT OF LANDLORDS' FILING SECOND APPLICATION DURING THE PENDENCY OF THE FIRST APPLICATION FOR NOT PAYMENT OF THE RENT

It has been held in 1968 P.L.R. 1087 that where the landlord filed a second application for the eviction on the ground of non-payment of rent during the pendency of the first eviction application, but the second eviction application did not cover the period of arrears as covered by the first application, even if the tenant makes any payment which the landlord has accepted in the second application that would not mean that the landlord gave up his claim to eviction on the first application. However, as held in 1966 Current L. J. 862, *M/s. Bagarain Armory and another Vs. Rakha Ram*, if the second application includes the rent for the period of the first application which is paid by the tenant in the second application on the first date of hearing, then the landlord is estopped from pursuing the first application for conspicuously waiving by conduct ejection for non payment of rent by accepting the rent for the same period.

NOTICE—Prior notice under Section 106 Transfer of Property Act determining contractual tenancy is essential but such notice however is not essential where contractual tenancy has already been determined vide AIR 1969 Pb. 110 (FB) Re. *Bhaiya Ram Hargo Lal Vs. Mahvir Prashad Murari Lal*. In cases of monthly tenancy, fifteen days notice is essential but it need not terminate with the end of month of tenancy vide 1969 Pb. 26 (DB) Re. *Sawaraj Pal Vs. Janak Raj*; (1968) 70 P. L. R. 55 (Dehli Section), Re. *C. K. Mehra Vs. Kharak Singh*; See also 1969 Cur. L. J. 926 and 1971 Cur. L. J. 391, and 1971 *Raja Ram Vs. Chhuhara Ram*. Notice u/s 106 Transfer of Property Act for terminating contract is necessary for filing ejection application. Such plea (absence of) cannot be raised for the first time in appeal A. I. R. 1971 Delhi 98 Re. *Batoo Mall Vs. Rameshwar Nath and others*.

Sec. 14 (2) (1) First Proviso—First date of hearing, meaning:—In a

case where there has been service of summons or notice on the tenant the date fixed for appearance is the first date of hearing, of the application. 1969 P L. R. 5 (Delhi section) (Himachal Bench) *Jamna Devi Vs. Shanti Parashad*; 1965 P. L. R. 45 : A. I. R. 1965 Punjab 175. Re. *Jagat Ram Hamir Chand Vs. Shanti Sarup*. In proceedings of setting aside ex-parte proceeding it is for the tenant to prove that not only he was prevented by sufficient cause for not attending on the date fixed but also he had the means to meet the liability. The day on which ex parte order is set aside is

the first date of hearing. 1965 P. L. R. 45. The expression 'first hearing' has not been defined either in the East Punjab Urban Rent Restriction Act, or in the General Clauses Act. There is a long array of judicial authorities in support of the proposition that 'first hearing commences when the Court looks into the pleadings in order to formulate the points in controversy between the parties, however, in case where no issues are to be settled the first hearing will be the day on which the court applies its mind to the case for the purpose of the trial; 1969 P. L. R. 472 (D. B.) In Re. Mangat Rai Vs. Ved Parkash. Non-deposit of rent on the first date of hearing on the plea that the copy of petition had not been served on the tenant along with summons, held tenant not liable to be evicted when service is without a copy of the petition as there is no valid service. 1970 R. C. R. 132 (Delhi Himachal Bench) in Re. Joint Hindu Family through Rattan Lal Vs. K. S. Sautha.

DUE SERVICE : 'Due service' means service along with the copy of the petition. Any hearing after that service would be the first hearing. A. I. R. 1965 Punjab 175 (DB) 67 P. L. R. 45 : Jagat Ram Vs. Shanti Sarup.

Sec. 14 (2) (ii) (a) Sub'letting Without Written Consent Of Landlord:—

Realisation of rent by landlord after subletting of premises without his consent in writing, does not in the absence of any pleading and any issue on this point, lead to the inference of permission for subletting. Clear knowledge of subletting qua landlord is essential. AIR 1969 S. C. 1291 Re. Gappu Lal Vs. Thakur ji Shiriji Dwarkadheesji. But converting of his individual business by the lessee into a partnership subsequent to the lease, does not amount to subletting or parting with the possession of the lessee rights vide AIR 1971 Pb. and H. 456 Re Vir Bhan Aggarwal Vs. Kunj Lal and another.

Sec. 14 (2) (ii) (a) Subletting:—

"Parting with possession" meaning and scope of:—Brother-in-law staying as paying guest whether parting with possession. In this respect see 1970 DLT 592, 1971 PLR (Delhi) 30 Re. Gurdial Singh Vs. Brij Kishore.

Mere use of premises, whether subletting:—Actual possession of building with the sub tenant onus on the sub-tenant to explain possession. 1969 PLR 242, Re. Dr. Ram Sarup Vs. Smt. Savitri Devi. Parting with the possession is the real test of subletting. The crux of subletting lies in actual control of the premises by the sub-tenant. It requires complete parting with the possession by the tenant (1969) 71 PLR 242 Re. Dr. Ram Sarup Vs. Smt. Savitri Devi.

(2) Sub-tenancy parties to the petition:—

The principle is that the main person should be joined as a party to a suit and not the subsidiary or under claiming party. Thus a sub-tenant whose landlord as envisaged by the Act, is the tenant and who neither can claim better and greater rights than his landlord nor he possesses any independent rights, is a necessary party vide AIR 1950 M. B. 19, Re. Shanker Rao Vs. Krishan Lal. In such circumstances, where a suit has been filed against the tenant and sub-tenant and a composite decree for eviction is passed against both, the sub-tenant would be competent in his own right to file the appeal even though the tenant (his landlord) does not choose to file appeal vide Karam Singh Vs. Pratap Singh, AIR 1964 S.C. 1305.

(3) **Burden of proof** :—The initial burden to prove the fact of creation of sub-tenancy by the tenant lies on the landlord but once he succeeds to prove another person to be in possession other than the tenant, then the onus shifts upon the tenant to prove how and in what capacity the tenant is occupying the premises or to explain and prove the circumstances under which the stranger occupies the premises. AIR 1962 Pb. 474 Re:- Ram Chandra Vs. Smt. Chandrawati.

Sec. 14 (2) (ii) (b) CHANGE OF USER:

The real test whether the change has been substantial is to see whether the landlord would have agreed to the premises being used for the changed purpose. Premises let for sale of books, printing press installed there in, held amounts to the change of user and the tenant is liable to eviction, in Re:—1971 P. L. R. 1 (D. B); 1970 R. C. R. 843, Telu Ram vs On Parkash Garg. Shop let for kiriyana business, being used for running a flour mill, no change of user and held ejection could not be ordered, in Re. 1969 D. L. T. 175, I. D. Malik Vs. Duni Chand. Where already a business was being carried on for repairing and servicing automobiles, the addition of facilities for supplying petrol cannot be held to be a change of user, in Re:—1966 Cur. L. J. (S. C) 273 Maharaj Kishan Vs. Milkha Singh Where the building is taken on lease by the firm for residential purposes, was not used by partners for their residence but its employees and visitors, the building was used by the firm for the purpose it was let, in Re. 1966 P. L. R. 376 Firm Himalayan Traders Vs. Narain Dass. Where the premises were rented out both for residential and commercial purposes but the tenant converted into the commercial use prior to the coming in force of the Act, held section applies only if conversion of user is after the coming into force of the Act, in re:- 1970 R. C. R. 4 : 1971 P. L. R. 113 J. N. Aggarwal vs Chamra Lal. Where the premises were let out for the purpose of selling Toka machines, and the tenants started manufacturing spare parts of Toka machines, held it amounted to a change of user in re:—1969 R.C.R. 1045, Bakhshi Singh Vs. Naubat Rai.

Sec. 14 (2) (iii) IMPAIR MATERIALLY THE VALUE OR UTILITY:

Improvement has to be seen from the point of view of the landlord and not from the point of view of the tenant, in re:-1969 R.C.R. 36 (Panjab and Haryana) Krishan Dev Vs. Jabbu Ram. In the case where the tenant erected wooden cabins on leased premises he was liable to be evicted, in re:-1971 R.C.R.931 (Rajasthan) Madav Lal Vs. Gobindi Bai. Where the tenant without the knowledge of the owner put up a staircase and balcony increasing the utility of the building thereby but also adding additional way to the building, held the tenant had committed the act of waste and was liable to eviction in re:- 1971 R.C.R. 865 (Madras) Shah Jetmull Genmull Vs. Gocooldas Jamunadas & Co. Where the tenant—had practically reconstructed the premises, it was held that the demised premises had been materially affected and the tenant was liable to be evicted, in re. 1969 P.L.R. 59 Banarasi Dass vs- Sunder Dass. Tenant closing the state way and roofing the same and making it impossible for the user of the same by going to the roof, he had materially effected the value and utility of the building. In re:- 1969 P.L.R. (S.N 6) Gopi Ram vs- Prem Kumar.

Sec. 14 (2) (iv) NUISANCE:—

Running of coal depot whether a nuisance to neighbours? Nature of locality and trades carried on there, is a relevant consideration to determine nuisance. Held in the circumstances of the case that where the Petitioners have been carrying on their trade of running of coal depot since the year 1942, the locality where there are several other coal depot and the persons living in the neighbourhood are subject to smoke, coal-dust, noises and smells etc, there was no nuisance. 1969 R. C. R. 1078 (Delhi High Court Himachal Bench) M/s. Central Government Employees Cooperative Fuel Stores Vs. M/s. Thakur Hotel Simla. Sound of sewing machine does not constitute by itself a nuisance, 1970 R. C. R. 733 (Mysore) Mrs. G. Colaco Vs. Urban D. S. Ilva. In order to attract the provisions, it must be proved that there is any nuisance

to the occupiers of the building in the neighbourhood, nuisance to the landlord is not covered by the provisions of the Act. 1962 P. L. R. 601. The fact that the nuisance had abated and ceased to exist during the pendency of the appeal against the order of ejection passed against the tenants, cannot be taken into consideration and will not effect the ejection order. 1966 P. L. R. 49 (S. N.) in Re: Milkha Singh Vs. Maharaj Krishan Kesar. Refusal to permit the landlord to pass through the room let out to him is no ground for ejection. 1969 P. L. R. 20 (S. N.) Re: Sewa Singh Vs. Y. P. Mohindru. Encroachment of premises not included in the lease, on the part of the tenant, is not a ground for ejection or nuisance. 1965 P. L. R. 58 Inder Singh Vs. Kalu Ram.

Sec. 14 (2) (v) Ceased to occupy the building or rented land for a continuous period of 12 months without reasonable Cause

In order to successfully see through the ejection of the tenant on this ground under the clause, two things have to be proved by the landlord: (i) that the tenant has ceased to occupy the building for a continuous period of 12 months and (2) that there was no reasonable cause for the same. Occupation does not mean mere possession, it implies something more. It means the actual user of the building. Mere presence of furniture does not amount to occupation. In Re:— 1967 P.L.R. 799 Kimti Lal Vs. Seth Nanak Chand. Where for all practical purposes the tenant had ceased to reside in the house in dispute which was situated at Hissar and had gone to reside at Delhi, only visiting Hissar very occasionally for short periods and even then not using the house in the sense of sleeping there: Held, that, the mere presence of the furniture and willingness to pay rent does not constitute occupation within the meaning of Section 3 (2) (v) of the East Punjab Urban Rent Restriction Act. The word occupation means occupation in the sense of actual user. In Re. 1963 P. L. R. 103, Shrimati Shakuntla Bawa Vs. Ram Parshad, the word "Occupation" has to be given the similar interpretation under this Act as well.

Sec. 4 (3) (iii) Bonafide requirements :—

(1) **Bonafide Scope** :— Status, position, social obligations of the landlord to be taken into account. 1969 R. C. R. 204 (Delhi) Re : — Pangu Mal vs. Smt. S. L. Keshwani. Mere fanciful desire not enough 1969 DLT 408 Re : — Lalit Kumar Vijay vs. Seroj Kumari.

(2) **Bonafide explained** :— The word "Bonafide" as used in the section means genuinely or in good faith and it conveys an idea of sincerity and absence of intent to deceive or absence of oblique motive. 1969 R. C. R. 391 (Delhi) re :— Om Parkash vs. Roshan Lal and 1971 R. C. R. 387 (Delhi) Re: — Sain Dass Vs. Madan Lal. Bonafide requirement means which is honest and a requirement which is neither capricious nor unfair nor absurd. 1969 R.C.R. 781 (Mysore) Re :— S. Sanaullah Vs. S. Farid

(3) **Bonafide Requirement** :— Whether the landlords' requirement is reasonable and bonafide has to be judged by the surrounding circumstances, which will include his means for reconstruction of the building and other steps taken by him in that behalf. So also his future intention to put the property to a more profitable use after demolition and reconstruction, is also a factor to be taken into consideration. A I. R. 1963 S. C. 499 Neta Ram vs. Jiwan Lal.

The owner is the best judge of his requirement and is entitled to make himself comfortable. It is the state of mind of the landlord that has to determine bonafides and the matter has not to be adjudged from the stand of the tenant or Controller. 1969 D. L. T. 366 ≡ 1969 R. C. R. 391 (Delhi) Re:— Om Parkash Vs. Roshan Lal; 1971 R. C. R. 523 (Delhi) Re :— P. C. Bhandari Vs. Caltex (Ind) Limited. Controller should not become Judge of the need of the landlord. Weight to be given to the statement of landlord (1970) 72 PLR 299 ≡ 1970 R. C. R. 81 (Pb. and Haryana) Re: Smt.

Chandra Wati Vs. Narain Dass. Court is not expected to put its own standards over landlord's. 1971 R. C. R. 887 (Delhi), Re :— Sain Dass Vs. Mandn Lal.

Requirement of landlady includes the requirement of those family members who have to live with her. 1969 DLT 412≡1969 R. C. R. 304 Re :— Ram Lal Khanna vs. Smt. Gulab Devi. Landlord suffering from heart attack and wanted ground floor, whether requirement bonafide if illness proved—Yes. 1959 R. C. R. 236 (Delhi) Re:—Krishan Kumar vs. Vimal Sehgal Number of persons constituting body of landlords—Requirement of one would mean requirement of all. 1971 R. C. R. 33≡1971 H. L. R. 41 (Delhi H. P. Bench) Re:—M/s. John Tinson and Co. Vs. Amar Chand Sood. Landlord occupying rented premises wanted possession of his own premises—need bonafide 1971 R. C. R. 33 (Delhi) Supra. Son resigned his job at Calcutta and secured job at Delhi to serve his mother who was insane. Requirement is bonafide. 1971 R. C. R. 463 (Delhi) Re:— Smt. Motia Devi Vs. D. P. Khosla and another.

Land-lord requiring premises for keeping buffalo for providing milk to family—need bonafide 1970 R. C. R. 354, Re:— Sheo Lal Vs. Roshan Lal. Father or father-in-law in a position to provide accommodation to the landlord. No ground for refusing eviction if requirement of landlord bonafide: 1969 R C R. 564 (Pb. and Haryana), Re:—Raj Kumar Vs. Major Gurmitender Singh. Bonafide requirement of landlady include the requirement of her husband. 1970 R. C. R. 292, Re:—T. C. Rekhi Vs. Usha Gujral. Requirement includes married son's requirement. 1970 R. C. R. 943 (Delhi) Re:—J. L. Mehta Vs. Smt. Hira Devi. It includes requirement of daughter. 1970 R. C. R. 724 (Madras) Re:—K. C. Devassay Vs. The State of Madras.

Landlord's family of large number of members:—Family children receiving education in the locality where house situated—His friends and relations also in the locality. House belonging to land-lord at 12 miles from present locality. Requirement bonafide. 1971 P. C. J. (Delhi) 769 Re :— Hari Parshad Vs. Dhanpat Singh.

Rented Land :—In cases of eviction of tenants from rented land, the Maxim "Actio Personalis Moritur cum persona" i.e. Personal right dies with the person, does not apply. It is not actio personalis. Heirs of Landlord are normally entitled to continue suit for ejectment on ground on which it was instituted.

Sec. 14 (3) (iii) :—(4) Unsafe and unfit for human habitation:—Meaning and effect explained 1970 P. L. R. 411 (D. B.) Re:— Dr. Piarey Lal Kapoor Vs. Smt. Kaushalya Devi. If it be proved that the premises have become unsafe or (even if it is proved that they are not unsafe) if it is proved that they have become unfit for habitation—tenant liable to ejectment—Even if it could be said that the remaining premises are themselves no more unsafe for human habitation, the shop had become unfit for habitation. There was imminent danger of its falling. A. I. R. 1968 Delhi 299 (F. B.) Re:—Sant Ram Vs Mehkoo Lal; 1967 P. L. R. 251, Re:—Smt. Shakuntla Devi Vs. Daulat Ram.

Renovations and Repairs—Difference explained in A.I.R 1971-Guj. 81 (13).

Section 14(3) (iii) Rebuilding, Requirement for—Test :— The phraseology used in this sub-clause is almost similar to the various Rent Acts in the country and the East Punjab Urban Rent Restriction Act before the amendment of the Act by Act No. 29 of 1956. Two types of interpretations have been given by the various courts to this type of clause. One view is that the desire of the landlord is to be the only test for determining whether the building should be vacated or not, and the condition of the building or the capacity of the landlord or arrangements made by him had nothing to do with it. The provisions were interpreted so as to mean that the landlord need not prove that the building was in a dilapidated state of condition, the landlord's bonafide desire to rebuild the same was sufficient, in Re: A. I. R. 1954 Punjab 135 Ram Chander Vs. Kidar Nath. The other view was that the condition of the building was the determining factor, coupled with the

bonafide intention to rebuild the same. In Re: A. I. R. 1950 Calcutta 74 Bhulan Singh Vs. Ganendra Kumar Roy; A. I. R. 1951 Calcutta 342 Maninder Nath De Vs. Man Singh it was held that where the landlord satisfied the court that he had the means to rebuild, that he had made necessary contract to rebuild and that he had every intention of demolishing the premises and erecting new premises thereon which would be very much more commodious than the previous building, he had proved that the premises were **bonafide** required for rebuilding. In A. I. R. 1959 Punjab 23 Bua Dass Tara Chand Vs. Piare Lal Dewan Chand, it was held that it is not the desire of the landlord to rebuild but his bonafide need of reconstruction that is the determining factor, the judge of which has to be the Court (A. I. R. 1954 Punjab 135 was not followed in this case). A similar view was taken in 1959 Punjab 103 where it was held that a mere desire of the landlord to rebuild or reconstruct without any further evidence, was not enough to sustain the ground of ejection of the tenant. The judge of the fact whether the landlord requires the premises for reconstruction etc, is the Rent Controller, for otherwise, as it would be apparant, the landlord would have an absolute licence. In A. I. R. 1963 S. C. 499 Neta Ram Vs. Jiwan Lal a case under the Patiala and East Punjab States Union Urban Rent Restriction Ordinance (8 of 2006 B K) it was held that before a landlord can obtain an order for ejection of his tenant on ground of his requirement for reconstruction of a house, he must satisfy the Rent Controller about genuineness of his claim and this can only be established of looking into all the surrounding circumstances, such as the condition of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward, and says that he entertains a particular intention, however strongly, said to be entertained by him, otherwise the very purpose of the Act would be defeated.

DECISION WHICH HAS BECOME FINAL NOT TO BE REOPENED

Section 15. The Controller shall summarily reject any application under sub-section (2) or under sub-section (3) of section 14 which raises substantially issues as have been finally decided in a former proceeding under this Act.

COMMENTARY

Res-judicata :—The proceedings for eviction is essentially a proceeding of civil nature and the principle of res-judicata which has been termed as a corollary of law by the Supreme Court, (vide AIR 1965 S. C. 1150, Re: Devlal Vs. Assistant Commissioner) would ordinarily be applicable. That is, if the second suit is based upon the same cause of action and on the same facts, the second suit is barred by principle of res-judicata vide A. I. R. 1951 Bom. 336, Re. N.G. Gor Vs. M. G. Rewal. However, where the question of genuine necessity is involved, it was held that if a suit is dismissed for one type of genuine necessity, the subsequent suit for the genuine necessity of the other person is not barred. AIR 1958 Mys. 113, Re. Narayan Iyengar Vs. Suba Rao; AIR 1958 M. P. 5 Re:—Harak Chand Vs. Karodi Mal; AIR 1954 Pat. 97, Re:—Kedar Nath Vs. Nagindra Narayan.

But where in a suit the landlord basis his claim on one ground only and omits to claim or leaves the other ground, it was held that he would be precluded from bringing another suit on the ground available to him on the date of the first suit vide 1964 Ph. L. R. 1005, Re:—Manmohan Lal Vs. B. D. Gupta. However, the case would be different, when the grounds between the two suits or proceedings are different or successive. In such cases, neither the principle of res-judicata nor the principle of Section 10 C. P. C. would be applicable thereto, for stay. AIR 1962 Mad. 447 Re:—K. Perumal Vs. Muthuswami.

Similarly if the previous suit is dismissed in default, such dismissal does not operate as res-judicata for the filing of the second suit. A.I.R. 1951 Mad. 745 Re:- Miss Revathi Vs. Venketaraman. **But for contrary view** see AIR 1964 All. 36 Re:—Behari Lal Vs. Mangat Ram. Second application is not barred when it is based on the changed

circumstances and improved conditions. A.I.R. 1954 Pb. 135 Re:— Ram Chander Vs. Kidar Nath and others.

The Controller is given the power to summarily reject application if the same point is raised again on the principles of res-judicata. However if the circumstances have changed then the fresh petition can be brought again. This is contemplated even by Section 14(3)(ii)(c) of the Act. See A. I. R. 1954 Punjab 135, Re:— Ram Chander Vs. Kidar Nath and others. **Principles of res-judicata** apply to Rent Controller. 1971 RCR 899 (Delhi) Re:- Raj Kishan Jain Vs. Master Hoshiar Singh Mittal.

Final decision in second application though arrived at in a later proceedings would operate as res-judicata in prior pending proceedings. 1971 RCR 841(DB) (Punjab) Re:- Rattan Chand Vs. Jagmohan Singh.

LEASES OF VACANT BUILDINGS

16. Whenever any building which was constructed before 15th day of August 1966, and was being let out to tenants remains vacant for a period of three months, the Controller may on receipt of an application from a person serve on the landlord a notice informing him that he should show cause why the vacant building be not let out to a tenant, who will pay fair rent to the landlord. On hearing the landlord the Controller may on such terms on which the building was being let out may lease the same to a person who has in his occupation no other building either as a owner or as a tenant.

COMMENTARY

This Section has been newly added with a view to ease the acute housing problems besides curtailing the landlords right to keep the premises, once tenanted, vacant for more than three months. This section applies to any building constructed before 15th day of August, 1966. In such cases, any person can make an application to the Controller for the lease of such premises to him on payment of fair rent but before the Controller exercises his powers under this Section, the service of a show cause notice on the landlord why the vacant building be not let out to the applicant tenant on payment of fair rent, is mandatory.

RECEIPT TO BE GIVEN FOR RENT PAID

17. (1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.

(2) Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid to him, signed by the landlord or his authorised agent.

(3) If the landlord or his authorised agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by the tenant **within two months from the date of payment and after hearing the landlord or his authorised agent, by order direct the landlord or his authorised agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant; and the Costs of the application** and shall also grant a certificate to the tenant in respect of the rent paid.

COMMENTARY

This provision fixes the time of the payment of rent as provided therein and also recognises the obligation of the landlord to pass receipt for the money realised as

rent from the tenant. It also prevents any fraud being practised on a tenant by the landlord by recovering rent twice on the ground of want of receipt for the rent paid by the tenant. If the landlord or his authorised agent fails to perform his obligation and refuses or neglects to deliver to the tenant a due receipt, the tenant can move the Controller within two months from the date of payment and obtain the certificate of payment together with any damages not exceeding double the amount of such rent paid plus the costs of application which may be awarded to him from the landlord. However, the Controller can exercise his powers vested in him under this section only after hearing the landlord or his duly authorised agent.

DEPOSIT OF RENT BY THE TENANT

18. (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 17 or refuses or neglects to deliver a receipt referred to therein or where there is a bonafide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely :—

- (a) the building or rented land for which the rent is deposited with a description sufficient for identifying the building or rented land;
- (b) the period for which the rent is deposited;
- (c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;
- (d) the reasons and circumstances for which the application for depositing the rent is made;
- (e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed:

Provided that no order for payment of any deposit of rent shall be made by the Controller under this sub-section without giving all persons named by the tenant in his application under sub-section (2) as claiming to be entitled to payment of such rent an opportunity of being heard and such order shall be without prejudice to the rights of such rent being decided by a court of competent jurisdiction.

(5) If at the time of filing the application under sub-section (4) but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent complains to the Controller that the statements in the tenant's application of the reasons and circumstances which led him to deposit the rent are untrue, the Controller after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months' rent, if the Controller is satisfied that the said statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation.

(6) The Controller may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard, levy on the landlord a fine which may extend to an amount equal to two months' rent, if the Controller is satisfied that the landlord, without any reasonable cause, refused to accept rent though tendered to him within the time referred to in section 17 and may further order that a sum out of fine realised be paid to the tenant as compensation.

19. (1) No rent deposited under section 18 shall be considered to have been validly deposited under that section, unless the deposit is made within **twenty-one days of the time referred to in section 17** for payment of the rent.

(2) No such deposit shall be considered to have been validly made, if the tenant wilfully makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of filing an application for the recovery of possession of the building or rented land from the tenant.

(3) If the rent is deposited within the time mentioned in sub-section (1) and does not cease to be a valid deposit for the reason mentioned in sub-section (2), the deposit shall constitute payment of rent to the landlord, as if the amount deposited had been validly tendered.

COMMENTARY

Deposit when to be made: The tenant can take benefit of this section and deposit the rent with the Controller

- (a) when the landlord refuses to accept the rental within agreed period or the prescribed period in section 17 or refuses or neglects to deliver the requisite receipt for the money realised as rent from the tenant or
- (b) when there is a bonafide doubt as to the person or persons to whom the rent is payable.

Mode of Valid Tender:—Particular mode for deposit has been provided which is to be accompanied with an application by the tenant containing requisite particulars as envisaged by section 18(2) within 21 days from the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Vide section 19(1) if the application is not made within the prescribed period, then it shall not be considered as valid deposit. Similarly if the tenant wilfully makes any false statement in his application for depositing the rent, then also it would not be a valid deposit unless the landlord withdraws such amount before the date of filing an application for the recovery of the possession of the building or rented land from the tenant. The landlord is entitled to withdraw the amount so deposited by filing an application before the Controller and after satisfying the authority of his right to the rent. The landlord within 30 days from the date of receiving the notice of deposit, can apprise the Controller of the tenant having made false and untrue statement in the application, whereupon the Controller on being satisfied that after giving the tenant an opportunity of being heard, may levy fine which may extend to an amount equal to two month's rent and compensate the landlord out of the fine so realised. The tenant can also be compensated in the same manner, if he satisfies the Controller that the landlord, without any reasonable cause, refused to accept rent though tendered in due time as prescribed by law.

SAVING AS TO ACCEPTANCE OF RENT AND FORFEITURE OF RENT IN DEPOSIT

20. (1) The withdrawal of rent deposited under section 18 in the manner provided therein shall not operate as an admission against the person withdrawing it of the correctness of the rate of rent, the period of default, the amount due, or of any other facts stated in the tenant's application for depositing the rent under the said section.

(2) Any rent in deposit which is not withdrawn by the landlord or by the person or persons entitled to receive such rent shall be forfeited to Government by an order made by the Controller, if it is not withdrawn before the expiration of five years from the date of posting of the notice of deposit.

(3) Before passing an order of forfeiture, the Controller shall give notice to the landlord or the person or persons entitled to receive the rent in deposit by registered post at the last known address of such landlord or person or persons and shall also publish the notice in his office and in any local newspaper.

VESTING OF APPELLATE AUTHORITY ON OFFICERS BY STATE GOVERNMENT

21. (1) (a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing prefer an appeal in writing to the appellate authority having jurisdiction. (In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded).

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order of the Controller shall be final and shall not be liable to be called in question in any court of law except as provided in sub-section (5) of this section.

(5) The High Court may at any time, on the application of any aggrieved party or on its own motion call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit.

COMMENTARY

Section 21 (3) :— An appellate authority can make a further enquiry but cannot remand the case back to the Rent Controller for re-trial and redecision. 1961 P L R. 865 (D B); 1963 Current Law Journal 291, Re :— Krishan Lal Seth Vs. Pritam Kumari. However see 1965 P. L. R. 974 Re.— Rajinder Kumar Vs Basheshar Nath, where it was held that when the evidence of a particular witness on a particular point was vague, it can remand.

Appellate authority can take into consideration subsequent events, facts and developments. Rent Controller and appellate Authority whether can issue notice for perjury under Sections 479—A, 195, 195 (1) (5) of the Cr. P. C.—Held yes. See (1971) 73 P. L. R. 61 (FB) Supra.

Appellate authority has jurisdiction to allow amendment of pleadings. The jurisdiction of the appellate authority is of the widest amplitude under Section 21 (3) of the Act and does not place any fetters on the power of that authority in the matter of passing procedural orders which may become necessary to pass on facts and circumstances of the particular case.

Section 21 (5) :— The Revisional powers of the High Court under Section 21 (5) of the Act are wider than Section 115 of the C. P. C. The power of revision is similar to Section 15 (5) of the East Punjab Urban Rent Restriction Act. The High Court has the jurisdiction to examine the legality and propriety of the finding and see the requirements of the landlord. 1969 R. C. R. 887 (S. C.) Re :— Nanak Chand Vs. Inderjit and others; 1960 S. C. 665 Re :— Moti Ram Vs. Suraj Bhan and other; A. I. R. 1963 S. C. 499 Re :— Chander Bhan Chattar Singh Vs. Jiwan Lal and others; A. I. R. 1968 Delhi 299 (FB)≡(1968) 70 P. L. R. (Delhi Section) 195 Re :— Sant Ram Vs. Mehkoo Lal; 1971 R. C. R. 30 (Delhi High Court H. P. Bench)≡1971 H. L. R. 41 Re.— M/s John Tinson and Co. Vs. Amar Chand Sood; C. R. 18 of 1971 Gurditta Mall Vs. Gita Devi decided on 3-11-1971 by Mr. Justice Chet Ram Thakur of Himachal Pradesh High Court at Simla; A.I.R 1971 Mad. 479 Re :— C. K. Subramaniam Vs. C. K. Ramaswamy.

High Court will not interfere with the findings of fact in revision A.I.R. 1968 Delhi 299(F.B) Sant Ram vs Mehkoo Lal 1971 R.C.R. 33(Delhi H.P Bench) Joham Tinson & Co., vs Amar Chand Sood. 1962 P.L.R. 694 (S.C.) Netaji vs Jeeva Lal. High Court will not permit new point to be raised in revision. A new point, even of law may be allowed to be raised on revision in the High Court under the section, only to promote the larger cause of justice on judicious consideration of the interest of both contesting parties. It cannot be claimed as a matter of right by any one of them merely because such a point possesses merit, in re:- A.I.R. 1968 Delhi 299 (F.B) Sant Ran vs Maiku Lal. The plea of want of notice under section 106 T.P. Act cannot be permitted to be raised in the revision in re:-1969 D.L.T 297 (Delhi H.P. Bench). Vijay Kumar vs Indian Coffee House.

POWER TO SUMMON AND ENFORCE ATTENDANCE OF WITNESSES

22. For the purposes of this Act, an appellate authority or a Controller appointed under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a court under the Code of Civil Procedure, 1908.

COMMENTARY

C. P. C. Applicability :— Rent Controller under the Act has not been conferred with all the powers of a civil court under Civil Procedure Code excepting those which have been mentioned in the Section. As such the refusal to record a compromise in proceedings under the Act, does not make it appealable under Order 43 rule 1 C. P. C. However the Rent Controller has to follow the procedure of a Small Cause Court as prescribed in Civil Procedure Code vide A. I. R. 1969 Delhi 7 Re :—Springdales School New Delhi and others Vs. Sati Tahilramani.

The code of Civil Procedure has been applied to the proceedings before the Rent Controller for a limited purpose but in the absence of the procedure prescribed for the guidance of Rent Controller, on the sound principles of natural justice, the provision of C. P. C. can be invoked by the Rent Controller. (See Also the commentary on Section 2 (a)). Controller and appellate authority is a court for purposes of issuing notice of perjury under Section 479-A, 476 and 195 (1) Cr. P. C. 1971 PLR 61 (F. B.)≡1971 Current Law Journal 142 (F. B.) Re :—Vidya Devi Vs Firm Madan Lal Prem Kumar.

Order 23 rule 1 C. P. C. is not applicable in proceedings under the Act. 1968 P. L. R. 174-B (Delhi Section) re :— Lachhman Dass Sain Ditta Mal Vs. Hanumant Dass.

EXECUTION OF ORDERS

23. Save as otherwise provided in section 26, any order made by the Controller or an order passed on appeal under this Act shall be executable by the Controller as a decree of a civil court and for this purpose, the Controller shall have all the powers of a civil court.

COMMENTARY

The Orders passed under the Act are to be treated and executed as decrees of the Civil Court, and both the ordinary procedures and ordinary rules as to appeals would apply, vide re : 1957 P. L. R. 24. Ordinarily the rights of the decree holder landlord are heritable vide 1968 P. L. R. 913 (D. B.) \equiv A. I. R. 1969 Punjab 270 (D. B.). The order of eviction passed against a tenant can be executed after his death and his widow and sons in occupation of the building, can be evicted in execution there of vide 1963 P. L. R. 606.

LANDLORD AND TENANT TO FURNISH PARTICULARS

24. Every landlord and every tenant of a building or rented land shall be bound to furnish to the Controller, or any person authorised by him in that behalf, such particulars in respect of such building or rented land as may be prescribed.

PENALTIES

25. (1) If any person contravenes any of the provisions of section 10, section 11, section 12 or section 24, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of clause (a) of sub-section (1) of section 7 or sub-sections (1) and (2) of section 8 shall be punishable with imprisonment which may extend to two years and with fine.

(3) No court inferior to that of a magistrate of the first class shall try any offence punishable under this Act.

(4) No Court shall take cognizance of an offence punishable under this Act, unless the complaint in respect of the offence has been made within three months from the date of the commission of the offence.

CONTROLLER TO EXERCISE POWER OF A MAGISTRATE FOR RECOVERY OF FINE.

26. Any fine imposed by a Controller under this Act shall be paid by the person fined within such time as may be allowed by the Controller and the Controller may, for good and sufficient reason, extend the time, and in default of such payment, the amount shall be recoverable as a fine under the provisions of the Code of Criminal Procedure, 1898 and the Controller shall be deemed to be a magistrate under the said Code for the purposes of such recovery.

POWERS TO MAKE RULES

27. (1) The State Government, may, by notification, make rules for the purposes of carrying out all or any of the provisions of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions aforesaid,

the Assembly makes any modification in the rules or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(3) In making any rule the Government may provide that a breach thereof shall be punishable with fine which may extend to Rs. 500 and when the breach is continuing one, with further fine which may extend to Rs. 1,000.

REPEAL AND SAVINGS

28. (1) The East Punjab Urban Rent Restriction Act, 1949 as amended from time to time as in force in the areas comprised in Himachal Pradesh immediately before 1st November, 1966 and the East Punjab Urban Rent Restriction Act, 1949 as amended from time to time in its application to the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 are hereby repealed.

(2) Notwithstanding such repeal, all suits and other proceedings under the said Acts pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Acts, as if the said Acts had continued in force and this Act had not been passed:

Provided that section 4 shall be applicable to all pending suits and proceedings for the fixation of fair rent or eviction against widows, minor sons or unmarried daughters of any tenant and all such suits and proceedings shall be disposed of in accordance with the provisions of this Act:

Provided further that the provisions for appeal under the said Acts shall continue in force in respect of suits and proceedings disposed of thereunder.

COMMENTARY

This Section has a repealing effect. The East Punjab Urban Rent Restriction Act, 1949 with all its amendments which was previously applicable to the area comprising Himachal Pradesh either before or subsequent to the Reorganisation of Punjab State on 1st November, 1966, has been repealed and this Act has come into force from 5th of November, 1971. However the operation of the Act is prospective in as much as all suits, and other proceedings under the said Acts pending, before any Court or other authority, shall be continued and decided and appeals preferred in accordance with the provisions of that Act as if the same had continued in force. In other words the pending rent petitions are to be governed and disposed of according to the provisions of the Punjab Act No. III of 1949, but in such cases too, section 4 has been made applicable not only to the pending suits but also to the proceedings for the fixation of the fair rent or eviction against widows, minor sons or unmarried daughters of any tenant and consequently there to all such suits and proceedings are to be disposed of in accordance with the provisions of this Act. Under section 4, the preferential right amongst the heirs afore-mentioned has been given to the widow and in the absence of the widow, the minor sons and daughters (unmarried). However in cases of unmarried daughter or daughters, the protection is given to her or all of them till her or their marriage irrespective of the fact that all or any of them attains or have attained majority. Such heirs shall be entitled to retain possession on the same terms and conditions as the deceased tenant. See also commentary on section 4.

THE SCHEDULE

(See clause (h) of section 2)

1. *Lawyers.*
2. *Architects.*
3. *Dentists.*
4. *Engineers.*
5. *Veterinary Surgeons.*
6. *Medical practitioners, including practitioners of indigenous systems of medicine.*

APPENDIX 'A'

Notification Exempting Premises and Appointing Controller and Appellate Authorities.

EXEMPTIONS

Notification No.7043- I.C.I.—66/22940 dated 18.8.1966.

1. "In exercise of the powers conferred by Section 3 of the East Punjab Urban Rent Restriction Act, 1949(East Punjab Act No. III of 1949), the President of India is pleased to exempt every building constructed during the years 1966 and 1967 from the provisions of the said Act for a period of five years from the date of its completion."

2. **Government property:**— Notification No. 4630-C.48/1764 dated 5.1.1949 "In exercise of the powers conferred by Section 3 of the Punjab Urban Rent Restriction Act, 1947, the Governor of East Punjab is pleased to exempt all Crown property from the provisions of the said Act."

3. **Properties belonging to local bodies:**—(i) By Notification dated 21.2.1947 issued under section 3 of the Punjab Urban Rent Restriction Act, 1941, the Governor of Punjab declared that the provisions of the Act shall not apply to the following premises vesting in a local body administering the urban area in which such premises are situated:—i) any building or part of a building let separately for being used as a shop or stall;

(ii) any land separately let for the purpose of being used principally for business or trade. However, by subsequent notification dated 26.4.1948 the above notification was cancelled. In so far as it related to urban areas in East Punjab except the urban area Jullundur, Ambala and Ferozepure. But another notification was issued subsequently:—

Notification No.4696-CI(II CI)59/17859 dated 3.6.1959—

4. "In exercise of the powers conferred by section 3 of the East Punjab Urban Rent Restriction Act, the Governor of Punjab is pleased to direct that the provisions of the aforesaid Act, shall not apply to the buildings and rented land belonging to Municipal Committees, Notified Area Committees, District Boards or Panchayats."

CONTROLLERS AND APPELLATE AUTHORITIES

1. **Subordinate Judges of First Class appointed Controllers:**— "In pursuance of the provisions of clause (b) of section 2 of the Punjab Urban Rent Restriction Act, 1947, the Governor of the Punjab is pleased to appoint all first class Subordinate Judges in the Punjab to perform the functions of Controllers under the said Act in the Urban area within the limits of their existing civil jurisdiction". (*Vide* Notification No. 1562-Cr-47/9224. published in the Punjab Gazette, Extraordinary, dated 14th April, 1947 at page337).

2. **Subordinate Judges of Third Class posted at places other than head-quarters appointed Controllers:**— "In exercise of the powers conferred by clause (b) of section 2 of the East Punjab Urban Rent Restriction Act, 1949, the Governor of Punjab is pleased to appoint all Subordinate Judges of the third class posted at places other than district head-quarters, in Punjab to perform the functions of the Controllers under the said Act in the Urban area within the limits of their civil jurisdiction."

[*Vide* Notification No 1985-LG (A)—51/II/1067, dated the 17th April, 1951, published in Punjab Gazette, Part I A, dated 27th April, 1951].

3. Subordinate Judges of Second and Third Class appointed as Controllers :—All Subordinate Judges of Second Class, posted at places other than district headquarters, in Punjab and all Subordinate Judges of Second and Third Class posted at district headquarters, have been appointed Rent Controllers within the limits of their respective civil jurisdictions. [*Vide* Notification No. 9803-LB—52/18958, dated 11th November, 1952 and No. 5665 LB-55/38293, dated 1st July, 1955 respectively].

4. District and Sessions Judges appointed Appellate Authorities.
 “In exercise of the powers conferred by sub-clause (a) of clause (1) of section 15 of the Punjab Urban Rent Restriction Act, 1947, the Governor of Punjab is pleased to confer on all District and Sessions Judges in the Punjab in respect of the urban areas in their respective existing jurisdiction, the powers of Appellate Authorities for the purpose of the said Act, with regard to orders made by Rent Controllers under sections 4, 10, 12, and 13 of the said Act.” [*Vide* Notification No. 1562 Cr. 47/9228 published in the Punjab Gazette, Extraordinary, dated 14th April, 1947, page 337].

Applicability to Cantonments :—The Act applies to cantonments in the States of Haryana and Punjab vide Ministry of Defence Notification No. S. R. O. 7 dated 21-11-1969.

56070
25.1.77



Library

IAS, Shimla

PH 347 So 62 U



00056070