

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**C.R. No. 8445 of 2016**

**Date of decision: 21.03.2017**

Rakesh Kumar

....Petitioner(s)

Versus

Smt. Satish Ratti

...Respondent(s)

**C.R. No. 8486 of 2016**

Kumar Gaurav

....Petitioner(s)

Versus

Smt. Satish Ratti

...Respondent(s)

AND

**C.R. No. 8661 of 2016**

Avinash Chander Gandhi (deceased) through L.R.

....Petitioner(s)

Versus

Smt. Satish Ratti

...Respondent(s)

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

Present: Mr. Tribhawan Singla, Advocate,  
for the petitioners.

Mr. S.P. Soi, Advocate,  
for the caveator-respondent.

**G.S.SANDHAWALIA, J. (Oral)**

The present judgment shall dispose of three revision petitions  
i.e. C.R. Nos. 8445, 8486 and 8661 of 2016 since the landlady is common in  
all the cases being an NRI and eviction had been ordered under Section 13-

B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the 1949 Act) by the Rent Controller, Nakodar on 29.10.2016. Facts are being taken from ***CWP No. 8445 of 2016, Rakesh Kumar vs. Satish Ratti***.

The eviction is regarding 3 shops bearing Nos. 1, 2 and 3 situated at the Post Office Road, Mohalla Rattian, Nakodar, District Jalandhar, which were shown red in colour in the site plan attached in the respective eviction petitions. The petition was filed on the strength of the landlady being a green card holder of Germany and being a person of Indian origin and on the basis of a registered sale deed dated 09.03.1992 from Joginder Pal. It is alleged that the property is double storied building consisting of three shops on the ground floor rented out to three separate tenants. The husband of the landlady was an NRI and had gone to Germany 40 years ago and retired from his service as a factory labourer. Both of them had decided to come back to settle in India. The shop in dispute was rented out to the respondent by the previous owner Joginder Pal and, therefore, the landlady had stepped into the shoes of the previous owner. The petitioner was a tenant under her and there existed a relationship of landlord-tenant between the parties. The shop was required for the business of electronic goods after demolishing the whole of the premises and for her use and her husband's use by constructing a modern show room for selling electronic goods. It was specifically mentioned that the adjoining shops also had been rented out to Kumar Gaurav and Avinash Chander, who are the tenants in C.R. Nos. 8486 and 8661 of 2016.

The defence taken by the petitioner-tenant was that no notice of the alleged purchase had been given and the sale deed did not show the true and correct picture of the property purchased. The Municipal Council's

record showed that in property bearing No. 802, there was some other tenant who was occupying the shop and the property in dispute bore M.C. No. 655, which did not belong to the landlady. The tenant was occupying a shop which was part and parcel of property no. 655 and not 802 and, therefore, there was no purchase of the said municipal number. It was admitted that the petitioner was a tenant under Joginder Pal and after his death, rent was being collected by one Sandeep Nayyar, who disclosed himself to be the owner of the property. It was accordingly pleaded that the landlady had no concern whatsoever with the same and it was also denied that there was a purchase as such. The factum of the status of the husband of the petitioner being an NRI was denied for want of knowledge and accordingly, contest was raised.

It is pertinent to notice that in the rejoinder submitted, it was mentioned that in the leave to contest application, it had been admitted that the rent of the shop was being collected by Sandeep Nayyar. The said person is none else but the son-in-law of the landlady and was authorized by the petitioner for collection of rent. It was further submitted that Joginder Pal was none else but the real brother of the father-in-law of the petitioner and a close relative. The property was previously part and parcel of property no. 802, which was jointly owned by Lekh Raj (father-in-law), Joginder Pal, Mulkh Raj and Hukam chand. In partition, the three shops which were under the tenancy of Rakesh Kumar, Kumar Gaurav and Avinash Chander had fallen to the share of Joginder Pal. Resultantly, the number of the property bearing MC No. 655 was changed by the Municipal Council on its own. Joginder Pal had no other property except the property in dispute. The property could be clearly verified by demarcation and the

four sides had been mentioned in the sale deed and the site plan attached alongwith the petition. The Municipal Council's record was not proof of title. It was accordingly mentioned that the property no. 802 min and 655 is the same property and 655 was previously bearing no. 802 min. Accordingly, the following issues were framed by the Rent Controller:-

- “1. Whether there exists a relationship of landlord and tenant between the petitioner and respondent? (OPP)*
- 2. Whether petitioner is NRI and is entitled to seek eviction of the respondent from the demises premises as per Section 13-B of East Punjab Urban Rent Restriction Act? (OPP)*
- 3. Whether petitioner has no locus standi to file this petition? (OPR)*
- 4. Whether petitioner has concealed the material facts from this court? (OPR)*
- 5. Relief.”*

The respondent-landlady examined as many as 5 witnesses including her husband and her son in law Sandeep Nayyar as PW-4. The site plan was placed on record as Ex.P-1 alongwith the photocopy of the passport and photocopy of green card as Exs. P-2 and P-3. Similarly, sale deed was brought on record as Ex.P-6. The pension papers also were exhibited.

On the other hand, the respondent-tenant stepped into the witness box as RW-1 and placed on record the information which he had taken from the Municipal Council under the Right to Information Act, 2005. Keeping in view the statements of the landlady, her husband and son-in-law alongwith the statement of PW-5 Kulwant Singh, Junior Assistant/Clerk, the Rent Controller has rightly noticed that the properties as such have been

shown with bounded as North-Gali, on the South-Hukam Chand and on the East, there was a Post Office Road and on the west, Lekh Raj had been shown, which was none else than the residential house of the petitioner and her husband since Lekh Raj was the father-in-law. The reasoning which has been given by the Rent Controller that the boundaries as such correctly established that the property was the same as per the sale deed is in accordance with the principles laid down by the Apex Court in ***Subhaga and others vs. Shobha and others, 2006 (5) SCC 466*** wherein, it has been held that the property can be identified either by the boundaries or other specific descriptions and if there was any discrepancy, normally boundaries would prevail. The reversal by the High Court on account of the fact that the identification was not proper was, thus, set aside on the said principle.

The relevant portion of *Subhaga's case (supra)* reads thus:-

*“6. The High Court has also upheld the title claimed by the plaintiff over the plot, Plot No. 1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first appellate court, it is clear that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff. In this situation, we are satisfied that the*

*judgment and decree of the High Court calls for interference. We are also satisfied that the lower appellate court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case.”*

Similar view was also taken in ***Sunil Kumar @ Kalia and another vs. Patasi Devi and others, 2015 (1) PLR 597***. The argument, thus, which has been raised by the counsel for the tenants that the property was not identified and the numbers were different as such as per the municipal record does not cut much ice with this Court.

It is not disputed that it is the case of the tenants themselves that Joginder Pal was the original owner and neither it is their case that they are tenants under any other person. Rather, it is an admitted case that rent was being collected by the son-in-law of the landlady namely Sandeep Nayyar who has also been examined as witness which put the controversy beyond a shadow of doubt as to who is the landlord. Under Section 2(c) of the 1949 Act, an expansive meaning is given to the term 'landlord' and he may be one who is also entitled to collect the rent. In the present case, the landlady is none else but the owner on the basis of a registered sale deed which was executed by her father-in-law's brother. The residential house also is apparently abutting the property in dispute as per the site plan. In such circumstances, the smoke screen which has been sought to be created regarding the identity of the property is without any basis and has been rightly cleared by the detailed discussion by the Rent Controller keeping in view the settled principles of law that the municipal numbers is not the correct method to identify the property in question.

Keeping in view the fact that the rent was also being collected

by the son-in-law, it is apparent that there is a relationship of landlord-tenant and neither the tenants have set up any title in someone else or claimed that they have been paying the rent to any one else. It is also to be noticed that the sale deed is dated 09.03.1992 and the date of institution is 22.12.2011. The bona fide requirement is, thus, genuinely met out on the ground that they were earlier residents of Germany and have now permanently come back to India and want to settle and being persons of Indian origin. The passport also of the landlady was an Indian passport which was exhibited as Ex.P-2 and, therefore, the landlady falls within the definition of NRI under Section 2(dd) of the Act. The presumption of the bona fide requirement has also been duly addressed by the Rent Controller in his detailed order and the same has been further substantiated on account of the fact that not only the landlady but her husband had also put in appearance to depose about the bona fide requirement.

The Apex Court in ***Kamaljit Singh vs. Sarabjit Singh, 2014 (4) PLR 828***, while following ***Baldev Singh Bajwa vs. Monish Saini, 2005 (4) RCR (Civil) 492***, has specifically held that Section 13-B is a beneficial piece of legislation to give expeditious and speedy recovery of the property to the NRI landlord. In ***Krishan Kumar and others vs. Kamla Devi and others, 2016 (1) RCR (Rent) 525***, the matter was sought to be re-agitated before this Court that the matter was pending consideration before the Apex Court pertaining to Section 13-B of the Act. The said argument was repelled by noticing that the view in *Baldev Singh Bajwa's case (supra)* had been followed by the three Judge Bench in ***Swami Nath vs. Nirmal Singh, 2010 (2) RCR 388*** wherein, it had been held that a restrictive definition was not justified. The said view has been further upheld by the Apex Court

whereby, it dismissed two appeals i.e. SLP Nos. 15366 and 15367 of 2016, which arose out of the judgment in *Krishan Kumar's case (supra)* on 11.01.2017.

In the present case, all the necessary ingredients having been fulfilled regarding ownership beyond 5 years, the person belonging to Indian Origin and having permanently returned to India and bona fide requirement having been duly proved, the impugned order, as such, does not suffer from any infirmity which would warrant interference in the revisional jurisdiction by this Court. The principles have been laid down by the Apex Court in ***Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, 2014 (9) SCALE 657*** which have to be kept in mind while deciding the present revision petitions. The relevant observations of *Hindustan Petroleum's case (supra)* read thus:-

*“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated*

*as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”*

Accordingly, there is no merit in the present revision petitions and the same are dismissed.

21.03.2017  
shivani

(G.S. SANDHAWALIA)  
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No