

In the High Court of Punjab and Haryana at Chandigarh

1. Civil Revision No. 6952 of 2009 (O&M)
Date of Decision: 18.3.2015.

Ajit SinghPetitioner

Versus

Labh KaurRespondent

2. Civil Revision No. 6953 of 2009 (O&M)

Ajit SinghPetitioner

Versus

Deepak SoodRespondent

3. Civil Revision No. 511 of 2012

Ajit SinghPetitioner

Versus

Mohinder Singh and othersRespondents

4. Civil Revision No. 588 of 2012

Ajit SinghPetitioner

Versus

Sita DeviRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate
for the petitioner.

Mr. C.M.Munjal, Advocate
for the respondent(s)
(in CR Nos. 6952 of 2009 and 6953 of 2009).

Mr. Sudhir Paruthi, Advocate
for the respondent(s)
(in CR Nos. 511 of 2012 and 588 of 2012).

SABINA, J.

Vide this order, above mentioned four petitions would be disposed of as the point in controversy, in all the cases, is the same.

Ajit Singh-petitioner filed petitions under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 ('Act' for short) seeking ejectment of the respondents from the shops in question on the ground of personal necessity.

The facts are being narrated from the petition titled 'Ajit Singh versus Labh Kaur'.

Case of the petitioner was that he was co-owner of the premises in question along with his brothers. The shop in question had been rented out to the respondent at a monthly rent of ₹ 1650/-. Prior to the filing of this petition, petitioner and his brothers had sought ejectment of the respondent and the said petition was pending. However, the present petition had been filed under Section 13-B of the Act. Petitioner was a Non-Resident Indian and had now returned to India and wanted to start his own business in the premises in question.

In the written statement, respondent admitted the fact that the petitioner was co-owner of the premises in question along with his brothers. However, it was denied that the petitioner was a

Non-Resident Indian and had returned to India. It was also denied that the petitioner required the premises in question for his own personal use and occupation.

On the pleadings of the parties, following issues were framed by the Rent Controller:-

1. *Whether the petitioner is owner of the property in dispute? OPA*
2. *Whether the petitioner is Non Resident of India ? OPP*
3. *Whether the petitioner has returned to India to settle ? OPP*
4. *Whether the demised premises is required by the petitioner for personal necessity? OPP*
5. *Whether the present petition is maintainable? OPP*
6. *Whether the petitioner has no locus standi to file the present petition ? OPR*
7. *Whether the site plan is wrong and incorrect? OPR*
8. *Relief.*

Parties led their evidence in support of their case.

Learned Rent Controller dismissed the ejectment petitions filed by the petitioner. Hence, the present petitions by the landlord-petitioner.

Learned senior counsel for the petitioner has submitted that the premises in question were required by the petitioner for opening up a shopping mall. In fact, four shops in question were the part of one building and petitioner required the vacant possession of all the four shops in question to enable him to open a mall to run his business. In support of his arguments, learned

senior counsel has placed reliance on '**Kamaljit Singh versus Sarabjit Singh, 2014(2) RCR (Rent) 249**' wherein it was held as under:-

“18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.”

Learned senior counsel has next placed reliance on '**Lakhwinder Kumar versus Pavitter Kaur (dead) through LRs, 2010(1) R.C.R (Rent) 588**' wherein it was held as under:-

“9. With a view to ascertain that there is a triable issue raised by the tenant, the Rent Controller shall be obligated to consider such contention in the light of judicially settled main and ancillary issues, like: (i) a NRI-

landlord even if only a co-owner/joint owner in the demises premises, can seek eviction of his tenant under Section 13-B of the Act; (ii) ordinarily, the fate of an eviction petition filed earlier under Section 13 of the Act, before Section 13-B came into existence, is no ground for not entertaining the eviction application under Section 13-B of the Act; (iii) nothing precludes the NRI-landlord to institute parallel proceedings for recovery of the arrears of rent, while also seeking eviction of the tenant under Section 13-B of the Act, for the reason that every landlord is entitled to be paid the rent till the premises is required by the tenant; (iv) the general principle that the landlord is the best judge of his own requirement and the tenant has no authority to dictate or advise his landlord as to how the later should adjust within the available accommodation or in a particular manner applies to an eviction application under Section 13-B of the Act also; (v) the ownership with possession of another accommodation is no bar against a NRI-landlord to invoke his once in a life time right and get one building of his choice vacated under Section 13-B of the Act; (vi) contrary to Section-13, the requirement of the NRI-landlord for the demised premises for his own use and occupation, shall be presumed to be genuine and bonafide unless rebutted by the tenant; (vii) even if there are more than one tenants in a single 'building', the NRI-landlord is entitled them to evict; (viii) the tenant shall have to apply for leave to contest within 15 days of

effecting service on him. No application shall thereafter be entertained and the Rent Controller has no power to condone the delay in filing such an application; (ix) even if the premises was let out by the 'co-owner' or an authorized person by the NRI-landowner, it shall amount to 'letting out of the premises' for and on behalf of such owner only.

x x x x x

27. Similarly, the plea that the respondent-landlord does not require the demised premises for his own use and occupation or that the eviction petition has been filed for malafide reasons, is totally baseless as the respondent in para No.3 (i) of the eviction application has specifically averred that he wants to start his own business and develop the building as a big Hotel and Restaurant after reconstructing it into a multi-storied building. There is nothing on record to doubt the capacity or bonafide of the respondent-landlord to utilize the subject property for the aforesaid purpose.

x x x x x

29. This very reason appears to have led their Lordships of the Supreme Court in Badev Singh Bajwa's case (supra) to hold that if a NRI-landlord owns more than one building, it is for him to make a choice of that 'one building' and seek eviction of tenant(s) therefrom under Section 13-B of the Act. In my considered view, it would much depend upon the nature of necessity expressed by

a NRI-landlord as to whether he requires the entire building for his own use and occupation or only a part thereof? No doubt, that Section 13-B of the Act enables him to seek eviction of the tenant(s) from the entire building, however, if the landlord needs only a part of the building, he can restrict his requirement qua that part only.

30. In the case in hand, it is an admitted fact that the three shops adjoin each other and are part of the same building which the respondent- landlord wants to reconstruct and develop into a big hotel and restaurant. He has, therefore, shown and presumptuously established his requirement for the 'entire building', whether occupied by one tenant or more. For the reasons afore-stated, I do not find any merit in these revision petitions which are accordingly dismissed with no order as to costs.

x x x x x

83. Adverting to the bonafide personal necessity of the respondent, it is well known that a landlord is the best judge of his requirements. The petitioner has nowhere disputed that the respondent is not the father of five married daughters or that his other co-owners do not have large families. The respondent has categorically averred that he wants to settle down in India permanently and wants to start some vocation. That being so, the respondent and his co-owners definitely require the

demised premises may be to demolish and re-construct it for their comfortable stay.

84. *The plea that each tenancy amounts to an 'independent unit' or that the respondent can seek eviction under Section 13-B of the Act in respect of 'one unit' only, is factually misleading and legally misconceived. The demised premises is not a big residential house. Admittedly, the residential house is one compact 'building' and bears one municipal number. Even if it has been let out in parts to different tenants, it constitutes one 'single residential house/building' for the purpose of Section 13-B (1) of the Act. As the respondent-landlord has decided to return and settle down in India with his family, the genuineness of his need or of his co-owners for the entire house stands proved beyond any pale of doubt."*

Learned senior counsel has also placed reliance on **M/s Bhandari General Store and another versus Makhan Singh Grewal, 2006(1) RCR 306**, wherein it was held as under:-

"8. In my opinion, the aforesaid judgment of the Supreme Court squarely covers the case of the respondent-landlord. In this case also, one building was let out in different parts and in that situation, he is entitled to recover the immediate possession of all the parts by filing different petitions. The question whether the different parts let out to different tenants are part of one building or separate buildings is a question of fact which is to be determined on the facts and circumstances of each case.

Before getting ejectment of different tenants from different parts, it has to be established that all the parts let out to different tenants are part of one building. In the instant case, the Rent Controller, on the basis of evidence available on record, has recorded a finding of fact that all the 13 shops are part and parcel of one building. In this regard, the Rent Controller has relied upon various photographs, site plan and the report of the Architect, which clearly establish that all the shops constitute one building and the suit building as a single unit was constructed at one time. I do not find any illegality or perversity in the said finding of fact. Thus, in my opinion, the ejectment orders passed against the petitioners regarding two different shops which form part of one building, cannot be said to be illegal on the ground that under Section 13B of the Act, the landlord has already got vacated one shop, which was also part of the said building.

x x x x x

11. I also do not find any force in the second contention raised by counsel for the petitioners. The Supreme Court in Baldev Singh Bajwa's case (supra) has held that under the Act, a special procedure for NRI landlords for getting immediate possession of a residential building, scheduled building and/or non-residential building for their personal use has been made to achieve a legislative object, which has been explained in the Statement of Object and

Reasons appended with the East Punjab Urban Rent Restriction (Amendment) Ordinance 2000. By the said amendment, a special class has been created giving special right to them to recover immediate possession from the tenants occupying their premises by providing special procedure, provided such premises were required by them for their use or for the use by their dependents. If an ejectment application is filed by an NRI landlord under Section 13B of the Act, the Rent Controller has been given power to grant leave to contest such application, which is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order of recovery of possession. The tenant can contest the ejectment application on the ground that need of the landlord is not bona fide. In the proceedings taken up by an NRI landlord under Section 13B of the Act for eviction of the tenant, the Court shall presume that the landlords' need pleaded in the petition is genuine and bona fide, but the said presumption is subject to the right of tenant to rebut it with strong and cogent evidence. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in favour of the landlord. In this case, in my

opinion, the petitioners-tenants have failed to rebut the presumption in favour of the respondent-landlord that his requirement of the demised premises is bona fide. In my opinion, the tenants have not placed on record any strong and cogent material rebutting the strong presumption in favour of the landlord. Undisputedly, the respondent is an NRI. He has returned to India. He requires the building in question for his personal use as he wants to open a show room of old and new cars. His case is covered by the requirement of Section 13B of the Act. According to him, the total area of the entire building is required by him for the aforesaid purpose. Merely because, the landlord is owning some other property in the Focal Point is no ground to hold that his need is not genuine. It is the choice of the landlord to get one building vacated under Section 13B of the Act out of two or more buildings. The landlord has already returned to India and opened his office in the 5 shops in his possession and he wants to construct the show room in the remaining portion of the building. Thus, in the facts and circumstances of this case, it can not be said that the need of the respondent-landlord is not bona fide, as alleged by the petitioners.”

Learned counsel for the respondents, on the other hand, have opposed the petitions and have submitted that in fact, the petitioner was owner of other property bearing No. 21 in Satluj Market, G.T. Road, Jalandhar and the same had been got vacated by the petitioner under Section 13-B of the Act. Petitioner had

failed to establish his *bona fide* need in the petitions filed under Section 13-B of the Act. Therefore, the petitions filed by the petitioner under Section 13-B of the Act, were liable to be dismissed.

The fact that petitioner is the owner of the premises in question, is not in dispute. Admittedly, petitioner is the co-owner of the premises in question and is a Non Resident Indian.

The question that requires consideration is as to whether the petitioner was entitled to seek ejectment of the respondents on the ground of personal necessity under Section 13-B of the Act.

Section 13-B of the Act reads as under:-

Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian -

(1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be :

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner

of such a building and shall be available only once during the life time of such an owners.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.

Thus, as per the above provision, a Non Resident Indian can seek eviction of the tenant on the ground of personal necessity. However, a Non Resident Indian can resort to benefit under Section 13-B of the act only once in his lifetime. Petitioner is the owner of the premises in question for more than five years prior to the filing of the ejectment petitions.

In order to determine the controversy between the parties, it is important to refer to site plan Ex. R-1, proved on record by the tenants. A perusal of the said document reveals that all the four shops in question form part of one building. One shop

shown at Mark-X in Ex. R-1, was on rent with Punjab State Civil Supplies Corporation Limited (PUNSUP) but admittedly, the same has been vacated by the said tenant. There is nothing on record to suggest that the shop which was vacated by the tenant, has been again rented out by the petitioner to another tenant. By moving the present petitions, petitioner wants vacant possession of the four shops in question to enable him to construct a mall for running his business. Since the shops in question form part of one building, the same are liable to be treated as one unit for the purpose of filing of petitions under Section 13-B of the Act by the landlord.

The tenants had made an effort to establish that the petitioner was also a co-owner of property bearing No. 21, Satluj Market near Bus Stand, Jalandhar and had sought ejectment of the tenants from the said premises. Petitioner had denied the fact that he had moved petition under Section 13-B of the Act to seek ejectment of the tenants qua property No. 21. There is no order on record to establish that petitioner had sought ejectment of any tenant qua property No. 21 by resorting to provision of Section 13-B of the Act. In these circumstances, the petitions moved by the petitioner seeking ejectment of the respondents/tenants under Section 13-B of the Act, were maintainable. Petitioner has specifically stated that he required the premises in question to run his own business as he had returned to India permanently. There is no reason to doubt the said statement made by the petitioner nor there is anything on record to infer to the contrary.

In the facts and circumstances of the present case, the

learned Rent Controller had, thus, erred in dismissing the ejectment petitions filed by the petitioner. In fact, petitioner had been successful in proving his case.

Accordingly, all these petitions are allowed. Respondents are directed to hand over the vacant possession of the premises in question to the petitioner within three months from today.

(SABINA)
JUDGE

March 18, 2015
Gurpreet