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## The Haryana Urban (Control of Rent and Eviction) Act, 1973

(Haryana Act No. 11 of 1973)

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# The Haryana Urban (Control of Rent and Eviction) Act, 1973

(Haryana Act No. 11 of 1973)

[Received the assent of the Governor of Haryana on the 25th April, 1973, and first published for general information in Haryana Government Gazette (Extraordinary) of April 27, 1973].

An Act to control the increase of rent of certain buildings and rented land situated within the limits of urban areas, and the eviction of tenants therefrom.

Be it enacted by the Legislature of the State of Haryana in the twenty-fourth Year of the Republic of India as follows :—

**1. Short title and extent.**— (1) This Act may be called the Haryana Urban (Control of Rent and Eviction) Act, 1973.

(2) It shall extend to all urban areas in Haryana but nothing herein contained shall apply to any cantonment area.

**[(3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.]**

## Comments

1. Statement of Objects And Reason
2. Interpretation of Statutes
3. Scope
4. Vires of Section 1(3)

### 1. Statement of Objects And Reasons

"Certain provisions of the existing law are not conducive to harmonious landlord-tenant relationship and also hamper rapid urban development. In order to remedy these defects and to entitle the tenants of the amenities of water supply electricity and sewerage, necessity of fresh legislation has been felt. Opportunity has also been taken to rationalise the basis of determination of fair rent and to provide for eviction of those tenants who construct their own houses in the urban area concerned sufficient for their requirements." [*Haryana Government Gazette (Extra.) dated 5.3.1973, page 259.*]

### 2. Interpretation of Statutes

Amendment of Section 1 incorporating exemption for 10 years from the purview of Rent Act--Amendment operates prospectively and becomes effective after its incorporation in the Act--Always open to the legislature to remove any defect to make the law valid. *Mohinder Kumar v. State of Haryana, 1985(2) Rent LR (S.C.) 644*

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1. Substituted by Section 2 of Haryana Amendment Act No. 16 of 1978.

### 3. Scope

Scope of Section 1(3) cannot be confined to the building constructed for the first time. The expression "any building" used in Section 1(3) will apply to the building which is constructed for the first time on an open land as well as a building which is constructed after demolition of an existing building which may have become unsafe or unfit for human habitation. *Ram Sarup v. Din Dayal, 1996(2) RLR 25 (Pb. & Hry.)*

Where a suit for possession of the shop in dispute was filed within a period of ten years from the date of the construction of the shop but during the pendency of the appeal filed by the defendant-tenant in the lower appellate Court against the judgment and decree for possession passed by the trial Court in favour of the plaintiff-landlord, the exemption period of ten years as provided in Section 1 (3) of the Haryana Urban (Control of Rent & Eviction) Act, 1973, had expired and so the lower appellate Court had disallowed the relief of possession to the plaintiff on the ground that the remedy of the plaintiff lay under Section 13 of the said Act and not by way of a Civil Suit. Held, that the suit was maintainable as it has been filed by the landlord within the exemption period of ten years. Held further, that the date of institution of the suit is relevant date for the purpose of finding out the maintainability of the suit and the subsequent of supervening events could not affect such maintainability. *Jagdish Lal Kalra v. M/s. Jagdish Chand Satish Kumar, 1988(2) PLR 602 (Pb. & Hry.)*

### 4. Vires of Section 1(3)

Exemption of buildings from the purview of Rent Act for a period of ten years from the date of its completion--Exemption for ten years reasonable--No violation of Article 14--Section 1(3) not ultra vires Article 14. *Mohinder Kumar v. State of Haryana, 1985(2) Rent LR (S.C.) 644 : AIR 1986 SC 244 : 1985(4) SCC 221*

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

(a) "building" means any building or a part of building let for any purpose whether being actually used for that purpose or not including any land, godowns, out-houses, gardens, lawns, wells or tanks appurtenant to such building or the furniture let there with or any fittings affixed to or machinery installed in such building, but does not include a room in a hotel, hostel 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 of 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 provided, and every person from time to time deriving title under a landlord :

<sup>1</sup>(d) "non residential building" means a building being use—

(i) mainly for the purpose of business or trade ; or

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1. Substituted by Section 2 of Haryana Amendment Act No 14 of 1976

- (ii) partly for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carries on business or trade in the building resides there :

Provided that if a building is let out for residential and non-residential purposes separately to more than one person, the portion thereof let out for the purpose of residence shall not be treated as a non-residential building.

*Explanation.*—Where a building is used mainly for the purpose of business or trade, it shall be deemed to be a non-residential building even though a small portion thereof is used for the purpose of residence:

- (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) "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 his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cartstand or slaughter-house or of rents for shops has been framed out, or leased by a municipal town or notified area committee;

(i) "urban area" means any area administered by a municipal committee, notified area committee, Faridabad Complex Administration or any area declared by the State Government by notification to be urban area for the purpose of this Act.

**3. Exemptions.**— The State Government may direct that all or any of the provisions of this Act shall not apply to any particular buildings or rented land or to any class or buildings or rented lands.

### Comments

Interpretation of Statute--Exemption of provisions of Rent Act/ Repeal of Statute-- Notification exempting the buildings whose monthly rent exceeded Rs. 1,000/- from the applicability of Rent Act--Effect of notification on the proceedings filed before Rent Control Authorities before the issue of notification--Tenant has no vested right under the Rent Act beyond the period of its operation--The protection extended to him survives only so long as and to the extent the special legislation operates--A Landlord's, normal rights vested in him by general law continue to exist till and so long as they are not abridged by a special protective legislation and during such period the said rights remain suspended--In case of tenant the theory of vested right is not available--The moment the protection of tenant under Rent Act is taken away, the tenant cannot claim any protection under the Rent Act.

*Held :*

According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by

such legislation as the Act. In the former case the right and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation. Hence while it can legitimately be said that the landlord's normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant therefor the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant came into operation. Hence the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant. It is for this reason that the analogy sought to be drawn by Shri Subbarao between the landlord's and the tenant's rights relying upon the decision of this Court in 1988 Suppl. (2) SCR is misplaced. In that case the landlord's normal right to evict the tenant from the premises was not interfered with for the first ten years of the construction of the premises by an exemption specifically incorporated in the protective Rent Legislation in question. The normal right was obviously the vested right under the general law and once accrued it continued to operate. The protection given to the tenant by the Rent legislation came into operation after the expiry of the period of 10 years. Hence, notwithstanding the coming into operation of the protection and in the absence of the provisions to the contrary, the proceedings already commenced on the basis of the vested right could not be defeated by mere passage of time consumed by the said proceedings. It is for this reason that the Court there held that the right which had accrued to the landlord being a vested right could not be denied to him by the efflux of time.

That is not the situation in the present case where the tenant who undoubtedly had the rights and remedies under the Act to claim reliefs against the landlords, lost the same the moment the protection was taken away, the rights and remedies being not vested ones. *Parripati Chandrashekharrao & Sons v. Alapati Jalaiah, 1995(2) Rent LR (Supreme Court) 183*

Applicability of Punjab Govt. Notification dated June 3, 1959 issued under East Punjab Rent Restriction Act to Haryana--After enactment of Haryana Rent Act, such notification continued to survive and effective under Haryana Rent Act--Such notification exempting buildings belonging to Municipality also applicable under Haryana Rent Act. *Hari Parshad Gupta v. Jatinder Kumar, 1982(1) Rent LR (Pb. & Hry.) 337.*

**4. Determination of fair rent.**— (1) The Controller shall, on application by the tenant or the landlord of a building or rented land, fix fair rent for such building or rented land after holding such enquiry as he may think fit. Such fair rent shall be operative from the date of application.

<sup>1</sup>(2) In fixing the fair rent under this section, the Controller shall first determine the basic rent which shall be,—

- (a) in respect of the building the construction whereof was completed on or before the 31st day of December, 1961, or land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1962; and

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1. Substituted by Section 3 of Haryana Amendment Act No. 14 of 1976

(b) in respect of the building the construction whereof is completed after the 31st day of December, 1961 or land let out after the said date. The rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon the basic rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land at the date of application.

(3) In fixing the fair rent, under this section, the Controller may allow an increase or decrease on the basic rent determined under sub-section (2), not exceeding twenty-five per cent of the rise or fall in the general level of prices since the date of agreed rent or the date of application, as the case may be in accordance with the <sup>1</sup> [average of All India Wholesale Price Index Numbers, as determined by the Government of India, for the calendar year immediately preceding the date of application.]

(4) Notwithstanding that the fair rent for building or rented land has been fixed under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 1949 Act), a landlord or tenant of such building or rented land shall be entitled to get its fair rent fixed under this section.

(5) Notwithstanding anything contained in this Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings. Such rent shall be binding only between the parties and their heirs.

### COMMENTS

Sections 4 and 13(2)(i)--'Fair Rent'--Determination--Vide Rent note dated 1.11.1962 the tenant had taken the demised premises on rent for a period of six months at the rate of Rs. 70/- per month plus house tax--Expiry of tenancy--Tenant continued to pay rent of Rs. 70--Landlord accepting the same without protest--Rs. 70/- is considered as agreed rent for fixation of fair rent. *Neki Ram v. Balwant Singh*, 2002(2) Rent LR (Punjab & Haryana) 22

Fair rent--Situation of the building cannot be said to be identical merely because the building is situate near another building--Rent cannot also be doubled on the ground that size of the building in question is double the size of another building alleged to be identical in situation--Fair rent cannot be fixed in this manner. *Bhim Sain v. Smt. Pushpa Devi*, 1984(1) Rent LR (Pb. & Hry.) 534.

Fair Rent--Formula for fixing the fair rent explained.

*Held :*

In *Bhim Sain v. Pushpa Devi*, 1984(1) Rent LR 534 : 1984(2) RCR 54 : 1984 IRR 418, it was held that the basic rent can be increased to 25% of the rise in journal level of price index but this view was held to be not correct and was overruled in *Gela Ram v. Sat Pal*, 1988(2) P.L.R 35. In case the methodology applied in *Bhim Sain*'s case is to be accepted as correct, then each and every basic rent, irrespective of its rate, was to be increased to the same extent, i.e. by Rs. 82/- in order to fix the fair rent of the demised premises. This certainly is not the true implication of this sub section. As a matter of fact, the index number as such has nothing to do with the rate of rent of a

1. Substituted for "All India Wholesale Price Index, as determined by Govt. of India relating to 31st December next preceding the date of application" by Act No. 16 of 1978.

particular premises. As is commonly said, index numbers are only barometers of economic activity, i.e., if one wants to get an idea as to what is happening to economy, he has to look to important indices like the index number of industrial Production, agricultural production, business activity etc. Thus when one has to say that the index number of wholesale prices is 112 for September 1987 as compared to September 1986 when it was hundred, it means there is a net increase in the prices of wholesale commodities to the extent of 12% during the year. This percentage has only to be found out to work out the percentage by which the basic rent has to be increased in order to fix the fair rent.

Formula to calculate Fair Rent:

$$\text{Fair Rent} = \text{Basic Rent} + \left[ \frac{.25 \times \text{Increase in Price Index}}{100} \right] \times \text{Basic Rent}$$

Fair Rent--Fair rent fixed on the basis of formula laid down by Division Bench in Gela Ram v. Sat Pal Sharma's case.

Formula of calculation for determining the fair rent as per Gela Ram's case :

Basic rent = Rs. 400/-

Wholesale price index during the year 1981, was 278.4

Wholesale price index in the year 1989, (i.e.,) the year preceding the presentation of petition was 462.2

Difference = 462.2 - 278.4 = 184 (rounded off)

25% of increase i.e., 25% of 184 = 46%

The increase of 46% is to be allowed in respect of rent which is already being paid i.e., 46% on the basic rent of Rs. 400 =  $46 \times 400/100 =$  Rs. 184.

Therefore fair rent will be Rs. 400 + Rs. 184 = Rs. 584

**5. Revision in fair rent in certain cases.**— (1) When the fair rent of a building on rented land has been fixed under Section 4, no further increase or decrease in such fair rent shall be permissible for a period of five years :

Provided that an increase may be allowed in cases where any addition, improvement or alteration has been carried out at the expense of the landlord, and in the building or rented land which is in occupation of the tenant then at the request of the tenant :

Provided further that the decrease may be allowed in the case where there is a decrease or diminution in the accommodation or amenities provided.

(2) Any dispute between the landlord and the tenant in regard to any increase or decrease under this section shall, be decided by the Controller.

**6. Landlord not to claim anything in excess of fair rent.**— Save as provided in this Act, when the Controller has fixed the fair rent of a building or rented land under section 4,—

(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 fair rent or of rent in excess of such fair rent shall be null and void.

**6-A. (Deposit of rent.—** (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, if a landlord refuses to receive, or grant a receipt for any rent payable in respect of the building or rented land when tendered to him by a tenant, the tenant may apply to the Controller for leave to deposit the rent in his office, and the Controller shall receive the deposit, if after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice hereinafter provided.

(2) When a deposit has been received under sub-section (1), it shall be deemed to be a payment made by the tenant to his landlord in respect of the rent due.

(3) On receiving the deposit, the Controller shall give notice of the receipt thereof to the landlord and shall pay the amount thereof to him.]

**7. Rent which should not have been paid may be recovered.—** Where any sum has, whether before or after the commencement of this Act, been paid which sum by reason of the provisions of the Act should not have been paid such sum shall at any time within a period of six months after the date of payment, be recoverable by the tenant from the landlord who received the payment or his legal representative, and may, without prejudice to any other method of recovery, be deducted, within such six months, by such tenant from any rent payable by him to such landlord.

*Explanation.—* In this section the expression "legal representative" has the same meaning as is assigned to it in the Code of Civil Procedure, 1908, and include in the case of joint family of which the deceased person was a member.

**8. Increase of rent on account of payment of rates, etc., of local authority.—**(1) Notwithstanding anything contained in any other provision of the Act, a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of the tenancy, fresh rate, cess or tax is levied in respect of the building or rented land by 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 this Act :—

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

Provided further that such increase in rent shall be payable by the tenant from the date of despatch of the written notice of demand sent by landlord under registered cover.



(2) Notwithstanding anything contained in any law for the time being in force or in any contract, no landlord shall recover from his tenant the amount of any rate, cess or tax or any 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).

**9. Landlord to provide certain amenities.**— (1) If the amenities of electricity, sewerage or tap water supply have been made available in any locality by the State Government or a local authority, the tenant of the building or rented land of such locality shall be entitled to the enjoyment thereof subject to the provisions hereinafter contained.

(2) If the landlord at the written request of the tenant fails to agree in writing to provide all or any of the amenities within a period of thirty days or fails to provide the same within a period of ninety days of such request, the tenant may apply to the Controller for that purpose. The Controller may, on such application by the tenant and after such enquiry as he may deem fit permit the tenant to have such amenity at the cost of the landlord on such conditions as he may deem proper. The tenant shall be entitled to deduct the expenses incurred by him in providing the amenity from the rent payable to the landlord till the full amount is realised :—

Provided that the rate of deduction of such expenses shall not exceed fifty per centum of the amount of rent :

Provided further that the Controller may reject the application if he is satisfied that such an order will cause undue hardship to the landlord keeping in view his source of income, or would involve expenditure incommensurate with the benefit sought to be achieved.

(3) The Controller may fix the extent and specification of the amenity as far as possible keeping in view the circumstances of the case and also the estimated cost thereof.

(4) After the amenity has been provided, the tenant shall immediately thereafter send the details of the expenses incurred by him to the landlord.

(5) In case of dispute as regards the quantum of the amount spent for providing the amenity, the same shall be decided by the Controller after enquiry on an application made to him.

(6) The landlord shall be entitled to enhance the rent of the building or the rented land to the extent of eight per centum per annum of the amount spent for providing such amenity from the date the amenity is provided :

Provided that where the tenant has initially incurred the expenses for providing such amenity, the enhancement of rent shall not be allowed till the amount spent by the tenant has been realised.

**10. Landlord not to interfere with amenities.**— (1) No landlord shall without just and sufficient cause, cut off or withhold any of the amenities enjoyed by the tenant.

(2) A tenant in occupation of a building or rented land may, if the landlord has contravened the provision of this section, make an application to the Controller complaining of such contravention.

(3) If the Controller on enquiry finds that the tenant has been in enjoyment of the amenities and that they were cut off or withheld by the landlord without just or sufficient cause, he shall make an order directing the landlord to restore such amenities :—

Provided that if the Controller is satisfied from affidavit or otherwise that immediate enjoyment of the amenities is essential, he may by order in writing allow the tenant to get such amenities restored on such terms and conditions as may be imposed by the Controller subject to his final decision as regards the expenses on the restoration of such amenities.

**11. Conversion of a residential building into a non-residential building.**— No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.

**12. Failure by landlord to make necessary repairs.**— 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 cost 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 cost thereof.

**13. Eviction of tenants.**— (1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

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

- (i) that the tenant has not paid or tendered the rent due from 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, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per cent per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act ;

- (ii) that the tenant has after the commencement of the 1949 Act, without the written consent of the landlord—
  - (a) transferred his right under the lease or sub-let 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 lease ;
- (iii) that the tenant has committed or caused to be committed such acts as are likely to impair materially the value or utility of the building or rented land;
- (iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupants of the same buildings or building in the neighbourhood;
- (v) that where the building is situated in a place other than a hill station the tenant has ceased to occupy the building for a continuous period of four 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 landlord may apply to the Controller for an order directing the tenant to put the landlord in possession —**

**(a) in the case of residential building, if,—**

- (i) he requires it for his own occupation, i. not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of 1949 Act in the said urban area ;
- (ii) he requires it for use as an office or consulting room by his son who intends to start practice as lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homeopathic Practitioners Act, 1965, or for the residence of his son who is married ;

Provided that such son 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 has not vacated it without sufficient cause after the commencement of the 1949 Act ;]

- (iii) it was let out to the tenant for use as a residence by reason of his being in the 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;

(iv) the tenant has already in his own possession a residential building or subsequently acquires possession of, or erects, such a building reasonably sufficient for his requirement in the urban area concerned ;

(v) he is a member of the armed forces of the Union of India and requires it for the occupation of his family and produces a certificate from 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.

*Explanation.*— For the purposes of this sub-clause "family" means such relations of the landlord as ordinary live with him and are dependent upon him :

(b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land without sufficient cause after the commencement of the 1949 Act;

(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 where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not except, under sub-clause (v) of clause (a) be entitled to apply under this sub-section before the expiry of such period :

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

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

<sup>1</sup> [(3-A) In the case of a non-residential building, a landlord who stands retired or discharged [\*\*\*] from the armed forces of the Union of India or

1. Substituted by Section 5 of Haryana Act 16 of 1978.

2. "As a Non-commissioned Officer" omitted by Haryana Act 5 of 1979.

who was a minor son at the time of death of the deceased landlord and requires it for his personal use may within a period of three years from the date of retirement or discharge or attaining the age of eighteen years, as the case may be apply to the Controller for an order directing the tenant to put the landlord in possession :

Provided that where the landlord has obtained possession of a non-residential building under this sub-section, he shall not be entitled to apply again for the possession of any other non-residential building of the same class.]

(4) The Controller shall, if he is satisfied that the claim of the landlord is bona fide 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.

(5) Where an application is made under sub-clause (v) of clause (a) of sub-section (3), 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 order.

(6) Where a landlord, who has obtained possession of a building or rented land in pursuance of an order under sub-clause (i) of clause (a) or clause (b) of sub-section (3), does not himself occupy it or if possession was obtained under sub-clause (v) 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 (ii) of clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, <sup>1</sup>[for a continuous period of twelve months from the date of obtaining possession or if possession was obtained under sub-section 3-A he does not occupy it for his exclusive personal use for a continuous period of the three years] or where a landlord who has obtained possession of a building under clause (c) of sub-section (3) 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 Controller for an order directing that the possession of such building or rented land shall be restored to him and the Controller shall make an order accordingly.

(7) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller

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1. Substituted by Section 5 of Haryana Amending Act No. 16 of 1978 for the words "for a continuous period of twelve months from the date of obtaining possession."

may direct that compensation not exceeding five hundred rupees be paid by such landlord to the tenant.

### Comments

Section 13(2)-Tender:Arrears of rent-Son tendering the rent-While tendering the arrears of rent son never claimed that he was tendering as the sub tenant--In his statement son deposing that he tendered the rent on behalf of his father--Rent Controller held that tender as valid and dismissed ejection application--Appellate Authority held the tender as invalid and ordered ejection--High Court dismissed the revision against order of Appellate Authority--Held, the tender of rent by the son was as a member of the family of the tenant--When rent is tendered by any member of the family of the tenant to the landlord without any inconsistent claim it cannot be termed as invalid tender--Order of High Court and Appellate Authority set aside and that of Rent Controller restored. *Rama Kant v. Sona Devi, 2002(1) Rent LR (SC) 299*

Section 13(2)(i)--Eviction--Default in payment of rent--House Tax--Ex parte order--Eviction being sought on the basis of default in payment of rent and House Tax--Rent paid by tenant without house tax on the first date of hearing and thereafter did not appear--Ex parte order on the ground of non-payment of House Tax--Ex parte order set aside--Contention of the tenant that he was under the impression that after payment of rent, the landlord would withdraw the petition for eviction as he has been doing on earlier occasions--No mala fide on the part of tenant--Tenant might have taken into the head that no ground for eviction survives. *Kartar Singh Chawla v. Har Kishan Lal, 2002(1) Rent LR (Ph. & Hry.) 192*

Section 13(2)(i)--Eviction--Default in payment of rent--Rent paid in excess but House Tax not paid--House Tax if due to the landlord could be adjusted from the excess rent. *Kartar Singh Chawla v. Har Kishan Lal, 2002(1) Rent LR (Ph. & Hry.) 192*

Section 13(2)(i)--Rent--House Tax--Landlord claiming arrears of rent and House Tax--Contention of the tenant that he is not liable to pay House Tax--Tenant can pay the House Tax and also contest the same because it is the right of the tenant to say that he was not liable to pay House Tax. *Kartar Singh Chawla v. Har Kishan Lal, 2002(1) Rent LR (Ph. & Hry.) 192*

Section 13(3-A)--Validity of--Bona fide requirement--Non-residential premises--Petitioner remained in occupation of the premises for the last 56 years--Petitioner now alleging that provisions regarding personal necessity are vague--Held, that restrictions imposed by impugned provisions just, fair and reasonable--No violation of Article 19 of the Constitution of India--Landlord entitled to evict tenant on the ground of bona fide requirement from non-residential premises. *Sheo Parshad v. State of Haryana, 2002(1) Rent LR (Ph. & Hry.) (D.B.) 514*

**113-A. Special procedure for disposal of application in certain cases.—** (1) Where the application is made by a landlord who is or was a member of the Armed Forces of the Union of India within one year prior to or after the date of his retirement or discharge or within one year from the date of commencement of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1986 whichever is later, on the ground mentioned in sub-clause (i) of clause (a) of sub-section (3) of Section 13, the same shall be dealt with in accordance with the procedure specified in this section. §§§§

1. Inserted by Haryana Amending Act, 11 of 1986. For objects and reasons see Hr. Gaz. Extra. dated 26.6.86 p. 316.

1] Provided that in case of death of such landlord, his widow and in the case of death of such widow, his child, grandchild or widowed daughter-in-law who was dependent upon him at the time of his death shall be entitled to make an application under this section to the Controller. —

(a) in the case of death of such landlord before the commencement of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1988, within one year of such commencement.

(b) in the case of death of such landlord after such commencement, but before the date of his retirement or discharge, within one year of the date of his death;

(c) in the case of death of such landlord after such commencement and the date of his retirement or discharge, within one year of the date of such retirement or discharge;

and on the date of such application the right to recover the possession of the residential building which belonged to such landlord at the time of his death shall accrue to the applicant.]

[(1A) Where an application is made by a landlord who is or was an employee of Government of India or of Government of Haryana or of any State owned Board or Corporation of Haryana within one year prior to or after the date of his retirement or within one year from the date of commencement of Haryana Urban (Control of Rent and Eviction) Amendment Act, 1990, whichever is later, on the ground mentioned in sub-clause (i) of clause (a) of sub-section (3) of section 13, the same shall be dealt with in accordance with the procedure specified in this section.]<sup>2</sup>

(2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form appended to this Act.

(3)(a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to

1. Inserted by Haryana Amendment Act No. 17 of 1988 (Notification published on 26.4.1988.)

2. Added by Act No. 10 of 1990.

take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) shall not contest the prayer for eviction from the residential building unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the residential building on the ground specified in sub-clause (1) of clause (a) of sub-section (3) of section 13.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) The Controller shall, while holding an inquiry in a proceeding to which this section applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

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

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

(9) Where no application has been made to the High Court for revision, the Controller may exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(10) Save as otherwise provided in this section, the procedure for the disposal of the application for eviction shall be the same as the procedure for the disposal of applications by the Controller.

(11) The provisions of this section or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force]

**14. Decisions which have become final not to be reopened—** The Controller shall summarily reject any application under sub-section (2) or (3) of section 13 which raises substantially the issues as have been finally decided in any former proceedings under this Act.



**15. Appellate and revisional authorities.**— (1) The State Government may, by a general or special order by notification, confer on such officers and authorities as it may think fit, the powers of appellate authorities for the purpose of this Act, in such area or in such classes of cases as may be specified in the order.

(2) Any person aggrieved by an order passed by the Controller may, within thirty 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 thirty days the time taken to obtain a certified copy of the order appealed against shall be excluded.

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

(4) 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.

(5) The decision of the appellate authority and subject to such decision, the 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 (6) of this section.

(6) <sup>1</sup>[The High Court], as revisional authority, may, at any time, on its own motion or on the application of any aggrieved party made within a period of ninety days, call for and examine the record relating to any order passed or proceedings taken under this Act for the purpose of satisfying it-self as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. In computing the period of ninety days the time taken, to obtain a certified copy of the order shall be excluded.

#### **Comments**

Section 15--Eviction--Ex parte order--Limitation--Delay of 65 days in filing appeal--Liberal approach to be taken in the matter of limitation until and unless it is established that there are mala fides on the part of the litigant in not filing the appeal within limitation, it should be condoned with costs. *Kartar Singh Chawla v. Har Kishan Lal, 2002(1) Rent LR (Ph. & Hry.)192*

**16. Power to summon and enforce attendance of witnesses.**— An authority exercising powers under this 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.

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1. Substituted for the words "The Financial Commissioner" by Section 6 of Haryana Amendment Act No. 16 of 1978.

**17. Costs.**— (1) The compensation and the cost of an incident to all proceedings before the Controller, the appellate authority or the revisional authority shall be in the discretion of the Controller, the appellate authority or the revisional authority, as the case may be. Such authority shall determine by whom or out of which property and to what extent such costs are to be paid and give all necessary directions for the purpose. The fact that the Controller, the appellate authority or the revisional authority has no jurisdiction to try proceedings shall be no bar to the exercise of such powers.

(2) Where the Controller, the appellate authority or the revisional authority directs that any costs shall not follow the event, the Controller, the appellate authority or the revisional authority shall state its reasons in writing.

**18. Execution of orders.**— Every order made under the provision of this Act shall be executed by a civil court having jurisdiction in the area as if it were a decree or order of that court.

*Explanation.*— One year's rent of the building or rented land, preceding the date of the order which is sought to be executed, shall be the jurisdictional value for the purposes of determining the forum of appeal.

**19. Institution and disposal of application.**— (1) Where there are more than one Controller at the same place, the application shall be made to the Controller who is authorised by the appellate authority of the area concerned to entertain such application.

(2) Such Controller shall either keep the application on his file or make over the same to some other Controller at the same place, for disposal.

**20. Power to transfer proceedings.**— (1) <sup>1</sup>[The High Court] may, on an application made to it or otherwise by order transfer any proceedings pending before any appellate authority to another appellate authority and the appellate authority to whom the proceedings are so transferred may, subject to any special direction in the order of transfer, dispose of the proceedings.

(2) An appellate authority may, on an application made to it or otherwise, by order transfer any proceedings pending before any Controller to another Controller within its jurisdiction and the Controller to whom the proceedings are so transferred may, subject to any special direction in the order of transfer, dispose of the proceedings.

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1. Substituted for the words "The Financial Commissioner" by section 7 of Haryana Amending Act No. 16 of 1978.

<sup>1</sup>[20-A. **Transfer of proceedings and filing of appeals and revisions against orders of Subordinate and District Judges.**— <sup>2</sup>(1) Notwithstanding anything contained in any other provisions of this Act.—

- (a) all proceedings pending before Sub-Divisional Officers (Civil) appointed to perform the functions of the Controllers shall stand transferred to the Subordinate Judges from the date of their appointment under clause (b) of section 2 to perform the functions of the Controllers;
- (b) an appeal from the order of the Sub-Divisional Officer (Civil) appointed to perform the functions of the Controller shall lie to the District Judge conferred with the powers of the appellate authority and a revision from the order of such appellate authority shall lie to the High Court; and
- (c) any appeal from the order of the Sub-Divisional Officer (Civil) appointed to perform the functions of the Controller has been filed with the Deputy Commissioner, conferred with the powers of the appellate authority or if any revision from the order of the Deputy Commissioner conferred with the powers of the appellate authority has been filed with the Financial Commissioner, the same shall stand transferred to the District Judge and the High Court, respectively.]§§§§

**21. Landlord and tenant to furnish particulars.**— 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.

**22. Penalties.**— (1) If any person contravenes any of the provisions of sub-section (2) of section 8, sub-section (1) of section 10, section 11, or section 21, 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 section 6, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) No Court shall take cognizance of an offence under this section except upon—

- (a) a complaint in writing (of facts which constitute such offence) filed with the sanction of the Controller; or
- (b) a report in writing of such facts made by the Controller.

**23. Powers to make rules.**— The State Government may, by notification, make rules to carry out all or any of the purposes of this Act.

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1. Inserted by Haryana Amending Act No. 4 of 1974.

2. Substituted by Section 8 of Haryana Amending Act No. 16 of 1978, w.e.f. 8.5.1978.

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**24. Repeal and Savings.**— (1) The East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. 3 of 1949), is hereby repealed :

Provided that such repeal shall not affect any proceeding pending or order passed immediately before the commencement of this Act, which shall be continued and disposed of or enforced as if the said Act had not been repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed (including any rule, notification or order made) which is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force at the time such thing was done or action was taken, and shall continue to be in force, unless and until superseded by anything done or any action taken under this Act.

### SCHEDULE

See Section 2(h)

Son, daughter, widow, father, mother, grand-father, grand-mother, son of a pre-deceased son, unmarried daughter of a pre-deceased son, widow of a pre-deceased son and widow of a pre-deceased son of pre-deceased son.

### "FORM"

[See sub-section (2) of Section 13-A]

Form of summons in a case where recovery of possession of residential building is prayed for under section 13-A of the Haryana Urban (Control of Rent & Eviction) Act, 1973.

(Name, description and place of residence of the tenant)

Whereas Shri \_\_\_\_\_ has filed an application ( a copy of which is annexed) for your eviction from \_\_\_\_\_ (here insert the particulars of the residential building) under section 13-A of the Haryana Urban (Control of Rent and Eviction) Act, 1973 :

Now, therefore, you are hereby summoned to appear before the Controller within fifteen days of the service thereof and to obtain the leave of the Controller to contest the application for eviction under section 13-A of the said Act, in default whereof the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said residential building.

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of section 13-A of the said Act.

Given under my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_

Controller .