

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 7748 of 2015 (O & M)

Date of decision: 09.05.2017

Subhash Chander

....Petitioner(s)

Versus

Sukhdial Singh @ Sukhdial Singh Bains

...Respondent(s)

AND

C.R. No. 8010 of 2015 (O & M)

Mukesh Kumar

....Petitioner(s)

Versus

Sukhdial Singh @ Sukhdial Singh Bains

...Respondent(s)

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

Present: Mr. Divanshu Jain, Advocate,
Mr. Robin Bansal, Advocate,
and Mr. Dhawal Bhandari, Advocate,
for the petitioner(s).

Mr. Munish Gupta, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of two civil revision petitions namely C.R. Nos. 7748 and 8010 of 2015 as common questions of law and facts are involved in both the cases. For reference, ***C.R. No. 7748 of 2015, Subhash Chander vs. Sukhdial Singh @ Sukhdial Singh Bains*** is being taken up.

The present revision petitions have been filed by the two

tenants, who are aggrieved against order dated 07.10.2015, whereby, leave to contest has been declined under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') by the Rent Controller, Garhshankar. The reasoning given while rejecting the application for leave to contest is that the attorney on the basis of which the petition was filed has been duly validated by giving a supplementary power of attorney for deciding the petition. The father of the landlord had died in the year 2001 and, therefore, the landlord was the owner for the mandatory period of 5 years since the petition was filed only on 28.02.2013. The agreement of tenancy which was for fixed period of 5 years from February, 2009 which had been entered into between the parties was not binding as such as per the terms and they could waive their right. Resultantly, the objection that the foreign citizenship had not been surrendered was also rejected in view of the provisions of Section 13-B(3) of the Act, which provided a deterrent against the vacation in case the property was not utilized for the purposes it was got vacated for. The issue of a separate building was also repelled on the ground that there was no document on the record to establish that there were two separate buildings and mere photographs were not sufficient. The site plan which had been placed on record established that the demised premises is one compact building and not two separate buildings.

A perusal of the ejectment petition which was filed on the same date against the two tenants and the site plan which was attached would go on to show that ejectment was sought in C.R. No. 7748 of 2015 from the shop marked as 'DEIH' occupied by Subhash Chander. Similarly, in C.R. No. 8010 of 2015, ejectment was sought from the shop marked as 'ABCDEFGH'. A perusal of the description of the site plan alongwith the

boundaries as given in the headings of the two petitions would go on to show that there was no mention of one shop which was sandwiched between the two shops owned by the two tenants. In the case of Subash Chander, on the South one Baldev Singh is mentioned and the shop which is allegedly possessed by one Nand Kishore should have been on the South. In the ejectment application of Mukesh Kumar, the shop in question should have been on the North whereas, as per the site plan, boundaries of one juice bar and the fruit shop of Kewal is mentioned.

Accordingly, eviction was sought from the portion shown as yellow and red respectively in the two cases. An averment was made that the building was one compact building. It is pertinent to mention that under Section 13-B of the Act, eviction can be sought from one building of a particular category, whether residential, scheduled or non-residential. The said Section 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 Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her user, or for the use of any one ordinarily 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.”

A specific objection as such was taken in the leave to contest application filed by the tenants that a petition has been filed against the other co-tenant and the shop in dispute constitutes a separate building and both buildings have no unity with each other. The relevant part of the objection in C.R. No. 7748 of 2015 reads thus:-

“(E) That as per the provisions of Section 13-B of East Punjab Urban Rent Restrictions Act the NRI owner can seek ejectment of only one building during his life time but the petitioner has filed an other petition for ejectment under the provisions of the 13-B of East Punjab Urban Rent Restrictions Act against Mukesh Kumar s/o Dev Raj, who is tenant in the separate building marked as ABCDEFG, shown red in colour in the site plan of petitioner. The shop in dispute constitute one building, whereas the shop in possession of above said Mukesh Kumar constitute

separate building and both the buildings have no unity with each other. The roof of the shop of Mukesh Kumar is lower in level than the shop of respondent. Both the buildings had been constructed at different time and the lintel of roof of both the building is also different. The petitioner has no right to file two petitions regarding separate buildings. Thus, the present petition is liable to be dismissed on this ground.”

Apart from that, further objection was taken that the landlord had not disclosed regarding his commercial property in the area of Mahilpur measuring 1 kanal which was lying vacant and it could be occupied by him if his intention was to live in India. The relevant portion reads as under:-

“(G) That the petitioner has not come to the court with clean hands. He has suppressed the true and material facts from this Hon'ble Court. He has not disclosed regarding his commercial property in the area of Mahilpur, which is lying vacant bearing Kh No. 47//21/2/1(1-0). The petitioner can occupied (sic) the said vacant property, if his intention is bonafide to live in India or to start some business. In fact the intention of the petitioner is malafide only to get the shop in dispute vacated while placing wrong and incorrect facts before this Hon'ble court.”

In the reply to the application, the landlord did not rebut this aspect specifically that there was another shop in between the two shops in question. Reply was made that the premises in possession of the tenants was part of one building. It has not been explained whether Nand Kishore's property as such was sold out at one stage and was part of the same building which would have depicted whether the property was part of the same

building and had been sold by the landlord at some stage. Similarly, the reply to the fact that he had other commercial building available in the same urban area namely Mahilpur was not rebutted and it was only mentioned that there was no other commercial building. The specific khasra numbers which had been given were not explained. It is to be noticed that the Rent Controller has touched this aspect of the two separate buildings and dealt with it in para no. 9, which reads thus:-

“The respondent also stated that the NRI can seek ejectment of only one building. He has filed two suits against separate tenants. There are separate buildings but, however, there is no any document on record to establish that there are two separate buildings and mere photographs are not sufficient. Moreover, site plans placed on record by the petitioner established on record that the demised premises is one compact building and not two separate buildings.”

Counsel for the petitioner is, thus, well justified to hold out that a triable issue would as such arise and, therefore, the dismissal of the applications for leave to contest was not justified. Reliance has accordingly rightly been placed upon a three-Judge Bench judgment of the Apex Court in ***Precision Steel and Engineering Works vs. Prem Deva Niranjana Deva Tayal, 1983 (1) SCR 498*** wherein, it was held that the affidavit of the tenant is the only relevant document at the time of granting leave to contest. As noticed, in view of the provision of Section 13-B of the Act, the right is limited to one building for summary eviction. In such circumstances, the landlord cannot be permitted as such to get a summary eviction straight away from two tenants without explaining the facts whether the premises are a part of one building or constitute separate buildings and evidence

was necessary in such cases.

Accordingly, order dated 07.10.2015 declining leave to contest is not justified in such circumstances and the revision petitions are allowed. The impugned order is set aside. Leave to contest is granted and the tenants shall accordingly file the written statements. Keeping in view the fact that the petition was filed in the year 2013 under Section 13-B of the Act, it would be appropriate if the proceedings are concluded within a period of one year from the date the certified copy is received. Parties shall appear before the Rent Controller, Garhshankar on 30.05.2017.

09.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No