

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219

CR No.6543 of 2014 (O&M)

Date of decision: 24.05.2017

Dalip & another

....Petitioners

Versus

Jaswinder Singh Rooprai

...Respondent

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

Present: Mr.Gaurav Tangri, Advocate, for the petitioners.

Mr.Deepak Verma, Advocate, for

Mr.Paramjit Rajput, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The petitioner-tenant challenges the order dated 17.04.2012, passed by the Rent Controller, Jalandhar, declining the leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') and directing eviction under Section 13-B of the Act.

The reasoning which prevailed with the Rent Controller is that the respondent was an NRI landlord as he had a passport issued by the UK Government and his place of birth was shown as Jalandhar and he was of Indian origin and therefore, fell under the definition of Section 2(dd) of the Act. There was a sale deed dated 25.09.1968 in his father's favour, namely, late Raghbir Singh, who had expired on 01.05.2000 and therefore, on account of the fact that even his mother was no more and sister-Bimla Rani had expired on 08.01.1997, he was entitled for the summary eviction under the provisions of the Act. Reliance was also placed upon the assessment register of the Municipal Corporation, Jalandhar, whereby the property in question, which is 1 room, 1 varandah, 1 kitchen, situated on the first floor as mentioned in the heading of the petition and shown red in the site plan of house No.EA-41, Mohalla Kazian, Attari Bazar, Jalandhar City and abutting

the house of the landlord, had been shown in the name of the applicant-respondent, after the death of his father, as owner. Resultantly, being owner for more than 5 years, since the petition was filed in November, 2008, the argument that there was no relationship of landlord-tenant, was rejected and eviction was directed.

Counsel for the petitioners has argued that the order was not justified and leave to contest should have been granted as the landlord had no intention to stay in India and he had no intention to return.

However, counsel for the respondent, on the other hand, brought to the notice of this Court that on the strength of the same pleadings, similarly situated tenants in the same building have been directed to be vacated by various orders. One such order has been upheld in the case of one tenant, namely, in ***Usha Rani Vs. Jaswinder Singh*** ***2013 Law Suit (P&H) 3668*** wherein CR-4314-2012 was decided on 05.08.2013. A perusal of the same would go on to show that the same sale deed in question was subject matter of controversy before this Court and the Rent Controller had ordered summary eviction, which has been upheld vide a detailed order by a Co-ordinate Bench. The relevant part reads as under:

“[20] A perusal of the aforesaid provision would show that once leave to defend is refused to the tenant the averments made in the ejectment application by the respondent-landlord are deemed to be admitted by the tenant and the landlord is entitled to immediate possession of the demised premises. Thus, once the other ingredients of section 13-B of the Act, are proved presumption has to be drawn in

favour of the landlord that his need for the demised premises is bona fide and it is for the tenant petitioner to prove otherwise. There is no such evidence on record on the basis of which it can be held that need of the landlord is not bona fide.

[21] In the instant case, the petitioner has failed to make out a strong case against the respondent-landlord by placing on record any documentary evidence to support his plea that the respondent-landlord does not fulfill the ingredients of Section 13-B of the Rent Act.

[22] The other argument raised on behalf of the petitioner that the respondent is not the son of Raghbir Singh is not sustainable as except making a bald assertion that the respondent is not the son of Raghbir Singh, the original owner, the petitioner has placed nothing on record to support his said assertion. Even before this Court, counsel for the petitioner could not refer to any evidence on the basis of which his such assertion would be supported.”

In the present case, as noticed, it has been specifically averred that at present, an Australian passport is being held by the NRI landlord and he was the only surviving legal heir of his father. The property was to be used for his own 2 sons and one daughter and he wanted to wind-up his work abroad as he was not keeping good health and the passport issued was also for 10 years. The petitioner had been inducted as a tenant in the premises and it had also been mentioned that similarly situated 4 more tenants were also there, namely, Mohinder Pal, Usha Rani, Santosh Rani and Usha Puri, against whom separate petitions had also been filed.

The factum of 4 petitions having been allowed is not disputed by counsel for the petitioners. The property had been leased out

CR-6543-2014 (O&M)

at a monthly rent of Rs.2000/- and was measuring around 10 marlas, which was also in possession of the other tenants and resultantly, eviction was sought. The same was contested under Section 18-A that the father had disowned the landlord and had bequeathed his share in favour of Shri Harkamal, who inherited the estate of the deceased.

The same was objected to by filing reply by the respondent-landlord that the ownership had been incorporated in the record of the Municipal Corporation in the year 2003 and TSI certificate had been issued which was also appended in the file of the Court and therefore, the father having executed any Will in favour of Harkamal was denied. The allegations of dis-inheritance were also denied and the fact that any civil litigation had been pending against the alleged beneficiary. The allegations that the house in Rasta Mohalla was sold was justified on the ground that the same was lacking basic civic amenities and not worth living and the sale did not, in any way, take away the right, as such, for possession of the premises.

The leave to contest, thus, was only to be granted in case the necessary ingredients were not made out whereby 5 years' prior ownership was not shown, whereas in this case, on account of the death of the father, the property has been shown in the assessment register from the year 2002 onwards in the name of the respondent who filed the petition after the requisite period of 5 years, in 2008. The fact that he is a Non-Resident Indian, stands also established, to which, there was no such dispute and the only allegation was that he was not likely to return and

the *bona fide* requirement was not there, which has been held to be presumed by the Apex Court in the case of **Baldev Singh Bajwa Vs. Monish Saini 2005 (12) SCC 778** that the need of the landlord is genuine and a *bona fide* one and heavy burden would lie upon the tenant to the contrary. Relevant observations read as under:

“24. Definition of “Non-resident Indian” (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase “Indian Origin” has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase “origin” refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the

meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase “return to India” along with the definition of the “NRI” under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

25. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the

learned counsel that the words “return to India” under Section 13-B of the Act denotes return to India permanently.”

In *Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452*, a three Judges Bench of the Apex Court has held that narrow and constricted meaning cannot be given to Section 13-B and rejected the argument that only one unit could be got evicted by the NRI and it was held that the object of the Act would be frustrated if the whole building could not be got vacated. Relevant observations read as under:

“12. Reliance was placed on the decision of this Court in Baldev Singh Bajwa v. Monish Saini [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.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly."

The Apex Court recently in *Kamaljit Singh Vs. Sarabjit Singh 2014 (4) RCR (Civil) 252*, held that Section 13-B is a beneficial provision, intending to provide speedy remedy to the Non Resident Indians and allowed the Civil Appeal, whereby the Rent Controller had taken the view that the NRI owner had failed to prove that he was the owner of the property in dispute since the sale deeds could not be correlated to the shops in question. It was noticed that the tenancy part was not denied and once that was so, the title of the landlord could not be questioned under Section 116 of the Evidence Act, 1872. Relevant observation reads as under:

"16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

"116. Estoppel of tenant; and of licensee of person

in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

The above judgments seals the legal position against the petitioner-tenants. Accordingly, in view of the above, the present revision petition, being devoid of any merit, is, hereby, dismissed.

24.05.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*