

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

CR No.6925 of 2015(O&M)

Date of decision: 26.11.2018

Raj Kumar @ Raju and anotherPetitioners

VERSUS

Parminder Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Krishan Sehajpal, Advocate for the petitioners.

Mr. Sudeep Mahajan, Advocate with
Ms. Manjit Saini, Advocate for respondent No.1.

Mr. Ashok K. Singla, Sr. DAG, Punjab.

REKHA MITTAL, J.

The present petition directs challenge against order dated 05.08.2015 passed by the Rent Controller, Amritsar whereby eviction petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') by respondent – Parminder Singh son of Gurbachan Singh was allowed, after permitting the parties to adduce evidence consequent to application for leave to contest filed by the petitioner having been allowed.

The facts relevant for disposal of present petition are that the respondent claimed himself to be Non Resident Indian (in short 'NRI') on the premise that he is permanently residing at Canada, at the address given in head-note of the petition since July 2007. He was earlier residing at Amritsar but since July 2007, he is residing in Canada. Due to permanent residence of the respondent at Canada, the latest passport was also issued by Consul (CPV) Consulate General of India, Toronto with passport

No.H7730631 in continuation of previous passport No.B1020052, issued on 20.08.2009. Permanent Resident Card was also issued to the petitioner by the Government of Canada being permanent resident there. Driving licence, social insurance card, health card were also issued to the respondent by the Government of Canada.

Sh. Satpal Dogra, father of the petitioners, took one shop on rent situated on ground floor of property bearing Khasra No.2026 min Pvt. No.15-A having area of about 175 square yards building No.39-C situated in the area of Sultanwind, New Partap Nagar, Guru Lal Bazar, Amritsar from the respondent in the year 1994. After the death of Sh. Satpal Dogra, tenancy rights were inherited by the petitioners being sons of Sh. Satpal Dogra. The rent was paid upto July 2007 against receipt at the rate of Rs.400/- per month.

The tenanted premises is bona fide required by the respondent for himself and his son Jagdeep Singh who is at present aged about 23 years, for business purpose. The respondent joined service as Pharmacist at Guru Nanak Dev Hospital, Amritsar in 1981. In July 2007, after taking long leave from service, petitioner along with his family shifted to Canada and since then the petitioner and his family are residing at Canada. Jagdeep Singh who was studying in B.Sc. (IT) Ist year in July 2007 could not pull well in Canada either in study or otherwise and as such has not settled so far in Canada. Jagdeep Singh now wants to settle in India at Amritsar and the tenancy premises is bona fide required for said Jagdeep Singh. The petitioner wants to open big showroom in the building i.e. property bearing Khasra No.2026 min, Pvt. No.15-A having area of about 175 square yards building No.39-C after demolishing existing construction, for his son Jagdeep Singh. At present, there are five shops

existing towards front side on ground floor out of which one shop is in possession of the petitioners. In addition to five shops, there are three rooms, garage, one kitchen, a bathroom, a miani/inter-floor on the backside of five shops. After demolishing the entire existing construction, the respondent wants to construct a single big showroom in the building for the purpose of Jagdeep Singh but in view of the situation of the tenanted shop in question, it is not possible to do so without getting the shop in question vacated. The respondent got other portion of the building vacated from other tenants for the said purpose but the petitioner refused to vacate and deliver immediate possession of the tenanted premises. Hence the petition.

The petitioners filed application for leave to contest and the same was dismissed by the Rent Controller, Amritsar vide order dated 06.06.2011 and they were directed to vacate the premises in question within two months from the date of order. Order dated 06.06.2011 became subject matter of challenge before this Court and order passed by the Rent Controller was set aside and application filed by the petitioners for leave to contest was allowed by this Court.

The petitioners filed written statement seriously contesting claim of the respondent/landlord. They raised preliminary objections inter alia that the eviction application is not maintainable; respondent is estopped by act and conduct from filing the petition; the respondent is not NRI and he has not approached the Court with clean hands. They have denied that the respondent is permanently residing at Canada or he is NRI. It is averred that occasionally, the respondent used to visit U.K., USA, after getting leave from his department. The respondent does not fall under the definition of NRI and he is not permanently residing at Canada

since July 2007. He has been drawing salary from the department. The alleged passport, if any, has been got issued by the respondent by committing fraud with the passport office. They have denied the allegations that the shop in question is bona fide required by the respondent for himself or Jagdeep Singh, his son. The respondent is serving as Pharmacist, Medical Superintendent in Guru Nanak Dev Hospital, Amritsar and Jagdeep Singh is well settled in his business in Canada. It is not alleged that Jagdeep Singh is dependent upon the respondent. All other material averments of the eviction application were denied with a prayer for dismissal of the same.

The respondent filed replication reiterating averments raised in the eviction petition while controverting the preliminary objections raised by the petitioners.

The controversy between the parties led to framing of following issues:-

1. Whether the demised premises is required bonafide by the applicant? OPA
2. Whether the present petition is not legally maintainable? OPR
3. Whether the petitioner has no locus standi to file the present petition? OPR
4. Whether the petitioner is estopped by his own act and conduct from filing the instant petition? OPR
5. Whether the petitioner has not come to the court with clean hands and has concealed the true and material facts from the notice of this Hon'ble Court? OPR
6. Relief.

Counsel for the petitioners has challenged the impugned order by making manifold submissions. It is argued with vehemence that the respondent/landlord does not fall within the definition of Non Resident Indian (in short 'NRI'), under Section 2(dd) of the Act as neither he is settled permanently nor temporarily in a foreign country nor he has been living abroad with an intention to stay outside India for uncertain period. To bring home his contention, he has referred to the testimony of Tilak Raj, Junior Assistant, RW-1 who produced documents Ex.R1 to R28 with regard to applications/affidavits filed by respondent- Parminder Singh for grant of leave, joining reports and orders passed by the authorities qua sanction of leave in advance or ex post facto for the period starting from the year 2004 onwards. It is further argued that in all the leave applications submitted by the respondent for going abroad, there is reference to tourism or social visit etc. After availing leave for a particular period, respondent had been resuming his duty either pre-maturely or on expiry of leave as Pharmacist in Sri Guru Teg Bahadur Hospital, Amritsar which is a Government Hospital and comes under the Department of Medical Education and Research, Government of Punjab.

According to counsel, as Sh. Parminder Singh continued to be in government service till his retirement in the year 2014, findings recorded by the Rent Controller upholding his plea that he is NRI are the result of failure to appreciate the material on record and legal position in right perspective, therefore, findings of the Rent Controller in this regard not only suffer from illegality but also perversity. He would apprise the Court that the Rent Controller even did not bother to advert to the documents Ex.R1 to R28 and testimony of Tilak Raj, Junior Assistant, while deciding the question of respondent being NRI or otherwise. In

addition, it is argued that the Rent Controller blindly relied upon the documents marked as exhibits in the testimony of Parminder Singh without deciding the objection with regard to mode of proof and admissibility of documents Ex.A1 to A21. Further argued that even the Court did not bother to appreciate that most of the documents are undated, therefore, the respondent cannot derive any advantage to his contentions from the undated documents i.e. Health Card Ex.A5, Social Insurance Number Ex.A6, Access Card Ex.A7, Visa Card Ex.A8, document of Canada Trust Ex.A11, Permit Ex.A13, document of State Farm Mutual Automobile Insurance Company Ex.A14. With regard to document Ex.A4 i.e. Permanent Resident Card, the same relates to August/October 2012, subsequent to filing of the eviction application in the year 2010 and driving licence Ex.A10 can be issued even to a visitor to Canada, therefore, is not an evidence of the respondent's settlement in Canada either temporarily much less permanently. It is further argued that document Ex.A9, Identity Card purported to be issued by NRI Sabha Punjab is not *per se* admissible in evidence nor there is any evidence on record what is the legal status of NRI Sabha or evidential value of such Identity Card which has been marked as an exhibit without proving the same, in accordance with law. It is further argued that the respondent obtained certain Visas for visiting different countries marked as exhibits in his testimony but the mere fact that a person has been allowed to visit a foreign country is not an evidence that the person concerned has settled in a foreign country either permanently or temporarily.

Counsel would argue that the application for eviction has been filed for personal requirement. In sub para (i) of para 5 of the eviction application, there is reference at one point that the premises is required by

the owner-landlord for himself and for his son Jagdeep Singh. The remaining para running into several pages only talks about requirement of the premises in order to settle Jagdeep Singh in a business after converting the entire property building No.39-C measuring approximately 175 square yards in a big showroom as Jagdeep Singh could not pull well in Canada either in study or otherwise and he wants to settle in India i.e. at Amritsar in the tenanted premises. It is argued that the averments raised in sub para (i) of para 5 clearly indicate that the respondent has sought eviction of the petitioners for personal requirement of his son Jagdeep Singh. It is argued that the respondent has not pleaded that Jagdeep Singh is ordinarily residing with him in Canada and he is dependent upon the respondent, therefore, the respondent has failed to make out a case that the demised premises is needed for personal requirement of Jagdeep Singh.

It is further argued that admittedly in the year 2010 the respondent was a government employee being a Pharmacist in the government hospital at Amritsar. There is nothing on record suggestive of the fact that the respondent ever sought any permission from his department for doing any business, in compliance with Conduct Rules governing the employees of Punjab Government. He has not stated as to what business he wants to start in the property in question for himself. It is further argued that contention of the respondent that tenancy premises is required for bona fide need of himself or/and his son Jagdeep Singh gets falsified and belied from the contents of FIR No.256 dated 22.11.2008 under Section 448/506 IPC lodged by respondent-Parminder Singh wherein it has been specifically mentioned that he wants to sell his property bearing No.39-C/15-A new Partap Nagar, Block Guru Lal Bazar near Police Station B Division, Amritsar in order to meet expenses qua

purchase of a house in Canada and education of his children in Canada. It is further argued that the instant petition filed by the respondent is nothing short of abuse and misuse of process of law to seek eviction of the petitioners and thereafter to sell the property in question as an unoccupied property because sale consideration of a vacant property would be much more vis-à-vis a property under occupation of a tenant.

Counsel representing the respondent has supported the impugned order with the submission that the documents produced by the respondent substantiates his plea that he has settled temporarily in Canada with an intent to stay there for an uncertain period, therefore, he falls within the definition of NRI under Section 2(dd) of the Act. It is further argued that the respondent visited Canada from time to time and he stayed there even for a period of one year at a go in order to settle his family in Canada, sufficient to prove that he is NRI. According to counsel, the documents produced by Tilak Raj with regard to leave also show that he had been residing in Canada for uncertain period.

Counsel has refuted contention of the petitioners that demised premises is not required for bona fide personal need of the respondent and his son. It is argued that in view of the legislative intent behind the provisions of Section 13-B of the Act specially enacted for the benefit of NRIs, the Court is obligated to proceed with the assumption that need projected by NRI landlord is bona fide unless the tenant is successful in leading cogent evidence to rebut the same. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Baldev Singh Bajwa Vs. Monish Saini, 2005(2) RCR (Rent) 470.** Further reference has been made to judgments of this Court **Darshan Singh Vs. Malkiat Singh and others, 2017(2) RCR (Rent) 29, Sohan Lal Vs. Swaran**

Kaur, 2003(2) RCR (Rent) 407, Assa Singh Vs. Charanjiv Singh
Gulati, 2004(2) RCR (Rent) 660, Amrita Pal Johal son of Mohan Singh
Vs. Baldev Raj son of Harbans Lal, 2014(1) RCR (Rent) 459.

I have heard counsel for the parties, perused the paper-book and records with assistance rendered by counsel for the parties.

There is no dispute that the respondent is the landlord/owner of property bearing No.39-C which was purchased by him vide sale deed dated 29.01.1988 Ex.A1. This property is measuring approximately 175 square yards and there are shops and residential portion in the said property. There is also no denial that the respondent was an employee of Punjab Government as he was working with Shri Guru Teg Bahadur Hospital, Amritsar. There is also no dispute that at the time of initiating eviction proceedings in April 2010, the respondent was a Government employee and he retired from service in the year 2014. The respondent never obtained permission from his department to settle temporarily much less permanently in Canada.

Section 2(dd) of the Act defines NRI, quoted thus:-

“(dd) "Non-resident Indian" means a person of Indian origin, who is either permanently or temporarily settled outside India in either case -

(a) for or on taking up employment outside India; or

(b) for carrying on a business or vocation outside India;

or

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period;”

Hon'ble the Supreme Court in Baldev Singh Bajwa's case (supra), has held that NRI landlord has special right of immediate possession of premises subject to conditions namely: (1) NRI landlord should be owner of building for 5 years before he applied to Controller for possession, (2) He should require the same for his own use or for use of any one ordinarily living with him and is dependent on him, (3) Right under Section 13-B of immediate possession could be availed of only once during life time of such an owner/NRI landlord, (4) NRI landlord has choice to select one among several other residential buildings and or non-residential buildings, (5) If the NRI landlord gets possession under Section 13-B(3), he shall neither transfer it either by sale or by any other mode nor he shall let it out for the period of five years. In case of breach, tenant is entitled to seek restoration of possession, (6) After getting possession, NRI landlord should occupy the premises continuously for a period of 3 months, (7) NRI landlord is prohibited from letting out the whole or any part of that building from which the tenant was evicted to any other person except the tenant who had been evicted, (8) In contravention of these restrictions, landlord is liable for a penal action and can be imposed punishment of imprisonment for a term which may extend to six months or with fine which may extend to rupees one thousand or with both.

On perusal of definition of NRI under Section 2(dd) extracted hereinbefore, the two questions that fall for consideration are (1) Whether the respondent settled either permanently or temporarily outside India? (2) If so, whether he settled as such for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period? The word '**settle**' implies something more than 'staying outside India'.

The Rent Controller, for the reasons best known, did not advert to testimony of Tilak Raj RW-1 and the documents Ex.R1 to R21 while deciding the moot question, if the respondent is covered within the definition of NRI or otherwise.

Plea of the respondent is that in July 2007, after taking long leave from service, he along with his family shifted to Canada and since then he and his family is residing at Canada. He has nowhere pleaded that since July 2007, he has settled either permanently or temporarily in Canada for any purpose whatever. Perusal of leave records produced by Tilak Raj would reveal that for the first time, respondent obtained Ex-India leave from 10.05.2004 to 24.05.2004 for going abroad, U.K., France, Germany, Switzerland, for the purpose of social tour. After availing leave, he resumed duty on 25.05.2004. In the year 2006, he applied for Ex-India Leave for 121 days for the purpose of tourism to U.K., Germany but since he resumed duty on 14.09.2006, leave was sanctioned for a period of 104 days. Again, he applied for Ex India Leave from 27.07.2007 to 19.01.2008 for a period of 177 days and in his affidavit Ex.R9, he has mentioned that he had to go to USA/Canada for social tour. He resumed duty on 16.01.2008 and accordingly leave was sanctioned from 27.07.2007 to 15.01.2008 vide order Ex.R10. Again, he applied for leave from 16.06.2008 to 16.11.2008 vide application Ex.R12 and in para 4 of affidavit Ex.R13 furnished by him, purpose of leave is going to England, USA, Canada for tourist purpose. Leave was sanctioned vide order Ex.R14. Again, he applied for Ex India Leave for a period of 83 days from 09.05.2011 to 30.07.2011 and in his affidavit Ex.R16, in para 5, he had stated to the following effect:-

“5) That I am go to Canada for short visit.”

The leave for this period was sanctioned vide order Ex.R17. He submitted his joining report on 29.07.2011 (F.N.) and the document is Ex.R18. He again availed Ex India Leave for 9 days from 14.10.2011 to 22.10.2011 for going to U.K. and the documents in this regard are Ex.R19 to R21. In the year 2012, he applied for Ex India Leave for 159 days from 18.06.2012 to 23.11.2012 for going to Canada to visit his family and the documents are Ex.R22 to R24. In the year 2013, he applied for Ex India Leave from 10.06.2013 to 26.10.2013 for a period of 139 days and the documents are Ex.R25 and R26.

Perusal of the aforesaid documents makes it evident that the respondent was allowed Ex India Leave on different occasions with a clear stipulation that he will not extend his leave beyond the period for which the leave had been applied/sanctioned. The respondent had been resuming duty either before expiry of the leave period or on expiry of the leave applied for. The purpose of leave is social tour/tourism or visit to family. Taking into consideration the period of leave applied for and purpose for which Ex India Leave was sought and sanctioned, it is difficult to accept contention of the respondent that he settled in a foreign country even temporarily much less for any other purpose in such circumstances as would indicate to stay outside India for an **uncertain** period. The respondent, at best, had been staying outside India for a specific/certain period after availing leave from his department. In the given scenario, it can safely be held that the trial Court committed a gross error rather illegality by upholding plea of the respondent that he falls within the definition of NRI and is entitled to special benefit allowed to NRI landlords under Section 13-B of the Act. As the respondent does not satisfy the ingredients of Section 2(dd) of the Act and his plea that he is

NRI has been negated by this Court, the present petition can well be disposed of even without advertting to the second question, whether the demised premises is bona fide required by the respondent in the light of averments raised in sub para (i) of para 5 of the eviction application.

However, still this Court would like to decide the second issue as well. The averments raised in sub para (i) of para 5 of the application have been reproduced in extenso, in the earlier part of the judgment. As has rightly been argued by counsel for the petitioners, except a single line in the opening part of sub para (i), there is no reference with regard to requirement of respondent for his own business purpose. On the contrary, a plain but careful reading of the averments, leaves no manner of doubt that the respondent has sought eviction for requirement of his son Jagdeep Singh who purportedly could not settle in Canada and for that reason, the respondent wants to convert the entire building No.39-C of 175 square yards in a big showroom for the business of Jagdeep. In **Baldev Singh Bajwa's case** (supra), it has been held that NRI landlord can seek eviction for his own use or for use of anyone ordinarily living with him and dependent upon him. The allegations in sub para (i) of para 5 and so also testimony of Parminder Singh – respondent are conspicuously silent if Jagdeep Singh is ordinarily living with the respondent or/and is dependent upon him, thus, the essential requirements for seeking eviction to satisfy need of Jagdeep are missing in the present case. The Rent Controller has even failed to take notice of this vital omission from pleadings and evidence of the respondent while deciding the question of bona fide personal requirement.

There is no denial that in November 2008, the respondent lodged FIR No.256 dated 22.11.2008 complaining against the petitioners

for not vacating the shop in question and Bittu son of Charanjit Singh for not vacating residential portion of property No.39-C. In the FIR, the respondent, despite being an employee of Punjab Government, tried to create an impression as he is NRI landlord. He has mentioned in his statement (FIR) that neither the petitioners have vacated the shop nor Bittu son of Charanjit has vacated the residential portion to whom he had informed that he wanted to sell the house and money is needed in respect of house purchased in Canada and for education of his children.

To be fair to the respondent, counsel has made a vain attempt to argue that in the FIR, there is only reference for sale of the house and not the shop in question but this contention is patently misconceived as the property in dispute is a house bearing No.39-C/15-A, New Partap Nagar, Guru Lal Bazar, Amritsar consisting of five shops and residential portion. The respondent concealed the factum of lodging of FIR from the Court. He has not explained that since lodging of FIR in November 2008 till April 2010 when he filed the petition for eviction, there was change of circumstances that created requirement of demised premises for business of Jagdeep Singh. The recitals in the FIR goes a long way to rebut contention of the respondent that demised premises is bona fide required for business of Jagdeep Singh. Taking a cumulative view of the entire oral and documentary evidence on record, it can safely be held that the respondent by hook and crook wanted to get the demised premises vacated from the petitioners and thereafter, sell the property bearing No.39-C at a higher rate.

The respondent produced documents marked as Ex.A1 to A21. Counsel for the petitioners raised an objection against exhibiting of the documents on the grounds of mode of proof and admissibility. The

Rent Controller did not bother to decide the objection and rather blindly relied upon the same in favour of the respondent/landlord. As has been pointed out by counsel for the petitioners, many of these documents are undated, therefore, the respondent cannot derive advantage thereof. The driving licence issued by an authority at Canada is not a prima facie evidence of settlement in Canada. Counsel for the respondent has failed to point out any law of Canadian Government that driving licence can only be allowed to a person who is settled in Canada. Identity card issued by NRI Sabha Punjab has not been proved in accordance with law. There is nothing on record suggestive of the fact that the said Sabha was made aware of the respondent being a government employee when this identity card was issued. Permanent Residence Card was issued subsequent to filing of the petition in April 2010 as it pertains to August/October 2012. Counsel has not made any submissions as to the basis on which such a card is issued by the Canadian Government. As such, it can be held that the Rent Controller committed a serious illegality by relying upon the documents produced by the respondent firstly without deciding the objection raised by the contesting party and secondly on account of its failure to appreciate evidential value thereof. In view of the above, the respondent can neither derive any advantage to his contention from the documentary evidence nor from the judgments cited at bar to establish his plea of being NRI or entitle to seek eviction on the ground of personal requirement of Jagdeep Singh, his son. In this view of the matter, eviction order passed by the Rent Controller suffer from illegality, therefore, cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. The impugned order is set aside. The application for eviction under Section 13-B of the Act is dismissed with costs throughout.

NOVEMBER 26, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no