

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

CR No.3059 of 2004

Date of Decision: 16.04.2018

Mangat Ram

.....Petitioner

Vs.

Jaswant Singh Tamber and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:-

Mr.D.S.Brar, Advocate, for the petitioner.

Mr.Sunil Chadha, Senior Advocate, with
Ms.Sweta Verma, Advocate, for respondent No.1.

RITU BAHRI, J. (ORAL)

Petitioner has come up in revision against the judgment of learned Rent Controller, Garhshankar dated 01.06.2004, whereby, he has been evicted in a petition under Section 13-B of the East Punjab Urban Rent Restriction Act.

Petitioner-Jaswant Singh Tamber (respondent No.1 herein) filed a petition under Section 13B of the Act for immediate possession by way of ejectment of the petitioner/respondent No.1(petitioner herein) from the shop, fully detailed in the head note of the petition. It has been averred by the respondent No.1 i.e. Jaswant Singh Tamber that he alongwith Rajinder Singh, Kulwant Singh their brother and Gurbachan Singh, their father, were the owners co-sharers to the extent of ¼ share each in the land measuring 17 marlas bearing khasra No.34//12/1/3, as per jamabandi for the year 1972-73 situated in the area of village Mahilpur. The respondent No.1 Jaswant Singh

and abovesaid owners had constructed their shops i.e. shop in dispute and the adjoining two southern shops, Deori on northern side, on the ground floor and *chaubara* on the first floor and other constructions on eastern side of three shops with joint expenditure. Kulwant Singh had died and he was succeeded by respondent No.3 i.e. Jagtar Singh, as such, the respondent No.3 has become owner in possession alongwith the petitioner/respondent No.1 i.e. Jaswant Singh Tamber, respondent No.2 and Gurbachan Singh. Gurbachan Singh had also died and is succeeded by the Jaswant Singh Tamber-respondent No.1 and respondent No.2-Rajinder Singh on the basis of valid registered Will dated 28.05.1982. Further, the petitioner/respondent No.1 had averred that in the year 1992, an oral family settlement was took place amongst the petitioner/respondent No.1, respondent No.2 and 3 with regard to above said three shops and the disputed shop came to the share of respondent No.3 and the southern shop in the share of respondent and the deori was kept joint for common use. The possession was transferred as per oral family partition/settlement. As such, the petitioner/respondent No.1 has become the exclusive owner in possession of the shop marked AB shown in red in colour in the site plan and fully detailed in the head note of the plaint, whereas the respondent No.1/petitioner is in possession as tenant in the shop in dispute at the rate of Rs.200/- per month. He was inducted as tenant about 8 years ago by the petitioner through respondent No.2. It has been further averred that the petitioner is non resident Indian and has returned to India and requires the shop in dispute for his own use and occupation.

On notice, respondent No.2 appeared and filed written statement admitting the claim of the petitioner/respondent No.1. The respondent No.3

against ex-parte. Respondent No.1/petitioner also appeared and filed an application under Section 18 A of the East Punjab Urban Rent Restriction Act for permission and leave to contest the ejectment petition on the averments that there exists no relationship of landlord and tenant between the petitioner/respondent No.1 i.e. Jaswant Singh Tamber and respondent No.1/petitioner i.e. Mangat Ram and petitioner/respondent No.1 Jaswant Singh Tamber is neither the owner/landlord qua the premises in dispute in possession of respondent No.1-Jaswant Singh Tamber. He has further averred that real facts are that the premises in dispute was owned by respondent No.2 and respondent No.1-Mangat Ram took the premises in dispute from respondent No.2 on rent @ 350/- per month vide writing dated 18.10.1981 the respondent No.2 sold the articles including fridge and furniture etc. to respondent No.1 for a consideration of Rs.11,000/- and rented out the premises @ Rs.350/- per month. The petitioner-Jaswant Singh Tamber has filed reply to the application for leave to contest. The factum of leasing out the demised premises by respondent No.2 has been admitted but it has been stated that respondent No.1-Mangat Ram has inducted tenant on behalf of co-owners. The following points was to be determined by this Court:

“ Whether application along with the affidavit filed by the tenant/respondent discloses such facts as would disentitle the land lord from obtaining an order for recovery of possession of the demised premises”.

The learned trial Court has held that as per written statement filed by respondent No.2, he had inducted that respondent No.1-Mangat Ram has inducted tenant on behalf of all the co-owners. Initially the petitioner-

Jaswant Singh Tamber, respondent No.2, Kulwqant Singh their brother and Gurbachan Singh their father were the owners/co-sharers to the extent of 1/4th share each in the land measuring 17 marlas bearing khasra No.34//12/1/3 as per jamabandi for the year 1972-73 for construction of shop. Thereafter, in the year 1992 an oral family settlement took place amongst the co-owners and in the said oral family settlements the shop in dispute came to the share of the petitioner-Jaswant Singh Tamber. Hence, in view of the judgment in the case of Lakhbir Singh Vs. Ram Parkash 1991(1) PCR page 390 passed by the learned Rent Controller rightly came to the conclusion that tenant cannot challenge the family partition in a summary proceedings under rent act, therefore, the petitioner is to be held exclusive owner on the basis if family settlements for the last more than 5 years. Petitioner-Jaswant Singh Tamber is shown to be joint owner and in possession in which the shop in dispute has been constructed. The respondent has not denied this fact that the shop in dispute is not constructed in khasra No.34//12/1/3.

In the present case, petitioner-Jaswant Singh Tamber is non-resident India. He has placed on record copy of the passport. A perusal of it shows that though he has been shown as a British Citizen but his birth place has been mentioned as Mahilpur and as per definition of Non Resident Indian given in section 2nd of the East Punjab Urban Rent Restriction Act, the petitioner shall be considered Non Resident India. A reference can be made in the case of Sohan lal Versus Swaran Kaur 2003(2) RCR page 407 has held the definition of expression NRI cannot be confined to only those who are holding Indian Passport and continue to be the Indian citizens. The

whether citizens or non-citizens, whether born in India or abroad, whether carrying Indian or foreign passport. It appears that as long as he is owner of a property in the State of Punjab Legislature has intentionally used wider expression to include large number of categories of NRIs. Hence, as per Section 13B, the petitioner was entitled to evict the respondents in summary manner and tenant had no right to remain possession. Hence, the petition was allowed by the learned Rent Controller.

On 24.01.2011, the present revision was sine die for awaiting the decision of the Larger Bench of this Court in the case of Smt.Bachan Kaur and others Vs. Kabal Singh and anr decided on 29.09.2010 on the question as to whether a petitioner filed by a N.R.I. as a co-owner is maintainable with the other Co-owners who do not enjoy the same status. On 26.04.2011, the Division Bench has answered this question in favour of landlord by passing the judgment in the aforesaid judgment wherein, it is held that ownership of the building is necessary condition for maintaining eviction petitioner under Section 13-B and letting out by the petitioner is not sine-qua-non maintain in terms of the East Punjab Urban Rent Restrictions Act, 1949 and one can acquire ownership right by virtue of a purchase or by inheritance. Though, the Court is of the opinion that the title derived by inheritance is legal consequence and should exclude limit of five years for filing a petition under Section 13B of the Act. It is further held that an act of the co-owner of inducting a tenant binds all other co-owners. After a tenant has been inducted, he is a tenant under all the co-owners. Therefore, a co-owner who has not inducted a tenant can seek eviction of such tenant. The right and liabilities of the co-owner creates a legal fiction of tenancy against

large Bench judgment of this Court as well as by the Hon'ble Supreme Court in M/s India Umbrella Manufacturing Co. and others vs. Bhagabandei Agarwalla (Dead) by LRs Smt.Savitri Agarwalla 2004(1) RCR (Civil) 686 and Mahavir Prasad Jain Vs. Manohar Lal Jain 2006 (2) RCR (Civil) 36, a co-owner NRI can seek eviction of the tenant in a building though the tenant was not inducted by such NRI and that it is not necessary that all other co-owners should be Non Resident Indians.

Applying the ratio of the abovesaid judgment, the present revision petition deserves to be dismissed. In compliance of the order dated 16.12.2014, petitioner has filed affidavit stating therein that vide receipt dated 14.01.2015, the petitioner-tenant has deposited the amount before the learned Rent Controller towards arrears of rent w.e.f. 01.01.2004 to 31.12.2014 amounting to Rs.42000/- + Rs.4400/-(as interest)= Rs.46,400/- (in total).

So in view of the above, the orders of the learned Rent Controller does not reflect any material irregularity or perversity which warranting interference. Hence the present revision on merits stands dismissed.

(RITU BAHRI)
JUDGE

16.04.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No