

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

(1) CR No. 1667 of 2013 (O&M)  
Date of decision: April 9, 2015

Khushwant Singh

...Petitioner

Versus

Brig. Rupinderjit Singh Dhillon

...Respondent

(2) CR No. 7786 of 2011 (O&M)

Mrs. Sukhwinder Kaur

...Petitioner

Versus

Brig. Rupinderjit Singh Dhillon

...Respondent

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Gurcharan Dass, Advocate,  
for the petitioner in CR No. 1667 of 2013.

Mr. Divanshu Jain, Advocate,  
for the petitioner in CR No. 7786 of 2011.

Mr. Anand Chhibbar, Senior Advocate with  
Mr. Vaibhav Sahni and Mr. Gaurav Mankotia, Advocates,  
for the respondent.

**K. KANNAN, J. (Oral)**

1. The revisions are at the instance of the tenants who were denied the leave to defend in their action for ejectment filed by a Brigadier anticipating to retirement under Section 13-A of East Punjab Urban Rent Restriction Act, 1948 (for short '**the Act**'). The certificate from the authority showing the date of superannuation as 12<sup>th</sup> September, 2008 had been filed

in the court and the landlord had also filed documents to show that the allotment made by the Improvement Trust was a building for residential construction and that it was not a commercial property. This became relevant, for, the landlord to disclose in view of the law under Section 13-A of the Act being construed to be restrictive for use only for residential purpose.

2. The tenants were occupying the respective portions of property only for a non-residential purpose admittedly and they took a plea that the petition was not competent under Section 13-A of the Act, since the property in their possession was for non-residential purposes. They also contended that the landlord's remaining portion of the property which was claimed by the landlord as residential was not in occupation of any tenants and the landlord himself was in occupation thereof. Consequently, the issue of whether the portion in the possession of the tenants were required by the landlord for conversion to residential purpose will have to be tested on evidence and consequently leave to defend must be granted.

3. The Rent Controller directed his attention only to the maintainability of the petition for a residential building portion of which were used for non-residential purpose and the tenability of the petition for eviction treating the non-residential portion as a part of residential building. The Rent Controller relied on several decisions rendered by this court holding that when a residential building constructed in place which is meant for residential purpose but put to use in some portion abutting the road for non-residential purpose, the building still be considered as residential building. The court has, therefore, found that there was simply no ground for defence to be availed by the tenants and declined the leave.

4. The counsel for the tenants relied on another stream of thought that has flowed through our courts that a property which is put to non-residential purpose by tenants, cannot be ejected by resort to Section 13-A, even if there are other portion of same building which are used for residential purpose. As compulsive was the view, which was taken by the Rent Controller holding that the residential building will not cease to be so merely because portion of the building put to non-residential purpose, I will not try to reconcile or re-state the law but I am at least convinced that efforts must be done by the Rent Controller to allow for the tenants to give their own contention adopting a different approach on this law as well. My own decision in a situation where there has been no leave to defend would put the tenant to disadvantage and would amount to foreclosure of a particular argument which will be allowed to be brought on board by an adequate defence.

5. The issue of requirement of the landlord as obtaining for additional use has been considered by the Supreme Court in the decision in Santosh Devi Soni Versus Chand Kiran 2001 (1) SCC 255. The court was referring to its own ruling in Dr. S.M. Mishra Versus D.D. Malik, Civil Appeal No. 120 of 1990, while considering a similar provision of the Delhi Rent Control Act where the issue was, whether a leave to defend must be granted or not. The Supreme Court held that if the requirement was by way of additional accommodation, leave to appeal should not be refused. There are decisions of this court as well, both of the Division Benches and the Single Benches, reiterating the law that when the landlord is in possession of his own portion of the building and the eviction is sought only of some other portion, he may not really hanker for taking possession scuttling usual

process of trial after defence is permitted to be taken by the tenant. This, in my view, is most reasonable, for, after all the statutory provisions fast tracking the requirement of a retired person or NRI under Sections 13-A and 13-B respectively of the Act has certain objective to fulfill. A retired person cannot stay on indefinite wait outside his own residence waiting for the tenant to find his own suitable time to vacate. A man who is owner of the property shall be given an immediate access. If he gains such access, there exists no urgent need that has to be considered when the issue is whether the additional need is justified or not.

6. The learned Senior Counsel Shri Anand Chhibbar argues that every aspect that would spell out the imperatives of his immediate need has been spelt out in the petition and considered by the court below. It is not as if the landlord is asking for additional accommodation having already arrived at the property and the court was required to consider only the issue of additional accommodation. The counsel would argue that the tenants had at all times been contending only on the maintainability of Section 13-A of the Act and if the court was examining the necessary record and found the need of the landlord as established, including also the requirement of the landlord to demolish the portions which are in hands of the tenants for reconstruction of a composite building, including both the residential and non-residential portion, no purpose will be served by putting through a process of trial in respect of matters which are already before the court.

7. I cannot convince myself to the arguments made only because we are not presented with a situation of a landlord who is unable to occupy any portion of the building. The courts do not take a decision merely by hearing one side and make a half hearted attempt to hear the other side.

Sifting of evidence is a process that is undertaken on the basis of pleadings. The issue before the Rent Controller was whether such pleadings must be allowed to be brought by tenants in defence. If I should accept the arguments of the learned Senior Counsel for the landlord, it should mean that the Presiding Officer must be overwhelmed by the requirement pleaded by the landlord and he shall merely take a wink at the tenant's defence and fend him off without allowing him the benefit of defence that the landlord has enough and more in his own residential portion and there is no need to demolish the rest of the building. That shall be surely a case that will go for consideration after allowing the tenant to plead what he wants. If in this case, the leave to sue has been granted and the defendants had taken a plea that there was no actual need for remaining portion at all and the court was passing an order admitting the case one way or the other, the extent of intervention that could have been possible would have been confined to a judgment of whether there had been proper consideration of the rival contentions of the parties. In this case such situation has not yet arrived. There is a landlord's requirement spelt out and the tenants who make a plea that there is a case for them to defend. The court found that there was no case. In my view, when the landlord's immediate requirement to enter his building is already assured, he can not compel fast tracking of proceeding without allowing the tenants to file their statement.

8. A day may still arrive when fast tracking is the norm and even such expression for judicial dispensation is not necessary. We have not conceived of any such technique which may allow for disposal of any petition within any reasonable time. It is a larger malady which we will confront sometime in future. For now, the curtains must be down. The

petitioners will have a right to defend and the orders passed already are set aside. The tenants shall file their written statement and the court will endeavour to dispose of the case as expeditiously as possible, taking into account the peculiar circumstances of the need of the landlord, as expressed, and the fact that the tenants had the benefit of the case in the court without full fledged adjudication for more than 7 years from the time when the Brigadier laid down the office.

9. Both the revision petitions are allowed in the above terms.

There shall be no order as to costs.

**April 9, 2015**  
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**(K.KANNAN)**  
**JUDGE**