IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 2321 of 2017 (O & M)
Date of decision: 20.04.2017

Amarjit Singh .....Petitioner(s)

Versus

Jarnail Singh ...Respondent(s)

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

Present: Ms. Sarika Gupta, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present petitioner challenges the order of the Rent Controller, Shaheed Bhagat Singh Nagar dated 07.09.2016 (Annexure P-3) whereby, ejectment has been ordered under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') from the shop in question in revisional proceedings.

The petition was filed by the respondent on 14.09.2006 on the ground that the present tenant was in possession of a shop marked as 'ABCD' which is part of the main market namely Pabla Market situated at Mukandpur Road, Banga. It is the case of the NRI respondent-landlord that he was residing in England for the last more than 40 years and he wanted to shift to India alongwith wife and to start a departmental store by constructing a showroom in the said market by including other shops also. He had filed similar ejectment petitions against other tenants and accordingly he placed on record the sale deed dated 20.01.1988. Leave to contest was granted on 11.04.2012 by the Rent Controller on the ground that triable issues arose. At an earlier point of time, eviction had been ordered on 05.10.2012 without examining the landlord. Resultantly, in C.R. No. 496 of 2013, the said order was set aside and the case was remitted back to the Rent Controller to give an opportunity to the landlord to appear as his own witness. Resultantly, the respondent appeared and proved the site plan and attested copy of his passport Ex.P2 alongwith identity card issued by NRI Sabha, Punjab Ex.P3 and certified copy of sale deed Ex.P4 and copy of Jamabandi Ex.P5.

Examining the passport, the Rent Controller came to the conclusion that the status of the landlord is an overseas citizen of India and the passport has been issued by United Kingdom of Great Britain and Northern Ireland and he was coming to India on a visitor visa. Keeping in view the statement made by the respondent and the admissions of the present petitioner, it was noticed that other 9 shops were lying vacant in the said premises and the respondent-landlord had been successful in getting eviction of the other tenants. Inter se litigation had also been initiated for payment of arrears of rent which had been duly paid and the petitions had been withdrawn and, therefore, it is admitted case that there was relationship of landlord-tenant and the property had been let out as such.

The Apex Court in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (12) SCC 778*** has specifically held that there is a presumption of bona fide requirement in favour of the NRI landlord and it has been held that it is not necessary for the landlord to permanently return as such. Accordingly, the argument which has now been raised by the counsel that there is no bona fide requirement as such and the landlord is only visiting India occasionally is without any basis keeping in view the observations of the Apex Court in *Baldev Singh's case (supra).* The relevant observations read thus:-

"23. It is further contended that for according relief under Section 13-B of the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to permanently return to India. The intention to permanently settle down in India should be read into words "return" used in Section 13-B. The specific category of NRI landlord has been created by the Legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of the NRI in Section 2(dd) of the Act, it is not necessary for the NRI-landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.

24. Definition of ``Non-resident Indian" (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be *an NRI, first should be of an Indian origin. The phrase ``Indian Origin'' has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase ``origin'' refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. <u>Return to India could not be read as return to India permanently with an intention to settle in India permanently.</u> If we read the phrase ``return to India'' along with the definition of the ``NRI'' under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.*

25. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him.

> *There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words "return to India" under Section 13-B of the Act denotes return to India permanently."*

The above said view has further been upheld by a three Judge Bench in ***Swami Nath vs. Nirmal Singh, 2010 (2) RCR 388*** and thereafter in ***Kamaljit Singh vs. Sarabjit Singh, 2014 (4) PLR 828*** wherein, it has been held that Section 13-B of the Act is a beneficial piece of legislation enacted for the purpose of giving speedy recovery to the NRI landlords and the whole purpose would be frustrated if they are not able to get possession of the rented premises in view of the procedure which has been specifically provided. The relevant observations in *Kamaljit Singh's case (supra)* read thus:-

> *"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.*
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> *19. The upshot of the above discussion is that the Courts below fell in manifest error in holding that the appellant-landlord was obliged to prove his title to the property, no matter the tenant clearly admits the existence of jural relationship of landlord and tenant between him and the appellant. We have, in the circumstances no hesitation in reversing the view taken by the Courts below and in decreeing the eviction petition."*

The bona fide requirement has been pleaded on the ground that all the shops have to be used for the purpose of a consolidated building in view of its prime location and the respondent has also stated that he has saved a sum of 70,000 to 80,000 pounds for investment in his business. The argument raised that he has not got permission from the Government to invest the said funds as such is without any basis. As noticed, the petition was filed way-back in the year 2006 and the requisite 5 years' period of ownership was already there which is a requisite condition under Section 13-B of the Act as the sale deed is dated 20.01.1988. For the last more than a decade, the landlord has been litigating and the argument raised that the building plans have not been sanctioned and, therefore, the bona fide requirement as such cannot be taken into account. In the absence of any clear possession, one would not expect anybody to invest or start seeking permission for raising construction since demolition as such cannot be done if one person is still in possession of a larger part of the building. The necessary requirements have been pleaded and proved. The landlord has put in appearance and shown his ownership and deposed his bona fide need and once the necessary ingredients as such have been satisfied, no ground as such is made out to interfere in the well reasoned order passed by the Rent Controller.

Resultantly, the present revision petition does not merit any further consideration and the same is dismissed in limine.

20.04.2017 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No