

CR No.6208 of 2017 (O&M)
CR No.6209 of 2017 (O&M)
CR No.6210 of 2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR No.6208 of 2017 (O&M)

Sahib Singh ... Petitioner

Versus

Sukhraj Singh ... Respondent

2. CR No.6209 of 2017 (O&M)

Sarwan Jangra ... Petitioner

Versus

Sukhraj Singh and another ... Respondents

3. CR No.6210 of 2017 (O&M)

Sunder Lal deceased through LR ... Petitioner

Versus

Sukhraj Singh and another ... Respondents

Date of Decision: 14.09.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Dhawan, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

This order will dispose of CR No.6208 of 2017 titled *Sahib Singh v. Sukhraj Singh*, CR No.6209 of 2017 titled *Sarwan Jangra v. Sukhraj Singh and another* & CR No.6210 of 2017 titled *Sunder Lal deceased through LR v. Sukhraj Singh and another*, all filed by Sahib

Singh, Sarwan Jangra and Sunder Lal deceased through LR's as common question of law and fact are involved in all of them which can be conveniently disposed of by one order.

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In my considered view these petitions deserve to be dismissed for the following reasons:-

The matter is res judicata between the parties with the passing of the prior order dated November 25, 2009 in CR No.5139 of 2009 (*Sahib Singh v. Sukhraj Singh*) and CR No.5138 of 2009 (*Sarwan Jangra and another v. Sukhraj Singh*). By a detailed ten page judgment, the learned Single Judge elaborately dealt with all the points in issue and traced the ownership rights over the disputed property to the original landlord and found no reason to interfere with the eviction order passed by the Rent Controller, Jalandhar in a petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949. Both the tenants were given reasonable time by this Court to make alternative arrangements to shift from the demised premises elsewhere and were permitted by an interim arrangement to retain the two demised shops up to January 31, 2010 subject to depositing the entire arrears of rent on or before December 15, 2009. The order and the context in which was passed has not been explained on the judicial file of this case. However, the order has been handed over from the Bar on Court request and has been read by me. The order has attained finality with the special leave to appeal before the Supreme Court bearing SLP (Civil) No.7725 of 2010 dismissed on March 26, 2010.

The learned single judge while dismissing the rent petition held as follows:-

*“(11). Considering the petitioner’s contentions on the touchstone of the parameters extracted above, the first and foremost question that arises for consideration is as to whether or not the respondent is a Non-Resident Indian. In **Baldev Singh Bajwa’s** case (supra), it has been ruled that a person who himself or his father or grandfather were of Indian origin and settled abroad permanently or temporarily for the purpose of job/business/vocation, would fall within the ambit of ‘Non-Resident Indian’. True it is that as per the entry made in the Passport (Ex.P2), the respondent was born in Tanzania, however, he has led documentary evidence, especially, the revenue records (Ex.P10) to show that his father and grandfather were born and brought up and were the citizens of India. This fact is further strengthened by the Civil Court decree (Ex.P6). The respondent, thus, has fully satisfied the ingredients of expression ‘Non-Resident Indian’ as explained in **Baldev Singh Bajwa’s** case (supra).*

(12). The petitioner’s further contention that the respondent-landlord is entitled to take benefit of Section 13-B of the Act against one tenant only which he has already availed by filing an eviction petition against another tenant in the same premises, is also legally misconceived. The legislation has consistently used the expression ‘building’ in Section 13-B and it is wholly immaterial whether such a ‘building’ is occupied by one tenant or more. So long as the benefit under Section 13-B of the Act is availed by a NRI-landlord qua one ‘building’ only, mere initiation of more than one eviction proceedings against the tenants occupying different portion of such building cannot defeat the legislative purpose of Section 13-B of the Act.”

Then again:-

“... finding returned by the Rent Controller, Jalandhar is absolutely correct and warrants no interference by this

Court. The receipts relied upon by the petitioners do not bear any description of the property. The fact of the matter is that the respondent has led overwhelming evidence to prove the ownership of his grandfather qua the subject property. He has also placed on record the death certificates Ex.P8 to P9 of his parents which clearly establishes that he has inherited the subject property by way of natural succession. The respondent's mother died on 24.12.1998 and the eviction petition has been filed by him after a period of over 5 years. In this view of the matter all the ingredients of Section 13-B stand fully satisfied."

The landlord did not file execution proceedings till 2016 but at the same time did not demand nor accept rent which was the agreed one at the original contractual rate of ₹100/- per month for each of the shops. Both the tenants filed objections before the Executing Court which has been rejected by the impugned order dated September 01, 2017 and warrants of possession have been issued in favour of the landlord commn to both cases.

It is against the order dated September 01, 2017 that the present petition has been filed under Article 227 of the Constitution of India.

The objection raised by the tenants is that the khasra number of the shops is different from the one claimed by the landlord. Meaning thereby, the khasra number of the shops and the khasra number of the property owned by the respondent-landlord are differently located. The following objections have been raised by tenants before the Executing Court:-

"3. That as per the site plan attached with the main petition the shop of judgment debtor abutting main Hoshiarpur Road and the said shop has been shown red in the site plan. As per the revenue record the shop of judgment debtor falls in khasra no. 10880/2. The khasra no.

10880/2 is in the name of Central Government and it has been fully described and mentioned in the jamabandi for the year 2009-2010 and other co-owner is one Chaman Lal s/o Dana Mal. The property of decree holder is in khasra no. 26677/10760 and it has been clearly mentioned in the fard jamabandi for the year 2009-2010 and share of decree holder is only 5 marlas approximately whereas the decree holder has filed petitions qua 32 marlas approximately. The site plan showing the khasra no. 10880/2 and 26677/10760 is attached herewith and judgment debtor has also obtained musavi for the year 2014-15 which clearly shows the said khasra number and Hoshiarpur Road has been shown in red colour in the site plan which itself clarifies the facts of the case.”

Reliance placed on the material as recorded in the order reproduced has not been accepted by the Executing Court as a valid defence especially when the matter is *res judicata* between the same parties. Another window of challenge, to my mind, cannot be opened to permit defeated party to go behind the eviction order and most certainly not against the orders of this Court in the previous litigation by trying to carve out a distinction. Such a defenseless defence was not taken before the Rent Controller and the High Court nor could be and, therefore, a new plea cannot be accepted in the present revisions under Article 227 of the constitution and should not be permitted to be introduced at the stage of execution in the name of objections. In fact the remedy provided under Article 227 is not meant for this. I am inclined to think the petitions are not maintainable in law and deserve to be rejected on this score alone.

Besides, the objections raised by the tenant go to the intolerable extent of pleading that the Executing Court can always see whether a decree

obtained by the rent decree holder is a result of fraud and misrepresentation. This is a plea in despair and I would have none of it and hold that the Rent Controller, NRI Cases, Jalandhar in her order dated September 01, 2017 has committed no error of law or fact when it remains steadfast to execute the eviction order finalized by the Court of last resort.

Therefore, nothing survives to be canvassed by the tenants before this Court and the objections were misconceived to buy time.

Accordingly, the petitions bearing CR No. 6208 and CR No. 6209 of 2017 are held to be devoid of merit and maintainability and are dismissed.

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The difference between this and the other two cases is that the ejectment order passed on the same date by the same order was not challenged unlike the other cases and became final qua the tenant and, therefore, becomes *res judicata* between the parties litigating under the same interest.

For the reasons which have prevailed in the dismissal of the earlier two revision petitions will apply to this case. A different view cannot be taken on the same issues to achieve a different result. This is like baying to the moon.

Accordingly, this petition also meets the same fate and is also dismissed at the threshold as devoid of life.

Execution proceedings to go on till their logical conclusion culminating in eviction since the objections have been rightly rejected by

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the executing court by the impugned orders and those orders are hereby affirmed.

14.09.2017
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>