

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CR No.3060 of 2014 (O&M)

Decided on : 28.02.2017

Government of Haryana and another

... Petitioners

Versus

Sarvinder Singh

.. Respondent

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

Present : Mr.Subhash Chand, DAG, Haryana
for petitioner No.1.

Mr.Sanjiv Gupta, Advocate
for petitioner No.2.

Ms.Ekta, Advocate for
Mr.Maninder Bharthy, Advocate for the respondent.

G.S.Sandhawalia, J. (Oral)

The present revision petition by the tenant is directed against the order dated 31.03.2014 passed by Rent Controller, Chandigarh, whereby eviction from the entire 3rd Floor, of SCO No.85-86, Sector 17, Chandigarh, has been ordered under Section 13-B of the *East Punjab Urban Rent Restriction Act, 1949* (for short the 'Act') as extended to Chandigarh.

The reasoning which prevailed with the Rent Controller was that petition under Section 13-B of the Act, had been filed for eviction, and it was mandatory to file an application for leave to contest under Section 18-A of the Act, within the prescribed period. No application for leave to defend has been sought. Therefore, in view of the fact that on account of non-filing the leave to contest, no triable issue had been

raised, and ejectment order was passed.

Apart from that, in spite of no leave to contest having been filed, Rent Controller noticed that necessary conditions of Section 13-B of the Act have been fulfilled. It was also noticed that summons, as provided under Schedule 2 of Section 18-A of the Act, were served upon the petitioner-tenant, as well as service was effected by way of dasti process, affixation and by a registered cover. Apart from that, Rent Controller also noticed that necessary ingredients that the landlord is an NRI, have been duly made out. Reliance was placed upon the passport to show that nationality was of the United State of America (USA), and the landlord was a person of Indian origin.

A perusal of the passport would go on to show that the place of birth of the petitioner was India. Therefore, findings as such, which have been recorded are within the parameters as laid down by the Apex Court in case of 'Baldev Singh Bajwa Vs. Monish Saini' 2002 (4) RCR (Civil) 492. It was noticed that the award dated 15.05.2006 was in favour of the landlord which was prior to the filing of the petition in the year 2014 and accordingly, necessary condition of 05 years ownership, has also been satisfied before the filing of the petition.

In view of the absence of the application for leave to contest, the petition under Section 13-B of the Act remains un-rebutted and therefore, there is a bona fide presumption in favour of the landlord that he required the premises in question for his own use and occupation.

The Apex Court in Om Parkash Vs. Ashwani Kumar Bassi 2010 (9), SCC 183, has held that there is no provision with the Rent

Controller to extend the time, for making of such application or affidavit under Section 18-A of the Act.

In the present case, the situation is even worse that the leave to contest was never filed. As per provisions of Section 18-A (5) of the Act, the Controller may give time to the tenant, leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord. Only where leave is granted to the tenant to contest the application under Section 18-A (6) of the Act, and the proceedings have to continue. Similarly, section 18-A (4), itself provides that tenant can file an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. The same having not been done, an order of eviction necessarily has to follow as has been laid down in the Full Bench of this Court in **Anwar Ali Vs. Gian Kaur 2012 (2) PLR 554**.

Resultantly, no fault can be found in the order passed by the Rent Controller. Accordingly, the present revision petition is dismissed.

At this stage, counsel for the petitioner No.2 has submitted that the petitioner being a govt. department be granted a reasonable time to vacate the premises.

Let necessary affidavit be filed before the Rent Controller, Chandigarh by petitioner No.1 within four weeks from today, that the vacant premises will be handed over by 31.12.2017.

In case the needful is done and all the arrears of rent are cleared, the petitioner-tenant will be allowed to continue till the said date.

In absence of the deposit of arrears and filing of affidavit and payment of

mesne profit by 7th of each calendar month, it will be open for the landlord to seek possession of the property.

[G.S.Sandhawalia]
Judge

28.02.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No