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P.K. VASUDEVA  
v.  
ZENOBIA BHANOT

AUGUST 11, 1999

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[V.N. KHARE AND S.N. PHUKAN, JJ.]

*Rent Control & Eviction:*

C *East Punjab Urban Rent Restriction Act, 1949—Section 13A—Revision Petitions filed by tenant against the order passed by Rent Controller after remand of case—High Court recalled earlier order of Single Judge dismissing revision petition on agreement of parties—Matter remanded to Rent Controller—Parties appeared before Rent Controller—Order of remand stood exhausted—Order passed on concession of counsel and the other party acted upon such order—Held, such order cannot be challenged by the tenant on the ground that earlier order of dismissing revision petition passed by Single Judge having attained finality as it was not challenged by landlady—Hence, High Court rightly dismissed the tenants' revision petition challenging the order of Rent Controller passed on the basis of the remand order.*

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E Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 was extended to the Union Territory of Chandigarh which provided for immediate recovery of residential premises by a landlord who had retired from government service or was about to retire. The respondent-widow of retired government servant filed applications for eviction against four tenants residing in four separate tenements in a building. The Rent Controller passed orders of eviction against two of the four tenants. Aggrieved tenants filed revision petitions. The revision petitions were allowed giving option to the respondent to choose any one of the four tenants for eviction as per second proviso to Section 13A of the Act. Thereafter, following the decision of the High Court, the Rent Controller rejected the other applications of the respondent. The respondent filed revision before High Court. The Division Bench endorsed the view of the High Court that only one tenant could be evicted and the Single Judge following opinion of the Division Bench, dismissed the revision petitions on 10.05.1993. Thereafter, the respondent relying on the matter of *Zenobia Bhanot v. P.K. Vasudeva* filed an application before the High Court for setting aside the dismissal of eviction applications by the Rent Controller,

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in substance for recalling of order dated 10.5.1993. The Single Judge recalled the earlier order of 10.5.1993 and allowed the revision petitions by remanding cases to the Rent Controller for decision on merits. The appellants filed the review petitions and they were dismissed. However, the appellant did not challenge the dismissal. Both the parties appeared before the Rent Controller and the Rent Controller allowed the eviction petitions filed by the respondent. Thereafter, the High Court dismissed the revision petitions filed by the appellants against the eviction petitions.

In appeals to this Court challenging the eviction petition the appellants contended that the order passed by the High Court on 10.5.1993 having attained finality could not have been recalled by the High Court by its subsequent order.

Dismissing the appeals, this Court

**HELD: 1.1.** When an order is passed on concession of counsel and the other party had acted upon such order then such order cannot be challenged by the tenant on the ground that earlier order of dismissing revision petition passed by Single Judge having attained finality as it was not challenged by landlady. [383-A]

**1.2.** The sequence of the events shows that the order of the Single Judge of the High Court was passed on the concession of the counsel for the appellants and was acted upon by other party when the Rent Controller decided the matter after remand. It stood exhausted when the parties appeared before the Rent Controller and the Rent Controller decided the matter. Thereafter, there remained nothing to be challenged in the order. Once the counsel for the appellants conceded before the High Court that the revision petitions required remand, it is no longer open to the appellants to contend that the order passed by the High Court could not have been passed. More so, the appellants filed review petitions against the order of the Single Judge recalling the earlier order but the same was rejected and this order at no stage was challenged. [383-B-D-E]

*Zenobia Bhanot v. P.K. Vasudeva*, [1995] 6 SCC 770, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6325 of 1998  
Etc.

A From the Judgment and Order dated 24.9.1998 of the Punjab & Haryana High Court in C.R. No. 3065 of 1997.

K.K. Mohan for the Appellant.

B Mahabir Singh, Rajeev Kataria, Gautam Awasthi and Pradeep Bhanot for the Respondent.

The Judgment of the Court was delivered by

C V.N. KHARE, J. Since common questions of fact and law are involved in these civil appeals and as such they were being disposed of by a common judgment.

D In all these appeals the appellants are the tenants and the respondent is the landlady. The respondent herein owns a premises in the city of Chandigarh. There were four separate tenements in the said building, two of which are occupied by the two appellants herein. In the year 1975, the husband of respondent landlady who was a government servant retired from service and on 5.1.1985 he died. The State Legislature of Punjab amended the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act'). By the aforesaid amendment a new Section 13A was added in the Act. The aforesaid Section 13A reads as under :

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

*building or scheduled building or any part or parts of such building if it is let out in part or parts."* A

By Notification dated 15.12.1986 Section 13A was extended to the Union Territory of Chandigarh. After this provision was extended to the Union Territory of Chandigarh the respondent landlady filed four separate applications before the Rent Control Officer, Chandigarh seeking eviction of the tenants under Section 13A of the Act. By an order dated 27th January, 1989 the Rent Controller passed an order of eviction against one of the tenants, namely, Dr. (Mrs.) S.K. Gill and subsequently on 15.3.1989 the Rent Controller also passed an order of eviction against another tenant Bhupinder Singh. Dr. (Mrs.) S.K.Gill and Shri Bhupinder Singh preferred two separate revisions before the High Court against the orders of the Rent Controller directing for their ejection. The High Court took the view that under the second proviso to Section 13A the landlord is entitled to recover possession of only one portion of the building and other tenants cannot be evicted. Accordingly, the landlady was given an option to choose any one of the four tenants for eviction. Accordingly, the revision was allowed. Consequent upon the order of the High Court, the landlady gave her choice for eviction of Dr. (Mrs.) S.K.Gill and, therefore, she was evicted from that portion of the building which she was occupying as a tenant. This is the first chapter of litigation. B  
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On 20th December, 1989 the Rent Controller following the decision of the High Court rejected the applications of landlady seeking eviction against the present appellants, namely, S/Shri Surinder Sharma and P.K. Vasudeva. The landlady preferred two separate revisions before the High Court challenging the orders of the Rent Controller rejecting her applications for eviction of the aforesaid two tenants. When the matter came up before the learned Single Judge, he was of the view that the question which arose in the case required consideration by a Division Bench. Consequently the question was referred to a Division Bench of the High Court for giving its opinion. The Division Bench of the High Court was of the view that under Section 13A of the Act, the landlord could get an order of ejection only against one tenant and not against all the tenants of the building and its opinion was directed to be placed before the Single Judge. Aggrieved, the landlady challenged the aforesaid decision dated 20.7.1992 rendered by the Division Bench of the High Court by filing special leave petitions in this Court. Subsequently, these special leave petitions were converted in civil appeals which were numbered as Civil Appeal Nos. 607-608/1993. Before the appeals could be decided, a Learned Single Judge of the High Court following the E  
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A opinion given by the Bench dismissed the revision petitions on 10.5.1993. However, this order of the High Court was not challenged by the landlady.

B Subsequently the aforesaid civil appeals came up for hearing before a Bench of this Court. This Court in C.A. Nos. 607-08/1993 took the view that Section 13A gives a special right to the landlord to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. This Court was of further opinion that where the building is let out in part or parts, an option is given to the landlord either to recover immediately the possession of the whole building or to recover in part or parts thereof. Consequently the civil appeals C were allowed by judgment and order dated 14.11.1995. The said decision is reported in [1995] 6 SCC 770. This is the second chapter of the litigation.

D After the aforesaid decision by this Court the respondent landlady on 9.12.1995 filed an application before the Rent Controller for executing the order of the Supreme Court. However, the said application was dismissed for default on 26.9.1996.

E The landlady on 10.12.1996 filed a miscellaneous application in Civil Revision No. 3025/90 under Section 151 C.P.C. which was earlier dismissed for allowing the revision petition and setting aside the order of the Rent Controller dated 20.12.1989 in the light of the order of Supreme Court dated 14.11.1995 in Civil Appeal No. 608/93. In substance the application was for recall of order dated 10.5.1993. The Learned Single Judge by an order dated 1.5.1997 recalled the order dated 10.5.1993 dismissing the revision petition and allowed both the revisions by remanding the cases to the Rent Controller for decision on merits. The tenants thereafter moved a review petition against the order dated F 1.5.1997 but the same was rejected on 10.7.1997. This order was not challenged by the tenants. Consequent upon the order of remand by the High Court, the Rent Controller on 13.6.1997 allowed both the petitions filed by the landlady directing the eviction of S/Shri Surinder Sharma and P.K. Vasudeva who are the appellants before us, following the decision of this Court reported in G [1995] 6 SCC 770. The tenants on 23.7.1997 filed special leave petitions in this Court against the orders dated 1.5.1997 passed by the High Court remanding the matter to the Rent Controller although before filing the above special leave petitions the Rent Control Officer had already decided the matter consequent upon the order of remand passed by the High Court. After the dismissal of the review petition on 10.7.1997 by the High Court the tenant filed H two revisions before the High Court against the orders dated 13.6.1997 passed

by the Rent Controller allowing the petitions of the landlady. The High Court on 24.9.1998 dismissed both the revisions and it is against these orders the appellants are in appeal before us. A

Learned counsel appearing for the appellants urged that the order dated 10.5.1993 passed by the High Court having attained finality the same could not have been recalled by the High Court by its order dated 1.5.1997. This argument has no merit. The sequence of the events shows that the order of learned Single Judge of the High Court dated 1.5.1997 which was passed on the concession of the counsel for the appellants was acted upon when the Rent Control Officer decided the matter after remand. The order dated 1.5.1997 which was passed by the High Court on agreement of the parties stood exhausted when the parties appeared before the Rent Controller and the Rent Controller decided the matter and thereafter there remained nothing to be challenged. If the appellants wanted they could have promptly challenged the order dated 1.5.1997 passed by the High Court and obtained stay of remand order. The appellant having chosen not to do so, it is too late in the day to challenge the order dated 1.5.1997 passed by the High Court based on agreement of the parties. Once the counsel for the tenants conceded before the High Court that the revision petitions required remand, it is no longer open to the tenants to contend that the order dated 1.5.1997 passed by the High Court could not have been passed. This is not all. The appellants filed review petitions against the order dated 1.5.1997 recalling the earlier order but the same were rejected. This order at no stage were challenged. We are, therefore, of the opinion that seeing the fact and circumstances of the case it is not open to the appellants to question the order dated 1.5.1997 passed by the High Court. B C D E

Learned counsel appearing for the appellants then contended that the petitions by the landlady under Section 13A of the Act before the Rent Controller were not filed within the period of limitation. This submission of learned counsel has no substance. It is on record that the petitions were filed by the landlady on 14.12.1987. In view of this fact, we find that the petitions filed by the landlady before the Rent Controller were well within the period of limitation. F G

In view of the above, we do not find any merits in these appeals and they are accordingly dismissed. However, in the circumstances, there shall be no order as to costs.

After this judgment was dictated learned counsel appearing for the H

**A** tenants stated that in case the appellants are to vacate the premises immediately, they shall be put to great hardships and therefore some reasonable time may be granted to them to vacate the premises. To this, counsel for the respondent has no objection. We, therefore, direct that the appellants/tenants shall not be dispossessed from the premises in question upto 30.6.2000 provided the appellants file usual undertaking in this Court within four weeks from today. It is directed that the appellants shall deposit the arrears of rent/damages, if any, within a period of two months from today and continue to pay month to month rent/damages to the landlady as and when it falls due. The appellants/tenants, on the expiry of the aforesaid period, shall hand over the vacant and peaceful possession of the premises to the landlady.

**C** N.J.

Appeals dismissed.