

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

C.R. No. 2374 of 2017 (O & M)

Date of decision: 17.04.2017

Pardeep Kumar

.....Petitioner(s)

Versus

Bela Singh and another

...Respondent(s)

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

Present: Mr. Arun Jain, Sr. Advocate,
with Mr. Sunil Sharma, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 7933-CII of 2017

Application for placing on record the rent notes dated 31.01.1990 and 02.12.2008 as Annexures P-1 and P-2 is allowed, subject to all just exceptions.

The same are taken on record.

C.R. No. 2374 of 2017 (O & M)

The present revision petition challenges the order of the Rent Controller, Amritsar dated 14.02.2017 whereby, ejectment has been ordered under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') from the two shop nos. 1 and 2 on the ground floor of building no. 170/13 Blue Plate No. 590/Xv-8, Black Plate No. 928/xv-8 situated in Abadi Husain Pura, Shivala Bhaiyan Road, Amritsar.

Senior counsel for the petitioner has vehemently submitted that there were two separate tenancies of the two different shops on 31.01.1990 and 20.12.2008 and, therefore, one single petition was not maintainable

before the Rent Controller and two separate petitions should have been filed. It is also submitted that a false plea was taken that the landlord had returned to India and the premises were required for the personal use of the applicants and their families. It is submitted that they are permanent residents of Hongkong and their families are settled there and there is no bona fide requirement as such and a false plea had been taken which is confirmed by the fact that the entries in the passports showed that they had only returned once or twice during the pendency of the case which was initiated on 19.08.2012. Counsel further argued that there was vacant portion available as such since the building was multi-storeyed over and above the ground floor and there was sufficient accommodation available and the premises being a shop is not liable to be vacated for the use of the residence as such. It is accordingly submitted that the order directing eviction was not justified and the Rent Controller has not taken into consideration all these factors.

A perusal of the paper book would go on to show that the petition was filed by the respondents who are two brothers. It is categorically averred that the two shops were let out @ ₹550/- and ₹1,200/- per month. The enhancement clause was also there for the second shop which took the rent to ₹1,500/- per month and, therefore, total amount due was ₹1,950/- per month. It is further alleged that they were senior citizens aged around 65 to 69 years and the premises are required for their personal use and for their families and they wanted to reside permanently in India for the rest of their lives. Further averments were made that they were neither owner nor occupying any other residential property in the municipal limits of Amritsar nor vacated any other property in Amritsar.

It is not disputed that leave to contest was granted on 03.10.2013 and resultantly, written statement came to be filed wherein, the plea was taken that there were two separate tenancies and, therefore, the single petition was not maintainable. Their bonafides was accordingly questioned that they had come to file the rent petition and returned and they were both serving as security guards at Hongkong and not abandoned their service. The purpose was to dispose of the property and they were in touch with various prospective buyers.

In the replication filed, defence taken was that both the portions were part of the same building and a single application was maintainable. It was denied that they had visited Amritsar for the short purpose of filing the instant petition and that they were not NRIs or that they were wanting to dispose of the property. Keeping in view the pleadings which came on record, the Rent Controller framed the following issues:-

“1. Whether the applicant is a Non-resident Indian? OPA

2. Whether the applicant is entitled to the relief of immediate possession under Section 13-B of EPURRA as prayed for in the head note of the plaint? OPA

3. Relief.”

Both the landlord-brothers stepped into the witness box as AW-1 and AW-2 namely Bela Singh and Naranjan Singh. On the other hand, the petitioner-tenant examined as many as 6 witnesses.

Resultantly, the Rent Controller came to the conclusion that the petitioner-tenant had admitted in his cross examination that the portion under the tenancy of Ashwani Kumar and Kuldip Singh had already been

vacated by the orders of the Court who were tenants on the second floor. Resultantly, the principles of the Apex Court in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (12) SCC 778*** were kept in mind while noting that the passports have been issued to the landlords by the Hongkong authorities and the photostat copies were on record. The sale deeds were dated 30.01.1981 and the petition had been filed on 19.08.2012 and, therefore, there was requisite ownership of 5 years. Resultantly, keeping in view the provisions of Section 13-B of the Act and Section 2(a), the definition of building was taken into consideration and reliance was placed upon judgment in ***Mukesh Kumar vs. Santosh Kumari and others, 2007 (1) RCR (Rent), 422*** that the definition of building has to be construed in such a manner as to how the landlord wishes to use and, therefore, once the shops were situated in one building, then the argument raised by the tenant had no force. The alleged ownership of some other properties of the landlord was beyond the municipal limits of Amritsar and pertained to Chohla Sahib, Tarn Taran and, therefore, the same could not be taken into consideration. It was also noticed that some tenants in the building had also vacated the shops on the second floor after the orders passed by the Court. Resultantly, keeping in view that it is not the legal requirement that the respondents actually had to come to India for filing the ejectment petition, eviction was ordered keeping in view the judgment of this Court in ***Lakhwinder Kumar and others vs. Pavitter Kaur (dead) through L.Rs. and others, 2010 (Suppl.) Civil Court Cases 33***. The fact that the need was not bona fide was also rebutted by relying upon the provisions of Section 13-B(3) that the Act provided a right for restoration and criminal proceedings could be initiated against such recalcitrant landlords.

The first argument which has been raised by senior counsel that there were two separate tenancies, though is an attractive argument at the first blush but keeping in view the provisions of Section 13-B of the Court, could not be applicable as such since the Legislature has given the NRI a right to seek eviction to recover immediate possession of the residential building; scheduled building and non-residential building. Section 13-B of the Act reads thus:-

“13-B. 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 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 user, 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 owner.

(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 it 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 he Controller shall make an order accordingly.”

The right to apply is only available after a period of 5 years from the date of becoming the owner and once during the lifetime of such a owner. Under Section 13-B(2) of the Act, the right is further given to make an application in respect of only one residential building or scheduled building or one residential building each chosen by him. Thus, it is apparent that the NRI is entitled to get as many as 3 buildings of different types vacated under the summary procedure provided and, therefore, once the right is given of the complete building as such and even if the tenancy was of two separate shops and for the purpose of residence, it would not as such make the petition not maintainable. The factum of the vacant portions as such which are available on the upper storeyes would also not be of much help to the tenant to argue that there was sufficient accommodation available. As noticed, leave to contest had already been granted and thereafter the landlords have put in appearance and deposed about their need. They were duly cross examined and in cross examination, it has come that there is no other building at Amritsar in the ownership of the landlord and all the 5 tenants in the building are independent and same had not vacated. The premises are required for the residential use which would be clear from the cross examination of Naranjan Singh that the ground floor is needed by them for residence. It is to be noticed that two landlords are

married to two real sisters and their attorney Angrej Singh was none else but their wives' brother. The argument also that at one stage the Power of Attorney had been executed in the year 2005 in the favour of the brother-in-law to sell the property would also be of no consequence as no such action was taken or acted upon from that point of time till the filing of the petition on 19.08.2012 for 7 long years. For their need of the premises in question, the landlords have pursued the litigation against the other tenants and have been successful in getting the vacation from some which has also come on record as noticed. The case of the tenant that there is sufficient accommodation on account of the vacation as such is of no consequence keeping in mind the basic principle being that the tenant is nobody who can dictate to the landlord and impose any condition and in what manner he is to live and what is the requirement. A perusal of the site plan (Ex.A-3) would go on to show that there are two rooms which are in use as a godown on the ground floor and two shops were in the occupation of the present petitioner and there is only a lobby on the ground floor with a bathroom. The rest of the rooms are situated on first, second and third floors. The age of the landlord is also to be taken into consideration. As noticed, they are senior citizens. If the premises are required on the ground floor for the residential use, the tenant cannot object that they would live on first floor and they should squeeze themselves in order to ease the comfort of the tenant. The judgment of the Apex Court in ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, 1999 (6) SCC 222*** can be taken into consideration for this aspect. The relevant portion reads thus:-

“12. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word

'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of

the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

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21. *Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day the family of the landlord consists of the landlord himself (a practising doctor), his son (again a practising doctor), the daughter-in-law and two grand children who are gradually growing in their age. Looking at the size of the family, availability of three bed rooms in the premises in which the landlord may live, is a requirement which is natural and consistent with the sense of decency - not to talk of comfort and convenience. There is nothing unreasonable in a family with two practising doctors as members thereof needing a room or two or a room with a veranda to be used as a residential clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are bare*

necessities for a comfortable living. The landlord has been living in Defence Colony locality for more than 35 years. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord, and the death of the landlord's mother-in-law, are events which have hardly any bearing on the case of felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural, sincere and honest and hence a bonafide need. There is no material available on record to doubt the genuineness of such need. It continues to subsist in spite of the two deaths. It is not the case of the tenant - appellant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family, may move to Sarvodaya Enclave House if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire family must shift to Sarvodaya Enclave house which is admittedly situated at a distance of about 7-8 kilometers from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood and the environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned senior

counsel for the respondent, has very rightly submitted that it could not have been the intendment of the Rent Control Law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy. In addition, we find that on the date of the initiation of the proceedings, Sarvodaya Enclave property was belonging to the wife of the landlord or to one of his sons resident abroad and was in actual occupation of a tenant. On the death of the wife of the landlord if any one of the two wills (one which was in existence at the time of initiation of the proceedings or the one, which appears to have been subsequently executed by the landlords' wife and filed before the High Court) was to be given effect to then the ownership in the property has passed on to one son or jointly to four sons of the landlord. If the will itself is excluded from consideration as not proved then also the ownership in the property has passed on to the four sons jointly, Sarvodaya Enclave property does not belong to the landlord and is not available for his occupation as an owner. To these facts the applicability of law laid down in Prativa Devi's case (Supra) is squarely attracted. In our opinion, the availability of Sarvodaya Enclave property is not of any relevance or germane to determining the need and the bonafides of the need of the landlord. We are not therefore inclined to attach any weight to the application for additional evidence filed by the landlord before the High Court though we agree with the learned Counsel for the tenant -

appellant that the High Court was not justified in taking into consideration the contents of the will without formally admitting the same in evidence and affording the parties opportunity of adducing evidence in proof and disproof thereof. ”

The argument that it is a commercial premises as such also and, therefore, cannot be vacated for residential purpose also cannot be taken into account keeping in view the fact that the petition is filed under Section 13-B of the Act. As noticed, Section 13-B of the Act provides that eviction can be ordered from all the three types of building for the necessity of the NRI. The Apex Court in *Baldev Singh Bajwa's case (supra)* has also held that there is a presumption as such in the favour of the NRI and heavy burden lies on the tenant to prove that the requirement is not genuine and the return to India need not be permanent.

In the present case, as noticed, the landlords have come into the witness box and have been duly cross examined regarding their need and bona fide requirement and, therefore, it cannot be said or presumed that the need is not genuine or bona fide. It has also been held by the Apex Court that there is no such requirement that the NRI landlord should permanently return as such and, therefore, the argument raised that the landlords have only come once or twice only for the purpose of filing the petition and deposing also, thus, cannot really be accepted keeping in view the binding precedent of the Apex Court in *Baldev Singh Bajwa's case (supra)* which reads 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. Return to India could not be read as return to India permanently with an intention to settle in India permanently. 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 observations have further been upheld by a three Judge Bench in **Swami Nath vs. Nirmal Singh, 2010 (2) RCR 388** wherein, it was held as under:-

“13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made on behalf of the Petitioners. The interpretation sought to be given to the proviso to [Section 13-B\(1\)](#) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of [Section 13-B](#) by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

14. The provisions of [Section 13-B](#) of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are

dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly.”

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 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.

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.”

Resultantly, this Court is of the opinion that once the necessary four ingredients have been made out that the sale deed is dated 30.01.1981; the ownership is more than 5 years; the respondents are persons belonging to Indian origin having been born in India but settled and having passports of Hongkong and United Kingdom and have come back and deposed regarding their bona fide need and requirement, therefore, all the necessary ingredients as such have been met out and the reasoning given by the Rent Controller in ordering eviction is accordingly held to be well justified.

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

17.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No