

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

C.R. No. 3080 of 2011 (O & M)

Date of decision: 13.02.2017

Punjab State and othersPetitioner(s)

Versus

Pritpal Singh Cheema and others ...Respondent(s)

AND

C.R. No. 6245 of 2016 (O & M)

Punjab State and othersPetitioner(s)

Versus

Pritpal Singh Cheema ...Respondent(s)

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

Present: Ms. Lavanya Paul, AAG, Punjab,
for the petitioners.

Mr.Gulzar Mohd., Advocate, for
Mr.Rajesh Gupta, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of two revision petitions i.e. C.R. Nos. 3080 of 2011 and 6245 of 2016 which have been filed by the State, as common questions of facts and law are involved in both the revision petitions. Facts are being taken from *C.R. No. 3080 of 2011, State of Punjab and others vs. Pritpal Singh Cheema and others* since in the said case, the eviction petition was filed on 02.05.2007 under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') prior to the filing of the eviction petition on 26.03.2010 under Section 13 of the Act.

The order under challenge is dated 29.01.2011 passed by the

Rent Controller, Ludhiana whereby, the application under Section 18-A of the Act for permission to contest filed by the State has been rejected. The Rent Controller, while deciding the said application, noticed that the property had been let out to the State through District Commander Punjab Home Guards in the year 1980 by Pritam Singh Cheema, father of the respondents, who had died on 25.10.1990. His wife Smt. Rachhpal Kaur Cheema had predeceased him on 21.07.1987. The respondents, being the sons of the original landlord, who were holding British passports and being persons of Indian origin, filed the petition under Section 13-B of the Act claiming to be covered under the definition of Non Resident Indians (in short 'NRIs') and being co-owners and having locus standi to file the petition.

The application for leave to contest was, thus, filed that they were holding British passports and were not Indian by birth and have no right to file petition under Section 13-B of the Act. There were other legal heirs of the deceased and, thus, the petition was not maintainable. They had filed applications dated 19.02.2007 with the Municipal Corporation for transfer of ownership of the property in their names and in the name of Sukhbir Singh on the basis of the Will of the deceased Pritam Singh Cheema and, therefore, the genuineness of the document was still to be ascertained. Thus, it could not be said that they were owners of the property for the last 5 years. They had not disclosed of the earlier petition which had been filed by their father which had been dismissed on 07.11.1989 and an application had been filed for setting aside of the dismissal order which had also been dismissed. Therefore, the State took the plea that their possession had become adverse and was hostile.

The Rent Controller noted that the father had given the property on rent and, thus, there existed the relationship of landlord-tenant. In the earlier litigation, the State had admitted the relationship and, therefore, being NRIs, they had the locus standi to maintain the petition once Pritam Singh had died on 25.10.1990 and respondents being legal heirs would have the ownership rights as such and reliance was placed upon the photocopies of their passports to show that they were NRIs. Reliance was also placed upon the certificate T.S.1 that they were co-sharers in the premises for the last more than 5 years since petition was filed on 02.05.2007 and Pritam Singh Cheema had expired in the year 1990. It being settled principle that a co-sharer can file a petition under Section 13-B was also noticed. Resultantly, the relationship having been admitted in the earlier litigation and a frivolous plea having been taken that there existed no relationship of landlord and tenant between the parties and since the earlier petition having been dismissed in default would not bar a fresh petition under Section 13-B of the Act as the first one had been filed by the father of the petitioner, the same has been rightly rejected. Merely because the property in question was being used as an office and was residential in nature did not as such affect the case of the landlords. The petition had been filed through the Attorney namely Sobhan Singh and, therefore, reliance was placed upon the judgment of the Apex Court in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (4) RCR (Civil) 492*** to hold that the presumption of bona fide requirement was in favour of the respondents-landlords and no triable issue as such was arising as the requisite conditions were being fulfilled and accordingly, the petition was allowed.

The law already stands settled by a Division Bench of this

Court in the judgment dated 26.04.2011, ***Smt. Bachan Kaur and others vs. Kabal Singh and another, 2011 (2) RCR (civil) 886*** that the NRI co-owner can seek eviction of the tenant under Section 13-B of the Act from the building not inducted by such NRI and it is not necessary that all other co-owners should be NRIs and there should be no objection for other co-owners. The respondents are the legal heirs of the original landlord, being his sons, who had let out the property. The State has taken the extreme step of even pleading that they are in adverse possession and, therefore, even the title of the respondents as such is admitted. The Supreme Court in ***Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & others (2009) 16 SCC 517*** has held that it is not for the State to hold out such a plea. The necessary conditions of the fact that they are NRIs by placing their passports on record and ownership was more than 5 years, as the father had died on 25.10.1990 and thus, succession had opened and that they wanted to return permanently was duly noticed.

Resultantly, keeping in view the fact that the necessary ingredients have been duly established and in view of the settled principle that the presumption is in favour of the NRI-landlords, the order passed by the Rent Controller is well justified. In ***Krishan Kumar and others vs. Kamla Devi and others, 2016 (1) RCR (Rent) 525***, the matter was sought to be re-agitated before this Court that the matter was pending consideration before the Apex Court pertaining to Section 13-B of the Act. The said argument was repelled by noticing that the view in *Baldev Singh Bajwa's case (supra)* had been followed by the three Judge Bench in ***Swami Nath vs. Nirmal Singh, 2010 (2) RCR 388*** wherein, it had been held that a restrictive definition was not justified. The said view has been further

upheld by the Apex Court whereby, it dismissed two appeals i.e. SLP Nos. 15366 and 15367 of 2016, which arose out of the judgment in *Krishan Kumar's case (supra)* on 11.01.2017.

Resultantly, keeping in view the cumulative discussion, this Court is of the opinion that the findings as such recorded by the Rent Controller while declining leave to contest are well justified and accordingly, the order does not require any interference in revisional jurisdiction.

Resultantly, the eviction orders which have thereafter been passed in C.R. No. 6245 of 2016 in a petition filed under Section 13-B of the Act are also upheld wherein, even a witness Ashok Singh as such appeared as PW-1 for the respondent-landlord. Merely because a plea was taken that the land had been transferred vide mutation no. 1606, in favour of the Central Government, would not, as such, restrict the Rent Controller from ordering ejectment keeping in view the settled principle that the title of the landlord cannot be questioned by the tenant. It is settled principle that the tenant cannot challenge the title deeds of the landlord as such. Moresoever, in view of the fact that once having taken the plea of adverse possession, the petitioner-State, thus, admits the status of the ownership of the respondents. Resultantly, the findings of the Rent Controller upheld by the Appellate Authority are also upheld in CR No.6245 of 2016. Both the revision petitions are accordingly dismissed.

13.02.2017
shivani/sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No