

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

Civil Revision No.3206 of 2012

Date of decision: 15.03.2017

Tarsem Singh

...Petitioner

Versus

Mohan Lal (now deceased) through his legal representatives **...Respondent**

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

Present: Mr. Arun Bakshi, Advocate for the petitioner.

Mr. H.K.Aurora, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition filed by the landlord is directed against the order dated 6.1.2010 whereby the Rent Controller, Jalandhar has dismissed the petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the Act”).

The Rent Controller, Jalandhar however came to the conclusion that there was a relationship of landlord and tenant interse the parties. The petition has been dismissed on the ground that the landlord had filed another petition under Section 13-B of the Act earlier in point of time in 2001 against another tenant namely Harbans Singh. It has thus been held that since the provisions of Section 13-B of the Act could be exercised only once in life time, therefore, there was a bar as such for filing the 2nd petition.

The said finding is against the provisions of Section 13-B of the Act which provides that NRI landlord can get immediate possession of a building or buildings as the case may be once he has ownership of five years from the date he has become owner of such a building. The same is available only once during the life time of such as owner.

if the owner had let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him to make an application in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him. Thus, he is entitled to get three buildings vacated under the said provision. Section 13-B of the Act reads as under:-

"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 a Non-resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may, let out by him or her, is required for his or her use, or for the use of any one ordinary 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 the Controller shall make an order accordingly."

In the present case, it is not disputed that vide sale deed dated 2.11.1966 (Ex. P3), the petitioner had got the ownership of the larger premises and the tenanted premises is part of the larger premises which was measuring 33 Marlas. The same was purchased from Harbans Singh who is alleged to have been continuing in possession in spite of the purchase as a tenant. The rent note dated 1.4.1966 (Mark-A) has been admitted by Harbans Singh against whom the petitioner had filed eviction petition in 2001. It is not disputed that Harbans Singh had filed a suit as such whereby he challenged the said sale deed which was dismissed which has come on record since Harbans Singh had appeared along with tenant as RW-3 and admitted that the suit was dismissed whereby he claimed himself to be owner of the property which is exhibited as Ex. P3. It was in such circumstances, the Rent Controller, Jalandhar has held that under Section 116 of the Evidence Act, 1872, the tenant could not dispute the title of the landlord and came to the conclusion that there was a relationship of landlord and tenant under issue no.1.

Even the fact that the petitioner was an NRI, was also decided in his favour since he was born in India at Jalandhar but had proved passport (Ex. P1) issued by United Kingdom of Great Britain & Northern Ireland in his favour. He had appeared in the witness box to state that he required the premises as he wanted to shift back to India and on account of this fact that the petition had been filed against Harbans Singh.

It was held under issues no.3 and 4 that the ~~second~~ **second** petition

which has been filed on 20.4.2006 was not maintainable in the present form since he had filed another petition earlier in point of time under Section 13-B of the Act against another tenant.

The law on this issue was settled by the Court in **M/s Bhandari General Store and another Vs. Makhan Singh Grewal and another** 2006(2) PLR 167 to that extent that an NRI landlord can seek eviction from a building of all the tenants. The same reads as under:-

7. After hearing the arguments of learned Counsel for the parties, I do not find any force in the submission made by learned Counsel for the petitioners-tenants. The provisions under Section 13A and 13B of the Act are almost similar. Under Section 13A of the Act, the right to recover immediate possession of the residential or scheduled building or any part of such building, if it is let out in part or parts, has been given to the specified landlord within one year prior to or within one year after the date of his retirement. Second proviso to this section provides that nothing in this section shall be construed as conferring a right on any person to recover possession of more than one residential or schedule building. Under Section 13B of the Act, a right has been given to the Non-Resident Indian landlord to recover immediate possession of the residential building, scheduled building and/or non-residential building on fulfillment of certain conditions. It has been specifically provided that the Non-Resident Indian landlord shall avail this right only once during his life time. It has been further provided under Sub-section (2) that if the said Non-Resident Indian has let out more than one residential building or scheduled building and/or non-residential building, he or she shall be entitled to get vacated only one residential building or scheduled building or non-residential building, as chosen by him or her. Therefore, the specified landlord

under Section 13A or Non Resident Indian Landlord under Section 13B has been given the right to recover immediate possession of one building. In both these cases, it has been made clear that such landlord can get the ejectment only from one building. In case of Non-Resident Indian, out of two buildings, option has been given to the landlord to choose one for getting immediate possession of the same. In Zenobia Bhanot's case (supra), the Supreme Court has held that if a residential building or scheduled building is let out in parts to different tenants, it is open for the specified landlord to get ejectment of all those tenants by filing different petitions. In the said decision, a residential building was let out by the specified landlord to different tenants in four parts. Four different ejectment petitions were filed by his wife under Section 13A of the Act. Those four petitions were tried before different Rent Controllers. The learned Single Judge of this Court took the view that under the second proviso of Section 13A of the Act, the specified landlord is entitled to recover possession of only one residential building i.e. one part of the building and he cannot seek ejectment of all the four tenants. He has to make a choice in this regard. The said interpretation of the learned Single Judge was approved by the Division Bench of this Court.”

The Apex Court in **Swami Nath Vs. Nirmal Singh 2010(2)**

RCR 388 rejected a similar contention which was raised that the ejectment application was only maintainable in respect of one shop and not all the three shops under Section 13-B of the Act. It was accordingly held that if possession of various tenants could be allowed to continue and the landlord was entitled to exercise his right of summary proceedings only against one unit, it would lead to an absurd situation. The said interpretation would be contrary to the objects sought to be achieved under Section 13-B of the Act.

Relevant portion reads as under:-

11. The submissions made on behalf of the Petitioners were strongly opposed on behalf of the Respondent/landlord. It was urged that the language of Section 13-B(1) of the 1949 Act was clear and unambiguous and the suggested interpretation of the proviso thereof would lead to an absurd situation if the building of the NRI was under the possession of various tenants and he was entitled to exercise his right of summary proceedings only in respect of one of the said units. It was submitted that such an interpretation would be absolutely contrary to the objects sought to be achieved by the introduction of Section 13-B in the 1949 Act by way of amendment in 2001.

12. Reliance was placed on the decision of this Court in **Baldev Singh Bajwa v. Monish Saini 2005(4) R.C.R.(Civil) 492 : 2005(2) R.C.R. (Rent) 470 : JT 2005 (12) SC 442** where the same question had come up for consideration and it was observed that on a plain reading of the provisions of Section 13-B, it would be obvious that once in a life-time possession is given to an NRI to get one building vacated in a summary manner. It was also submitted that the ownership of the Respondent/landlord in respect of only one building had not been disputed by the Petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the second time to a particular building, which contention had been negated by the Courts below.

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.

Resultantly, keeping in view the above settled position of law, the finding recorded by the Rent Controller, Jalandhar on issues no.3 and 4 being perverse are reversed. It is held that the 2nd petition was maintainable and the NRI landlord was entitled for eviction of all the tenants from the premises in question which is part of one building.

Accordingly, the present petition is allowed. Consequently, relief clause is also modified and eviction of the respondent-tenant is ordered from the premises in question. The tenant is given two months' time to vacate premises in question.

March 15, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No