

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 6870 of 2011 (O & M)

Date of decision: 09.05.2017

Gurinder Singh Sethi

....Petitioner(s)

Versus

Yadwinder Singh

...Respondent(s)

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

Present: Mr. Akshay Bhan, Sr. Advocate,
with Mr. Abhishek Sanghi, Advocate,
for the petitioner.

Mr. Kanwal Goyal, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 10.09.2011 passed by the Rent Controller, Ludhiana whereby, leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') has been declined on the ground that no triable issue is made out and ejectment has been ordered under Section 13-B of the Act.

The reasoning given by the Rent Controller was that there was a sale deed dated 24.02.1987 in favour of the respondent-landlord and he was an NRI as per his passport issued by the Canadian Authorities wherein, it was mentioned that he was born at Ferozepur. Resultantly, keeping in view the observations of the Apex Court in *Baldev Singh Bajwa vs. Monish Saini, 2005 (12) SCC 778*, it was held that there was a presumption as such in favour of the landlord. The objection raised in the application under Section 18-A of the Act that he had alternative accommodation was repelled on the ground that alternate accommodation was not a bar as such

against an NRI. Resultantly, keeping in view that there was the requisite ownership of five years, the eviction petition has been allowed on the ground that no triable issue arises.

The premises in question admittedly are one room/shop which is part of Property No. BXX 1362, Ghumar Mandi Road, Krishna Nagar, Ludhiana. As per the case of the landlord himself, he had let out the property in the year 1987 @ ₹1,500/- per month which was purchased in the same year. The date of birth in the passport is 22.06.1976 and, therefore, the landlord was only 11 years at that point of time. In the leave to contest application, the plea was taken that he was permanently settled in Canada and did not have any intention to return and he was not the exclusive owner of the property in dispute as in the sale deed produced, it was shown that he alongwith mother and brother are the owners of the entire building. It was further averred that he was having one shop at Gian Singh Rarewala Market, Ludhiana which was lying vacant and there were 4 shops in the building and one shop was in occupation of the petitioner himself and which is lying vacant and never used by the petitioner. The shop in occupation was a big shop which was clear from the site plan attached with the application as well as the photographs attached. The relevant part of the pleadings reads thus:-

“vi) That the plan produced alongwith the petition is not correct because there are all four shops in the building. One shop has been sold to Om Parkash, one shop is in occupation of Raja Electricals and one shop is in occupation of the respondent, whereas one shop is in occupation of the petitioner himself. That shop is lying vacant and it was never used by the petitioner for running ay (sic) business and

this fact also shows that the petitioner does not require the property in dispute. The shop which is in occupation of the petitioner is a big shops as is clear from the plan attached with this application as well as the photographs attached with this application.”

In reply, the plea taken was that the landlord had come to Ludhiana to start business and he had no intention to sell the property. It was denied that there was any shop in his possession and the premises are not required for own use and occupation. It was further denied that there was any shop in possession of the petitioner of a bigger size.

In reply to the above said pleas, the landlord has not clarified regarding the sale of shop to Om Parkash and the accommodation of Raja Electricals or regarding the shop in occupation of the respondent which was allegedly lying vacant. The basic denial has been made that there is no shop in possession of the petitioner of a bigger size and the photographs did not relate to the property in question. Apart from denial, the vacancy of a shop in Gian Singh Rarewala Market has not been clarified. Thus, it is apparent that the Rent Controller has not appreciated this aspect in the impugned order and only side stepped the issue by placing reliance upon the judgment in ***Lakhwinder Kumar vs. Pavitter Kaur (dead) through L.Rs., 2010 (1) RCR (Rent) 588.***

The factum of alternative accommodation once being available, then leave to contest as such should have been granted keeping in view the principle laid down by this Court in ***Nelson Christopher vs. Pritam Singh, 2010 (1) RCR (Rent) 16*** wherein, it has been held that once there is ownership of another house in the same urban area and the landlord did not show as to what was the ground of preference, leave to contest is to be

granted. The relevant para of *Nelson Christopher's case (supra)* reads thus:-

“10. Therefore, from the affidavit of the petitioner, it was to be seen whether the respondent was dis-entitled from getting the possession of the demised premises. In order to succeed, he was to prove that he bona fide required that premises for his use and occupation. It stands proved from the facts that the respondent owns and possesses another house in the same urban area and nothing was said by the respondent as to what was the ground of preference for getting the demised premises vacated. From the affidavit of the tenant it prime facie stands proved that the respondent shall be dis-entitled to the recovery of the possession of the demised premises on the ground taken by him in the application under Section 13-B of the Act. Therefore, the finding recorded by the Rent Controller cannot be sustained and is liable to be set aside.”

It is to be noticed that it is a commercial property which is not as such bounded or part of the property as such of the respondent-landlord. In such circumstances, a triable issue having been raised, leave to contest should have been granted keeping in view the observations of the three-Judge Bench judgment of the Apex Court in ***Precision Steel and Engineering Works vs. Prem Deva Niranjana Deva Tayal, 1983 (1) SCR 498.***

The judgment in *Lakhwinder Kumar's case (supra)* lays down the principles regarding the right of eviction which are available to the NRIs by noticing that even NRI co-owners are entitled for the benefits of Section 13-B of the Act which should be invoked once in the lifetime regarding one

building of one category. The issue of alternative accommodation as such which is available with the landlord was not subject matter of the said case which is, thus, not applicable to the facts and circumstances of the case.

Accordingly, the impugned order dated 10.09.2011 declining leave to contest is not justified in such circumstances and the same is set aside. Revision petition is allowed and leave to contest is granted and the tenant is permitted to file the written statement. Keeping in view the fact that the petition was filed in the year 2007 under Section 13-B of the Act, it would be appropriate if the proceedings are concluded by 31.03.2018.

09.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No