

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.3604 of 2015(O&M)

Date of Decision:-12.07.2017

M/s Commando Caterers Pvt. Limited & Anr.

.....Petitioners.

Versus

Shinder Singh Mandair.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vishal Aggarwal, Advocate for the Petitioners.

Mr. H.S. Saini, Advocate for the respondent.

JASWANT SINGH, J. (ORAL)

Petitioners (tenants) have filed the present revision petition aggrieved against the order dated 05/05/2015 passed by the Ld. Rent Controller, SAS Nagar, Mohali, whereby, the ejectment application filed by respondent-landlord under section 13-B of the East Punjab Urban Rent Restriction Act (hereinafter referred to as 'The Act') has been allowed, after granting leave to defend to tenant and consequently, eviction of the petitioner has been ordered.

Learned Counsel for the petitioners has vehemently argued that there is a concealment of fact on the part of the respondent-landlord as he has failed to disclose in the eviction application that he is owner of other properties as well within the municipal limits of Nayagaon. He argues that a perusal of the evidence led by the tenant, especially in the form of

Jamabandi, it is apparent that the respondent-landlord is owner of other properties as well in the Municipal Limits of Nayagaon, District Mohali where the demised premises is situated and this fact has been admitted by him in his cross-examination. He further submits that the demised premises comprises the building where there are 09 (nine) sets of flats of two bedrooms and 03 (three) sets of flats of one bedroom each and, the proposed need of the landlord and his wife is for residential purposes which cannot be termed to be genuine. Hence, prayer has been made for setting aside the impugned order and consequent dismissal of ejectment application. In support of his arguments, Ld. counsel for the petitioners has relied upon the following judgments:

- 1. *Jaswinder Singh & Anr. Vs. Mewa Singh & Ors. 2015 (1) Rent Law Reporter 5;***
- 2. *Hasmat Rai & Anr. Vs. Raghunath Prashad 1981 (2) Rent Control Reporter 401;***
- 3. *Nelson Christopher Vs. Pritam Singh 2010 (1) Rent Law Reporter 135;***
- 4. *Baldev Singh Bajwa Vs. Monish Saini 2005 (2) Rent Control Reporter 470***

On the other hand, Ld. Counsel for the respondent has argued that as per the provision of section 13-B of the act, there is no requirement to mention in the ejectment application regarding ownership of other properties as well, within the municipal limits of Nayagaon. He further submits that it is not in dispute that the landlord is an NRI and that he has been the owner of the demised premises for the last 5 years. Since, the landlord has categorically mentioned in his ejectment application that he requires the premises for his own use and occupation therefore, there is no requirement to further inquire into the matter, as all the ingredients required under section 13-B of the act have been fulfilled and thus, the ejectment

order passed by the Ld. and controller does not suffer from any illegality. Hence, prayer has been made for dismissal of the ejectment application. In support of his contentions, Ld. Counsel for the respondent has relied upon the following judgments:

- 1. *M/s Chandigarh Finance & Investment Company Vs. Sukhminder Singh Bhattal & Ors. 2013 (2) RCR (Rent) 335;***
- 2. *Sheela Rani Vs. Minder Kaur alias Mohinder Kaur 2013 (2) RCR (Rent) 130;***
- 3. *Onkar Singh Vs. Dilbagh Rai & Anr. 2012 (1) RCR (Rent) 135;***
- 4. *Sanjiwan Kumar @ Pappu Khad Wala Vs. Sarabjit Kaur 2014 (1) RCR (Rent) 364;***
- 5. *Rajnish Jain & Ors. Vs. Krishan Kant 2009 (2) RCR (Rent) 609;***
- 6. *Neera Kheti Vs. Sadhu Singh 2013 (2) RCR (Rent) 236; &***
- 7. *Neena & Anr. Vs. Lal Chand Sidhu & Ors. 2015 (1) RCR (Rent) 537.***

I have heard the Ld. counsel for the parties at length and have perused the paper book along with the record and am of the considered opinion that the present petition deserves to be dismissed, being without any merit.

It has been proved on record that the respondent-landlord is a resident of United Kingdom and the copy of the passport proves his NRI status. It is also not in dispute that the respondent-landlord is owner of the premises in question for last more than 5 years having purchased and a perusal of his ejectment application shows that he along with his wife intends to settle back in India. However, the petitioner-tenant has challenged the bona fide necessity of the respondent-landlord on the ground of concealment as well as on the ground that he has other properties as well within the municipal limits of Nayagaon. However, this court is of the

opinion that the said plea of non-disclosure entails dismissal of ejectment application, would not be available in the present case. The requirement of mandatory disclosure of other properties has been incorporated only in section 13 (3), which deals with the personal requirement of a resident Indian. This requirement is not there while seeking eviction under any other ground or under section 13 (B), which is a special right conferred upon NRI. In the circumstances, the plea that non disclosure/concealment regarding other properties entails dismissal of ejectment application, cannot be taken by a tenant in a proceeding under section 13 (B).

Meaning thereby, there is no requirement for a landlord filing an ejectment application under section 13 (B) of the Act to disclose that he is in possession of other properties within the municipal limits where the demised premises is situated. Had that been the intention of the Legislature, it would have so mentioned in section 13-B as well, as has been mentioned in section 13 (3) of the Act. The only requirement is that the landlord should be an NRI; owner of the demised premises for the last 5 years; averment in the petition that he requires the premises for his own use and occupation or anyone living and dependent upon.

Another limb of argument of the petitioners is that, once the landlord was forced to admit in his cross-examination that he had other constructed properties within the municipal limits of Nayagaon especially the one which is adjoining the demised premises then, the court should have come to a conclusion that the tenant has displaced the presumption of bona fide requirement. However, this argument is also devoid of any merit. As observed in previous paragraph, there is no such requirement under Section 13B of the Act to disclose that landlord has other properties in his/her

possession. The reason for this is quite apparent from the wording of Section 13-B of the Act itself. A landlord can claim benefit of this Section only once in a life time and therefore he has an option to choose any premises that he feels is more suited to his need. Ownership or possession of any other property within the municipal limits of demised premises, thus, does not make any difference, especially in view of the numerous onerous condition put upon such NRI-landlord. It would be apposite to reproduce the following extracts from the judgment of the Supreme Court in ***Baldev Singh Bajwa Vs. Monish Saini, 2006 AIR (SC) 59*** which gains significance in view of the facts of the case:-

“20. The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under [Section 18-A](#) of the Act of 1949 which requires the Controller to take up the matter on day-to-day basis till the conclusion of the hearing of an application. The Legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction, it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. [Section 13-B](#) gives right of ejectment to special category of landlord who is NRI (Non Resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-section (3) of [Section 13-B](#) imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of [Section 13-B](#), the tenant is given a right of restoration of possession of the said building. Under subsection (2-B) of [Section 19](#) the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended upto six months. These restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine. Landlord, after the decree for possession, is bound to possess

the accommodation. Landlord is prohibited from transferring it or letting it out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it improbable for any NRI landlord to approach the Court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenants' right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under [Section 13-B](#) by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bonafide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine."

(Emphasis supplied)

A reading of the above shows that the mere fact that the landlord has any other premises in his occupation would not be enough to displace his personal necessity, especially like in the present case.

Lastly, the plea that the need of respondent-NRI landlord is not genuine in view of the fact that the need of landlord is to shift in demised premises with his wife, whereas the demised premises consists of 09 (nine) sets of flats of two bedrooms each and 03 (three) sets of flats of one bedroom each with multiple entrances, is concerned, same is also devoid of any merit

for three reasons:-

- (i) *Admittedly, the tenancy is composite one and it is settled position of law that partial eviction is not permissible.*
- (ii) *The Court cannot go into the question of sufficiency or insufficiency of accommodation for a landlord because every individual has his own sense of living standard and it is best left to him to decide the manner in which he intends to reside.*
- (iii) *In his pleadings as well as evidence as PW-1, landlord has stated that when he will start to live in India, his family of four married sons, grandsons and grand-daughter, who are also living in U.K. Would visit India to meet him and his wife. This statement is enough to dispel the doubts that tenant intends to create in the bonafides of the landlord.*

The judgments relied upon the Ld. counsel for the petitioners are on the issue as to whether the leave to contest is required to be given to the tenant in view of the fact that landlord owns other premises. Present case is not of leave to contest but is on merits. Hence, the said judgments are completely distinguishable on facts.

In view of the above, finding no error in the order passed by the learned Rent Controller impugned herein, the present revision petition is hereby dismissed.

(JASWANT SINGH)
JUDGE

July 12, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>