

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1304 of 2013 (O&M)

Date of decision: 22.03.2017

Darshan Lal

....Petitioner

Versus

Malkiat Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sanjeev K.Virk, Advocate, for the petitioner.

Mr.Divanshu Jain, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant, is directed against the order dated 23.04.2012, passed by the Rent Controller, Phagwara, whereby leave to contest has been declined.

The reasoning given by the Rent Controller, in the detailed order passed by him, is that while deciding the application under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), it was noticed that the respondents were NRI's, as per the definition under Section 2(dd) of the Act. It is to be noticed that all the three are sons of Karnail Singh and grandsons of Chanan Singh and respondent No.1 was holding passport issued by the United Kingdom of Great Britain, whereas respondents No.2 and 3 were holding Canadian passports and having been born at Phagwara. The ownership was on the basis of a Civil Suit decree against their grandfather, wayback in the year 1972, whereas the petition was only filed on 03.01.2009. Even their father had expired on 14.08.2001, which was more than 5 years from the date of filing of the petition. The necessary averments had been made that they wanted to return to India and occupy the premises, which was duly taken into consideration, while keeping in view the law laid down by the Apex Court in **Baldev Singh**

Bajwa Vs. Monish Saini 2005 (12) SCC 778.

It was, accordingly, held that the triable issue, which was sought to be raised by challenging the ownership, as such, on the ground that the property was shown in the name of the Provincial Government and the revenue record, was baseless by taking into account the fact that even the details of the khasra numbers of the property had not been brought on record to co-relate it to the tenanted premises. Reliance was placed upon the judgment and decree dated 04.05.1972, the copy of the house tax assessment register and the site-plan, to come to the conclusion that respondents were the owners and therefore, directed the summary eviction under Section 13-B of the Act.

Once the necessary ingredients of being an NRI under Section 2(dd) and wanting to return to India, having the requisite ownership of 5 years, have been made out, keeping in view the law laid down in **Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452**, by a three Judges Bench of the Apex Court wherein it has been held that a narrow and constricted meaning cannot be given under Section 13-B.

In **Kamaljit Vs. Sarabjit Singh 2014 (2) RCR (Rent) 249**, it has been held by the Apex Court that Section 13-B is a beneficial provision, intending to provide speedy remedy to the Non Resident Indians and the Civil Appeal was allowed since the Rent Controller had taken the view that the NRI owner had failed to prove that he was the owner of the property in dispute since the sale deeds could not be co-related to the shops in question. It was noticed in the said case that the

tenancy part was not denied and once that was so, the title of the landlord could not be questioned under Section 116 of the Evidence Act, 1872 and Section 13-B was a beneficial piece of legislation. Relevant observation reads as under:

“16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter’s title to the property. Section 116 clearly lends itself to that interpretation when it says:

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

17. 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.”

The contention that matters are pending consideration before the Apex Court, pertaining to Section 13-B of the Act are also without any basis. In **Krishan Kumar & others Vs. Kamla Devi & others 2016 (1) RCR (Rent) 525**, the said issue was raised, which was repelled, keeping in view the judgments of the Apex Court in **Swami Nath (supra)**. The said view was further upheld by dismissing the two appeals, i.e., SLP Nos.15366 & 15367 of 2016, on 11.01.2017, which arose out of the said judgment. It is further to be noticed that nothing has been brought on record that any fresh reference is pending before the Apex Court before a Larger Bench, wherein the correctness of the judgments in **Baldev Singh Bajwa (supra)** and **Swami Nath (supra)**, have been doubted.

Thus, from the above discussion, this Court is of the opinion that the present revision petition is bereft of any merit and the same is, hereby, dismissed.

22.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No