

Balbir Singh Vs. Hari Ram

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Court : Punjab and Haryana

Decided On : Jun-03-1982

Reported in : AIR1983P& H132

Judge : Kulwant Singh Tiwana and; M.M. Punchhi, JJ.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 12 and 13(3); [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 12; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

Appeal No. : Civil Revn. No. 733 of 1981

Appellant : Balbir Singh

Respondent : Hari Ram

Advocate for Pet/Ap. : Shri. D. V. Sehgal

Judgement :

K.S. Tiwana, J.

1. The question requiring determination in this civil revision is whether a tenant can prospectus an application under Section 12 of the Haryana Urban (Control of Rent and Eviction) Act (Haryana Act No. 11 of 1973), hereinafter referred to as the Haryana Act, to carry out the repairs during the pendency of the application of the landlord unde Section 13(3)(c) of this Act for his eviction on the ground of the

premises being unfit and unsafe for human habitation.

2. The facts giving rise to this Civil Revision are that Balbir Singh petitioner, a tenant in a shop belonging to Hari Ram respondent-landlord, filed an application under Section 12 of the Act before the Rent Controller, Narwana for permission for replacement of the last-Khan (span) of the roof of the shop in which he runs his bakery. The respondent, on the same day, filed an application under Section 13(3)(c) of the Act for ejectment of the petitioner from these premises taking a ground that because of the falling of the roof the premises having become unsafe and unfit for human habitation. In his application under Section 12 of the Act, the petitioner made a demand for urgent repairs in the premises. The learned Rent Controller relying on *Dr. Piara Lal Kapur v. Smt. Kaushalya Devi*, (1970) 72 Pun LR 411 and *Smt. Bhagwanti v. Yashodha Devi*, 1980(1) Rent CR 574, held that the application on behalf of the tenant under Section 12 of the Act is not maintainable when the landlord has also filed an application, seeking his eviction on the ground that the demised premises were unsafe and unfit for human habitation.

3. Balbir Singh came to this Court in revision. At the motion hearing the landlord single Judge observed : 'However, I feel that there is nothing in the statute, which debars the tenant's right to make a prayer for repairs during the pendency of the application by the landlord for his ejectment' and the revision was admitted for hearing before a Division Bench.

4. The case was argued before us at length by the counsel for the parties. The arguments covered the filed of the scope of Section 12 in the light of Section 13(3)(c) of the Haryana Act when the landlord exercises his right under the statute in approaching the Rent Controller for evicting the tenant. Arguments were also addressed by the learned counsel as to what is meant by the words 'necessary repairs' as it occurs in Section 12; the meaning of the word 'repair' and also whether the replacement of the roof falls within the ambit of 'necessary repairs' and not under the structural alternations.

5. Before we deal with the point in issue, it will be proper to notice the relevant provisions of Section 12 and Section 13(3)(c) of the Haryana Act. These are :--

'S. 12. If a landlord fails to make the necessary repairs to a building other than structural alterations, the Controller shall be competent to direct, on an application by the tenant, and after such enquiry as the Controller may think necessary, that such repairs may be carried out by the tenant and the costs thereof may be deducted from the rent which is payable by him :

Provided that if the Controller is satisfied from affidavit or otherwise that urgent repairs are essential, he may by order in writing, allow the tenant to get the repairs carried out on such terms and conditions as may be imposed by the Controller, subject to his final decision as regards the costs thereof. Section 13(3) : A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession :--

(a) and (b).....

(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the State 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 : Provided that'

6. On behalf of the respondent it was stated that the point in controversy is not res integra. This was raised in earlier cases and adjudicated upon by this Court in a similar matter which came up before a Division Bench of this Court in Dr. Piara Lal Kapur's case (1970) 72 Pun LR 411(supra).

In that case, Smt. Kaushalya Devi and her son the landlords, made an application for the eviction of Dr. Piara Lal from a shop situated at Amritsar on the ground that the premises had become unsafe or unfit for human habitation, since the front wall and a part of the roof of the demised premises were not in exercise. Dr. Piara Lal Kapur also filed an application under Section 12 of the [East Punjab Urban Rent Restriction Act, 1949](#)(Act III of 1949), hereinafter referred to as the Punjab Act, which is similar to Section 12 of this Act except the proviso, which provides for all the urgent repairs as an interim measure. Four conclusions can be noticed to flow from Dr. Piara Lal Kapur's case having a bearing on the point in issue :--

(i) An order for repairs can be made in an appropriate case on an application made by the tenant under Section 12 of the Act;

(ii) Repairs can be allowed at the instance of the tenant if these are such without which the premises have neither been rendered unsafe nor unfit for human habitation;

(iii) Even if repairs are called for to render a building which has become unsafe or unfit for human habitation as fit for the same and an application is made by a tenant under Section 12 and it is found that whatever is required to be done for making the premises fit and habitable would merely amount to repairs and not structural alterations an order can be passed in favour of the tenant if the landlord has not exercised his right under Section 13(3)(a)(iii) of the Punjab Act to evict the tenant on account of the premises having become unsafe or unfit for human habitation;

(iv) If the landlord succeeds in making out a case to the effect that the demised premises have become unsafe or unfit for human habitation, he is entitled to obtain an order for eviction of the tenant even if it will be possible to make the building fit or habitable by carrying out extensive repairs.

7. In Smt. Bhagwanti's case ((1980) 1 Ren CR 574), a learned single Judge of this Court dealt with a similar provision under the Punjab Act and held :--

'It was, however, to be noted that the language of Section 12 and Section 13(3)(a)(iii) of the Act are materially different. In Section 12 of the Act it is provided that if a landlord fails to make the necessary repairs to a building other than structural alterations, it shall be competent for the Controller to direct on application by the tenant, and after such enquiry as the Controller may think necessary, that such repairs may be made by the tenant, and that the cost thereof may be deducted from the rent, which is payable by him. Section 12 cannot be read along with Section 13 of the Act. If the tenant has not exercised his option before filing an application for ejectment under Section 13(3)(a)(iii) of the Act, he cannot derive any benefit under Section 12 of the Act.'

The learned Judge in this case drew support from the Division Bench judgment in Dr. Piara Lal Kapur's case (1970) 72 Pun LR 411(supra).

8. A situation, it was suggested, can arise in which a tenant may carry out repairs himself without asking the landlord to do those. He may not even have a recourse to Section 12 and avoid his eviction by carrying out the major repairs, keeping those away from the knowledge of the landlord, and put back the premises in a fit and habitable condition, which may have become unsafe and unfit for that purpose. When the landlord may file a case against him he may take the position that the Act does not contain a prohibition against such repairs by the tenant and he could do those. I do not subscribe to this view. The language of Section 12 is explicit and makes it manifest that it is the landlord, who has to carry out the repairs of the tenanted premise. It is for this reason that this provision has been made that if he fails to do it, then the tenant can have a recourse to this section. There is a built in prohibition in this provision restraining the tenant to carry out the repairs himself at his volition. In this way, by carrying out of all the major, minor, necessary or urgent repairs of the premises, the tenant cannot defeat the right of the landlord to evict him on the ground under S. 13(3)(c), if such a situation had come to exist at any time. Once a right accrues to the landlord to seek eviction of the tenant on account of safety or unfitness of the premises for human habitation, it will remain alive, according to *Gajana Dattatraya v. Sherbanu Hosang Patel*, AIR 1975 SC. 2156. We will refer to this to detail a little latter.

9. The tenant comes and remains in occupation of the demised premises on the basis of indenture of lease, oral or written. The rent legislation has been brought on the Statute Book for protection the tenants. By this legislation the right of ownership, including right of possession of the landlord, is not eliminated. The relationship of landlord and tenant for the purpose of ejection is governed by the statute and the Courts or Tribunals deciding the cases cannot travel beyond the provision of the statute. The Act gives protection to the tenant only till the time he does not violate the terms of the lease, the provisions of the statute or does not make any default. Examples can be cited from the statute itself. The Haryana Act under Section 13 provides for certain situation in the event of existence of which the tenant either forfeits his tenancy and becomes liable to eviction or the landlord

gets a right to evict him. The tenant becomes liable to eviction; if (i) he has not paid or tendered the rent in the circumstances given; (ii) has transferred or sublet his right or has rented the building for the purpose other than it was leased; (iii) if the tenant has committed or caused to be committed any act, which impairs or is likely to impair the value or utility of the property; (iv) of the tenant is guilty of such an act or conduct as are in nuisance to the occupants in the neighbourhood; (v) has failed to occupy for a certain period; (vi) under S. 13(3)(c) if the building has become unsafe or unfit for human habitation; etc. The term used in these provisions is 'has'. The same term has been used under Section 13(3)(c) as it was used in other parts of this section. There is no controversy that if a tenant sublets the tenanted premises, he loses a right to continue as a tenant, the moment he inducts a sub-tenant in the premises. He cannot be heard to say that on the day of the filing of the petition for eviction or on the day of passing of the orders by the Rent Controller, there was no sub-tenant on the premises. *Gajanan Dattatraya v. Sherbanu Hosang Patel*, AIR 1975 SC. 2156 is an authority on the point, wherein it has been held (at page 2158) :--

'The provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases. To accede to the contentions of the appellant would mean that a tenant would not be within the mischief of unlawful subletting if after the landlord gives a notice terminating the tenancy on the ground of unlawful subletting the sub-tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is proved.'

This is also the view of this Court on subletting by a tenant. Similar is the position about nuisance. In a recent case reported as *Jagdish Chand v. Mst. Bachni Devi*, 1980 CLJ (Civil) 490, a learned single Judge of this Court held :--

'To elucidate the point mentioned above, let us take the case where a landlord has applied for the eviction of the tenant on the ground of subletting without the written consent of the landlord. During the pendency of the ejectment petition, the tenant removes the sub-tenant. Can in such a case the tenant claim that the ground for his ejectment no longer exists and he should not be ordered to be evicted? The answer is apparently in the negative. If any authority on the point is required, the same may be found in *Gajanan Dattatarya v. Sherbanu Hosang Patel*, AIR 1975 SC. 2156. In this case, the Hon'ble Supreme Court laid stress upon the language in the relevant clause of the Bombay Rents, Hotel and Lodging House Rates Control Act and the tenant 'has sublet' and held that the protection from eviction afforded to the tenant ceases, the moment he sublets the premises and this would be irrespective of the fact as to whether the subletting had or had not continued till the date of the suit for eviction. On the same analogy, if the eviction of the tenant is sought on the ground of causing nuisance to the occupiers of the building in the neighbourhood, the tenant could avoid eviction by removing the nuisance during the pendency of the ejectment petition. In this respect, we can safely apply the ratio of the Supreme Court case referred to above in interpreting the words used in the relevant clause of the Punjab Act, namely, 'the tenant has been' (emphasis mine) guilty of such acts and conduct as are a nuisance to the occupiers of the building in the neighbourhood.'

10. Owner of a building, once it becomes unsafe or unfit for human habitation, acquires a right to ask for the eviction of the tenant. The tenant cannot negate his remedy or thwart the right by his own act. Experience of the cases under the Rent Act shows that most of the tenancy in this area is for 11 months, year to year, or for a fixed period. A tenancy cannot be converted into a perpetual tenancy by the tenant by negating the right of the landlord by his own action. Even if the structure, because of age or certain other factors, is crumbling, the landlord has the choice to take a decision about it as to whether he is to restore it to its original position by extensive repairs or to make a new construction in its place. The observations in *Jagdish Chand's case* (supra), which is under the Punjab Act III of 1949 (S. 13(3)(a)(iii) of the Punjab Act is equivalent to Section 13(3)(c) of the Act) can be referred to beneficially :--

'Applying the above ratio to the case in hand, the relevant clause of the Act mentions the ground of eviction as follows :-- '3(iii) in the case of any building or if it has become unsafe or unfit for human habitation.' As we would notice, the phraseology used in this clause, i. e., 'has become' has been repeated as in the case of other grounds for ejection. This being so, it can be safely inferred that once the building of the premises becomes unsafe or unfit for human habitation, no amount of subsequent repairs carried out by the tenant can deprive the landlord of his valuable right to evict the tenant. I am, therefore, unable to agree with the learned appellate Authority that as the tenant in the present case had brought the fallen roof of its original shape, she was no longer liable to be evicted. We can consider this matter from another angle also, though hypothetical. In the case of a roof having collapsed, the option rests with the landlord to see as to what type of new roof he should construct and this may be in the light of his future plans to construct another room or storey about the roof for which purpose, he is bound to reconstruct the roof with the suitable strength so as to withstand the additional load of the upper storey. Can the tenant by replacing the mud roof frustrate all such plans of the landlord? Certainly not. Apart from the consideration of constructing another storey, a landlord may desire to effect a much stronger roof to avoid its falling a second time and this again is for him to decide and carry out, which he can do so only after the premises are vacated by the tenant.'

These instances in Jagdish Chand's case, though hypothetical, have a meaning. It is the landlord, being the owner of the property, and not the tenant, who has to take a decision as to what sort of repairs, in case those happen to be extensive, are to be carried out or what type of roof is to be rebuilt and with what purpose, keeping in view the future use of the property. Although it was hypothetically argued before us at length whether the replacement of a roof falls within the ambit of the word 'repair', I abstain from deciding it, as the matter in the present case about this has yet to be decided by the Rent Controller and the admitting order does not specifically refer to it. I have touched the point only where it became necessary for the decision of this case. I am referring to replacement of the roof only in the context of the issue involved. As I have said in the light of Gajanan Dattatraya's case (AIR 1975 SC. 2156)(supra) that once the building has, in the opinion of the landlord, become unsafe or unfit for human habitation and he

satisfies the Rent Controller about it, the liability of the tenant for eviction arises. The liability for eviction normally dates back from the time the building comes in such a state. If the tenant takes a pre-emptive step by taking proceedings under Section 12 and secures an order for carrying out the repairs, even if these are major, to make the building safe and fit for human habitation, then the plea of the landlord under Section 13(3)(c) of the Haryana Act, however strong it may be, can be thwarted. As I infer from (iii) reproduced in para 6 from Dr. Piara Lal Kapur's case (1970) 72 Pun LR 411, a tenant can successfully block his eviction if he gets the premises repaired in the circumstances envisaged in that case. But, this is not permitted by Gajanan Dattatraya's case (supra) where the Supreme Court in so many words said 'the tenant's liability for eviction arises once a fact of unlawful subletting is proved.' The view in Dr. Piara Lal Kapur's case to this Supreme Court in the case of Gajana Dattatraya, and cannot hold the field. At one stage it was argued by Shri D. V. Sehgal, learned counsel for the petitioner that the order under Section 12 of the Haryana Act is binding on the Rent Controller in proceedings under Section 13(3)(c). We cannot subscribe to such a conclusion. It is just the converse. A decision under Section 13(3)(c) will be binding on the parties, as it will finally determine the question of eviction. If the landlord fails he may not legitimately be able to obstruct the proceedings under Section 12 for permission for repairs claimed on behalf of the tenant. If the tenant fails to resist the eviction under this provision, then he has no case for repairs under Section 12. After an order adverse to the interest of the tenant under S. 13(3)(c) S. 12 cannot be invoked by him. It is, therefore, not correct to say that any order under Section 12 of the Act has an overriding effect over the orders under S. 13(3)(c).

The words used in Section 12 are 'necessary repairs'. The proviso, the equivalent of which is not found in Section 12 of the Punjab Act, authorises the Rent Controller, if he is satisfied on the basis of affidavit or otherwise, to permit the tenant to carry out urgent repairs, which may be essential, subject to the imposing of certain conditions. This proviso creates a distinct position, which is not in the Punjab Act, in which the urgency of the repairs is to be established. The ordinary dictionary meaning of the word 'necessary' are indispensable; unavoidable; inevitable; untenable. The meanings of the word 'urgent' are 'pressing, calling for haste, grave necessity.' These words, as used in regard to the repairs of a

building, as in Section 12 and its proviso, are to be ascribed the ordinary dictionary meanings. Section 12 and its proviso contain different phrases, that is, 'necessary repairs', and 'urgent repairs', having the same meaning in the context in which they are used. In the proviso, emphasis is added to the urgent repairs by using the word 'essential'. The use of the word 'essential' predicating the subject refers to the indispensable element of the urgency of the repairs. 'Essential' nature of the repairs fall within the ambit of the proviso to Section 12. The Rent Controller is to allow only those repairs, which are urgent and essential. While allowing, he is to keep in view the right of the landlord under Section 13(3)(c), for which a matter may be pending or might come before him. The premises due to age or due to the neglect of either the landlord or the tenant to look after these or various other reasons may fall in such a condition that it may pose immediate danger to the premises in case those are not attempted to immediately. Take the case where the building can be saved with which may tend to pose danger to its fitness or safety for human habitation if the repairs are delayed. On the application of the tenant, the Rent Controller proviso to Section 12 is to allow only those repairs, which are urgent and necessary. The Rent Controller has to assess the repairs and the condition of the building before he allows these repairs. This he can do in various ways; by inspection of the premises himself, through the commission etc. The proviso seems to have been added keeping in view certain situations, where the urgency is such that action may not wait for the proceedings, like an application under Section 13(3)(c) of the Haryana Act in case one is brought by the landlord, which because of certain reasons may not be decided expeditiously. This is a feature, which is distinct from the Punjab Act, under which Dr. Piara Lal Kapur, ((1970) 72 Pun LR 411) and Smt. Bhagwanti's cases (1980(2) Ren CR 574) were decided.

In Dr. Piara Lal Kapur's case, which was under the Punjab Act the Bench coined a phrase 'extensive repairs', which is not found in the Act. 'Extensive repairs' though mean, large, far-reaching and comprehensive in nature, but yet may not fall within the category of 'necessary repairs' mentioned in Section 12 or 'urgent repairs', which may be essential as required by the proviso.

In this situation, it may not be appropriate to hold that in all cases the Rent Controller has to stay the proceedings under Section 12 to wait the result of the

petition of the landlord brought before him under Section 13(3)(c). The proviso, in case the situation is grave, makes a special type of exception for allowing of the urgent repairs, which are essential.

It also requires a notice that Section 12 can be invoked by the tenant only in a limited sphere, that is, for recovery of the costs of the tenantable repairs from the landlord if he fails to carry those out, even the proviso operates subject of the final decision on costs of their repairs. It is not within the scope of Section 12 to find out whether the demised premises are in such a condition that those are unsafe or unfit for human habitation. Though Section 12 of the Act is wide in scope and operation than the corresponding provision in the Punjab Act, in the matter of allowing urgent repairs, but that cannot operate to repel the right of the landlord. The urgent repairs so permitted do not operate to negate the right of the landlord if he is able to establish that the building had become unsafe or unfit for human habitation and would have continued to be so, but for the repairs. Under S. 12 of the Act, if from the affidavit or otherwise the Rent Controller is satisfied that 'urgent repairs' which normally should mean 'necessary repairs', are essential, then he may by order is writing allow the tenant to carry those out subject to the terms and conditions imposed by him and subject to his final decision regarding the costs thereof. Whether the demised premises are unfit or unsafe for human habitation fall exclusively within the field of operation of Section 13(3)(c). Since this is not the scope of sphere of S. 12, it cannot trample the field operation of Section 13(3)(c) of the Haryana Act and care has to be taken that the purpose of a petition under Section 12 is not permitted to be to knock out the claim of the landlord under Section 13. The tenant cannot, by recourse to Section 12 of the Act, be permitted to improve the condition of the premises to save his eviction by taking out the premises from the purview of Section 13(3)(c), by remedying those defects in the impaired portion of the premises through the repairs. The words in Section 12 are 'necessary repairs to a building other than structural alterations'. The repairs which are covered by these terms are those which are necessary for the purposeful, effective and beneficial utilisation of a tenanted premises. In an enquiry the responsibility may have to be fixed on the landlord or the tenant for bringing the landlord building in the condition in which the landlord described it as unsafe or unfit for human habitation. This has to be done as no one can be permitted to

capitalise on his own act.

11. Whether it is a structural change or a 'necessary repairs' is a question of fact determinable in proceeding under Section 12 when the tenant approaches the Rent Controller under the circumstances mentioned in this section. This will, however, not be binding in the proceeding under S. 13(3)(c) of the Act if the landlord contests it on the ground that the premises but for these repairs had become unfit or unsafe for human habitation. If the tenant establish that whatever the landlord says is not correct and the building can be put back in the same position by repairs, as this word is understood in the context of S. 12, then he can non-suit the landlord in the action under Section 13(3)(c). All these elements of repairs can be normally gone into by the Rent Controller in proceedings under Section 12. There is no specific provision in the Act as to what course is to be adopted if the tenant and the landlord simultaneously approach the Rent Controller under Sections 12 and 13 respectively. Section 13(3)(c) does not debar the tenant to approach the Rent Controller under Section 12 during the pendency of the position of the landlord seeking his eviction on the ground that the premises are unfit and unsafe for human habitation.

12. It is not necessary that the landlord has to succeed in every case, when he approaches the Rent Controller under S. 13(3)(c) of the Haryana Act. The unsafe and unfit condition of the building, to fulfil the object of this section, is a question of fact. He is to satisfy the Tribunal functioning under the Act on this question of fact before he succeeds. The tenant may on the other hand prove that the building is safe and fit for habitation and can defeat the claim of the landlord. Such a building may still require necessary repairs even urgently, for the purposeful utilisation of the tenanted premises. If this is the position, the question of repairs, which call for urgency, can be permitted to be enquired into simultaneously and the decision on an application under Section 12 may not await this decision under Section 13(3)(c).

13. As said earlier Section 13(3)(c) of the Act does not debar a tenant from approaching Rent Controller under S. 12 during the pendency of the petition of the landlord seeking his eviction on the ground that the leased premises are unsafe or

unfit for human habitation, nor there is any express prohibition towards that. The proviso to Section 12 of the Act creates a special situation. It can be invoked by the tenant in justifiable circumstances. As noticed earlier, it has a purpose to help those tenants who may be inconvenienced by the defaulting landlords by not carrying out urgent and essential repairs in the tenanted premises. In my view, there is no conflict in Section 12 and Section 13(3)(c) of the Act, if they are operated in their relative spheres. Dr. Piara Lal Kapur's case ((1970) 72 Pun LR 411), a part of which, as noticed earlier, is pro tanto repealed by the Supreme Court judgment in Gajanan Dattatraya's case (AIR 1975 SC. 2156) and Smt. Bhagwanti's case, which are under the Punjab Act, do not extend help to interpret Section 12 of the Haryana Act, as was sought by the Rent Controller.

In view of this, any petition under S. 12 of the Haryana Act is not earlier to be dismissed at the threshold or stayed due to the pendency of the petition of the landlord under Section 13(3)(c) of the same Act. The application of the tenant in this case could not be dismissed by the Rent Controller. The revision is accepted and the order under revision is set aside.

M.M. Punchi, J.

14. I have delightfully read the lucid judgment prepared by my learned brother Kulwant Singh Tiwana, J. The clear transparency of the legal expositions therein encourage me indeed to add a few words of my own thereto.

15. The relationship of Sections 12 and 13 of the Haryana Act and of the same sequenced sections of its precursor the Punjab Act, is required to be discerned.

16. Take Section 12 in the first instance. It is plain that it operates only when the landlord fails to make the necessary repairs (contradistinct to structural alterations). There is obvious inbuilt taboo to the tenant to carry out any repairs himself at his sweet will. The failure of the landlord to make the necessary repairs gives the tenant a justifiable cause of approach the Rent Controller under Section 12 by making the necessary application. The Rent Controller then undertakes an inquiry, as he may think necessary, and then decides if such repairs may be carried out by the tenant. In that event, the costs thereof may be ordered by him to

be deducted from the rent which is payable by the tenant. In both the enactments, the inquiry is confined to 'necessary repairs'. The proviso to S. 12 in the Haryana Act, however, authorises the Rent Controller, if satisfied from affidavit or otherwise, to order urgent repairs on such terms and conditions as may be imposed by him. But his interim decision in that regard is again subject to his final decision as regards the costs thereof. In *Dr. Piara Lal Kapur v. Smt. Kaushalya Devi*, (1970) 72 Pun LR 411, the Bench coined the expression 'extensive repairs'. Whatever be the adjective used to the word, repairs remain repairs, but can be differentially graded.

17. In the context of Section 12 of the enactments, case law is varied as to whether the replacement of a roof of a building or a part thereof would fall within the ambit of the section. See in this connection *Chandu Lal v. Har Lal*, (1966) 68 Pun LR (SN) 36 and *Dr. Jagmohan Singh v. Smt. Bimla Devi*, (1975) 77 Pun LR 643, illustratively. The former judgment was taken note of by the Division Bench in *Dr. Piara Lal Kapur's case* ((1970) 72 Pun LR 411)(supra) and spelled out to be a case on its facts. There seems, however, no fetter on the power of the Rent Controller to allow under Section 12, repairs. But it must be clearly understood in the context that the limited object of the Rent Controller in permitting repairs is to allow the tenant to restore the building to his beneficial use as demised and to reimburse him in that even of the costs of the repairs, and none other. It cannot be said that if the tenant was successful in obtaining a repair order under Section 12, he could do what he liked or that the landlord as a consequence was held a guilty party and deprived of his rights available under S. 13 of the enactments.

18. In *Dr. Piara Lal Kapur's case* (supra), the Division Bench had predicated a race between the landlord and the tenant. It took the view that the tenant could obtain permission from the Rent Controller of not only necessary but even extensive repairs. Those extensive repairs could even have the effect of removing the state of the building having become unsafe or unfit for human habitation. But in the same breath, the Bench held that in case the landlord had approached earlier than the tenant under S. 13(3)(a)(iii) of the Punjab Act for eviction, then the tenant under Section 12 could not ask for extensive repairs which would go to the extent of making the building safe or fit for human habitation. In other words, the view of the

Bench was that the grade of repairs and the time factor in approaching the Rent Controller determined the scope of the inquiry under Section 12 and his jurisdiction.

19. Now under both Acts, the landlord has been given the right to approach the Controller for an order directing the tenant to put the landlord in possession in the case of any building or rented land, if it has become unsafe or unfit for human habitation. Broadly stated, all the grounds of eviction provided in Section 13 of both Acts can be classified in four categories--(i) fault of the tenant and the landlord cashing thereon; (ii) the innocent tenant to be asked to make way for the requirement and need of the landlord, (iii) the landlord hard-pressed to execute building work at the instance of the State Government, improvement trust etc., and (iv) the defective/faulty premises rendered unsafe or unfit for human habitation. The fourth category, it seems, does not take into account as to which out of the two parties, i. e. the landlord or the tenant, was at fault or whose neglect or volition, had made the building unsafe or unfit for human habitation. It equally does not take into account the speed of the natural factors of ordinary wear and tear and aging of the building. In *Gajanan Dattatraya v. Sherbanu Hosang Patel*, AIR 1975 SC. 2156, the case was plainly of the first category. In *Jagdish Chand etc. v. Mst. Bachni Devi*, 1980 CLJ (Civil) 490(Punj & Har), *Gajanan Dattatraya's* case (supra) was applied to a case falling in the fourth category. Thus the case of a faulty tenant was equated with the case of a faulty premises by extension of the principle, and in my view rightly.

20. It is worthy to recall that in *Gajanan Dattatrayas* case (supra), the tenant could not be heard to say that the default alleged against him of subletting was not existing, but it was rather held in the terms that it having once existed, the order of eviction must follow. Likewise, if the faulty premises had at one time become unsafe or unfit for human habitation, the tenant cannot be heard to say that it is not so, for he had caused it to be safe and fit, by getting a repair order from the Rent Controller under Section 12, or that he had got repaired the building on his own, foresaking his claim to the costs. Thus the building, if becomes once unsafe or unfit for human habitatio, it confers a right on the landlord for eviction of the tenant and that right could be defeated by the tenant on his own, or by his seeking an

order under Section 12, even if the landlord has not come earlier to the Court seeking eviction under S. 13. In this context, Gujanan Dattatraya's case (supra) has pro tanto overruled Dr. Piara Lal Kapur's case (1970) 72 Pun LR 411(supra) so far as it relates to this aspect of the matter. And if that is so, there is no relationship between Sections 12 and 13 as their spheres are strait-jacketed and well defined.

21. Thus held, a right vested in the landlord under Section 13 cannot be defeated or wiped out by an order under S. 12. A right vested in Section 12, even if exercised earlier, cannot defeat a landlord's petition under Section 13. But such order under Section 12 is without prejudice to and subject to the right of landlord accrued under Section 13. And whether such right accrued at all is a question of fact finally to be determined in proceedings under Section 13. But under Section 12, the enquiry is to the limited extent as to what is the existing state of the building required to be necessarily repaired. The limited scope of inquiry is well laden in Section 12. And under the proviso thereto in the Haryana Act, the Rent Controller can pass an order even without any elaborate inquiry and even on affidavits, but under the main section, the inquiry he undertakes is as he 'may think necessary'. The proceedings of eviction contemplated in Section 13 are different from an inquiry as conceived of in Section 12, for in the very nature of things, the objects of both the sections are different and distinct.

22. The Haryana Act even prohibits under Section 13(6) and the Punjab Act under Section 13(4) the landlord who has obtained possession of a building on such ground to put that building to any use or let it out to any tenant other than the tenant evicted from it. It correspondingly confers a right on the evicted tenant, in case of breach, to apply to the Rent Controller for an order directing that the possession of such building or rented land shall be restored to him. This is an adequate safeguard that a building or rented land, which has become unsafe or unfit for human habitation, cannot be used by the landlord, or to be let cannot be used by the landlord, or to be let out to another, and the only person who can use it in the unsafe or unfit condition, of course at his own risk, is the evicted tenant. The intention of the Legislature is clear that it is the landlord who, by his own acts or repair or reconstruction is entitled to remove the unsafe or unfit condition of the

building for human habitation and not the tenant, who cannot violate the legal right of the landlord to put, pull down and raise his building to his taste and choice.

23. Having added these words, I agree with my learned brother Kulwant Singh Tiwana, J. I also agree that the application of the tenant in this case could not be dismissed by the Rent Controller and that the revision petition should be accepted, setting aside the order impugned, but leaving it open to him to proceed in accordance with law and in the light of the observations made herein.

24. Order accordingly.

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