

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

**Civil Revision No.1204 of 2014 (O&M)
Date of Order: 22.08.2017**

Capt. Anil Dhawan

....Petitioner

Versus

Azad Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. B.S. Guliani, Advocate for the petitioner-NRI landlord.

Mr. Divanshu Jain, Advocate for contesting respondent No.2.

JASWANT SINGH, J. (ORAL)

The petitioner-NRI landlord, concededly, is a foreign passport holder besides co-owner of SCO No.73, Sector 46-C, Chandigarh. The ownership is being asserted, in view of the settled principles of law that a 99 years' lease executed by the Chandigarh Administration in favour of the allottees vests with them a right of ownership so as to hold them as natural landlords. The petitioner being an NRI-landlord filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short "1949 Act") on 10.01.2011 (**Annexure P-2**) seeking to eject Azad Singh (respondent No.1) and his wife-Santra Devi (respondent No.2) from the entire Ground Floor of SCO No.73, Sector 46-C, Chandigarh, on the ground of personal requirement of the petitioner.

The co-owners were impleaded as proforma respondents. It is also admitted that Azad Singh was inducted as a tenant in the year 2005 by the petitioner along with the remaining co-owners.

Upon notice, Azad Singh did not file an application under Section 18-A (4 & 5) of 1949 Act, seeking leave to contest, however, his wife Santra Devi preferred the application for leave to contest. Her primary stand is reflected in para 5 of her application (**Annexure P-3**), which reads as under:-

“ That the petition is not maintainable on account of mis-joinder of parties. The answering respondent is not a tenant. There is no relationship of landlord and tenant in between the petitioner and the respondent No.2. The respondent No.2, however, is in the occupation of the premises inasmuch as the respondent No.1 who was the tenant in the premises, is a missing person. An FIR in this regard was lodged with the police by respondent No.2. The matter is under investigation. Whether the respondent No.2 is in illegal or unauthorized occupation or what is her status in the premises is to be determined by the civil courts and no order under Section 13-B of the East Punjab Urban Rent Restriction Act can be passed against the respondent No.2. If the petitioner wants the ejectment of the respondent No.2 from the premises, he will have to approach the Civil Courts and not through section 13-B of the East Punjab Urban Rent Restriction Act. ”

Learned Rent Controller, Chandigarh, vide impugned order dated 09.12.2013 (**Annexure P-1**), has granted leave to contest to Santra Devi, as it was the case of landlord that Azad Singh was inducted as a tenant and Santra Devi was a trespasser. Accordingly, it was noticed that the status of Santra Devi would be a triable issue, which would be decided in the eviction petition.

This Court while issuing notice of motion vide order dated 18.2.2014 stayed further proceedings before the trial Court.

Heard learned counsel for the parties at length and perused the file with their able assistance.

It is not in dispute that at the initial stage of consideration of the application for leave to contest, the averments in the affidavit alone have to be seen. The claim of Santra Devi is that her husband is missing for more than seven years, whereas the counsel for the landlord submits that as per the documents submitted before the Rent Controller, Chandigarh subsequently, he is stated to have died, therefore, the conceded tenancy of Azad Singh would devolve on all legal heirs including Santra Devi-wife.

Be that as it may, once the trial Court has found that certain triable issues are involved, this Court finds no material irregularity in the same.

In view of aforesaid, no further adjudication is warranted in the present revision. Accordingly, this revision petition is dismissed. The Rent Controller, Chandigarh is directed to expedite the eviction petition expeditiously, preferably within a period of nine months from the receipt of certified copy of this order.

August 22, 2017
manoj/Gagan

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No