

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 1360 of 2013 (O & M)

Date of decision: 22.05.2017

Sarabjit Singh

....Petitioner(s)

Versus

Jiwan Singh

...Respondent(s)

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

Present: Mr. Arun Kumar Bakshi, Advocate,
for the petitioner.

Mr. R.S. Bajaj, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 6 revision petitions i.e. C.R. Nos. 1360, 1200, 1201, 1211, 1157 and 1358 of 2013 since common questions of facts and law are involved in all the revision petitions. For reference, *C.R. No. 1360 of 2013, Sarabjit Singh vs. Jiwan Singh* is being taken up.

The present revision petitions are directed against the order dated 20.12.2012 passed by the same Rent Controller, Jalandhar, whereby, leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') has been declined against a common landlord namely Jiwan Singh regarding six shops which are stated to be of the property of the respondent situated at S.D. College Road, Jalandhar and the residential portion is situated on the southern portion. The Rent Controller, vide the impugned order, declined leave to contest on the ground that there was a sale deed dated 15.03.1973 in favour of the petitioner who is a co-owner. Resultantly, it was held that being a co-owner, the application was maintainable and it was required for personal

use and occupation for doing the business of the grocery and general store which the landlord was doing in U.K. and intended to do so in the shops concerned. Reference was accordingly made to the judgment of the Apex Court in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (12) SCC 778*** and the application under Section 18-A of the Act was dismissed and eviction was ordered from the shops in question.

A perusal of the petition filed on 29.03.2012 under Section 13-B of the Act would go on to show that the landlord claimed that he was an NRI, having a passport of United Kingdom of Great Britain and Northern Ireland. He had been doing the business of grocery and general store in England and now, the business in England was being looked after by his sons. He and his brothers had purchased Property No. 1, Old Jawahar Nagar, Jalandhar, residential house with a view to settle in India in the evening of his life way back in the year 1973 and also purchased six shops which is a block of a single unit and that the petitioner was tenant in one of those shops. Resultantly, it was held that he was going to demolish all the six shops to construct a suitable new building. A power of attorney dated 24.01.2012 executed by the brothers was also relied upon and, therefore, the petition was being filed against all the tenants to vacate the entire six shops and to implement the dream project. The portion shown in Yellow colour was stated to be the residential property and accordingly, the demand was made that eviction be ordered as all the shops were part of the single unit purchased by the petitioner and his brothers. One Kuldeep Singh was also appointed as an Attorney to act on behalf of the landlord who is stated to be fully conversant with the facts of the case.

The petition was opposed by filing an application under Section

18-A of the Act wherein, the plea taken was that the shops had been taken on rent from Jit Singh and rent was being paid to the said person. One Sohan Singh and Sama Kaur were also receiving the rent. Electric connection was also installed in the name of Jit Singh and the tenant was the actual consumer. The petitioner was not the owner of the entire property for more than five years prior to the date of filing of the petition. Sale deed for the remaining property had not been placed on record and the tenants namely Snehlata, another tenant namely J.N. Dass (since expired) and his family was living there, who were tenants on the backside of the property of the applicant and no ejection petition has been filed against them. The landlords were well settled with their families and there was no intention to settle in India and the shopping complex was only about 4 marlas measuring 114 sq. ft. The provisions of Section 13-B of the Act were being misused as such and resultantly, prayer was made for grant of leave to contest.

In the reply filed, the defence taken by the landlord was that no tenancy had ever been created by Jit Singh and the landlord and his brothers used to receive the rent. It was admitted that Jit Singh had got installed the electricity connection at the instance of the petitioner and his brothers as he was looking after the property and the tenants of rear portion had already consented to vacate the property to the suitability of the petitioner and there was no need to file ejectment application against them. Other paragraphs were accordingly denied and it was averred that the application was maintainable under Section 13-B of the Act.

In the present case, the tenant has raised an issue that Jit Singh was the landlord and electric connection had also been installed in the name of Jit Singh. Accordingly, relationship as such had been denied. The factum

of Jit Singh as such having installed the electric connection has not been denied. This aspect has totally been ignored by the Rent Controller while granting leave to contest. Similarly, the presumption as such that the landlords want to come back and reside in India was also a triable issue as such, as admittedly, even the residential portion is leased out and is not in possession of the landlords. On the plea having been taken by the tenants that no ejectment petition had been filed against them, the defence is that consent has been taken from them to vacate the property. It has been held by the three-Judge Bench judgment of the Apex Court in ***Precision Steel and Engineering Works vs. Prem Deva Niranjana Deva Tayal, 1983 (1) SCR 498*** that where a triable issue is made out, leave to contest should be granted.

In such circumstances, this Court is of the opinion that triable issue as such was made out and the leave to contest has been wrongly declined.

Resultantly, the revision petitions are allowed. The eviction orders are set aside and leave to contest is granted and the tenants are permitted to file the written statement. Keeping in view the fact that the petitions were filed in the year 2012 under Section 13-B of the Act, it would be appropriate if the proceedings are concluded by 31.12.2018 and the District Judge, Jalandhar shall ensure that all the petitions are entrusted to one Rent Controller to avoid contradictory findings.

22.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No