

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2506 of 2010(O&M)
Date of Order:19.02.2020.

Parshotam Dass Sharma and others

..Petitioners

Versus

Hardyal Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.S.Sobti, Advocate, for the petitioners.

Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The tenants-petitioners have filed the present provision petition against the order passed by Rent Controller declining prayer to grant leave to contest as provided under Section 18-A of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act').

Under Section 13-B of the 1949 Act, a special right is conferred on 'Non Resident Indians' (NRI) to seek immediate possession of the property owned by them from possession of the the tenants. Section 18-A of the 1949 Act lays down the procedure for dealing with such petitions. Sub-section 4 of Section 18-A of the 1949 Act enables the tenant to apply for leave to contest which is required to be decided by the learned Rent Controller. As noticed above, learned Rent Controller has rejected the application. For reference, Sections 13-B and Section 18-A of the 1949 Act are extracted as under:-

"13-B. Right to recover immediate possession of residential building or scheduled building and or non- residential building Indian;

(1) Where an owner is a 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 or required for his or her use, or for the use of any one ordinary 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.

18-A. Special procedure for disposal of applications under Section, 13-A or Section 13-B. "

(1) Every application under section 13-A or section 13-B shall be dealt with in accordance with the procedure specified in this section.

(2) After an application under section 13-A or section 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.

(3) (a) The summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule to the Code of Civil Procedure, 1908. The Controller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgment due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of the building in respect whereof the application under section 13- A or section 13-B has been made.

(b) When an acknowledgment purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement urporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

(4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the 5 [residential building or scheduled building and/or non residential building], as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord 6 [or the owner, who is non resident Indian] in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts

as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand- child or widowed daughter-in-law 7 [or the owner, who is non resident Indian] of such specified landlord from obtaining an order for the recovery of possession of the [residential building or scheduled building and/or non residential building], as the case may be, under [section 13-A or section 13-B].

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave granted to the tenant to contest and shall hear the application from day-to day till the hearing is concluded and application decided.

(7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any [residential building or scheduled building and/or non residential building] made by the Controller in accordance with the procedure specified in this Section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under [section 13-A or section 13- B] shall be the same as the procedure for the disposal of applications by the Controller.”

This court has heard learned counsel for the parties at length and with their able assistance gone through the paper book along with record.

Learned counsel representing the petitioners has submitted that the petition filed under Section 13-B before the Rent Controller was not maintainable as respondents herein (petitioners before the Rent Controller) became owners only during the pendency of the petition i.e. on 03.10.2008. In this regard, he referred to Form-TS-I, which is a document of transfer of the property from mother, who had died, in favour of his natural heirs. He further submitted that Dr. Raj Kumar was inducted as a tenant by Rakesh Kumar a co-owner and therefore, there was no relationship of landlord and

tenant between the respondents herein and Rakesh Kumar. He further submitted that the petitioners have failed to establish their bonafide requirement. He further submitted that eviction has been sought on the ground of bonafide requirement of the building being unfit and unsafe which is not the ground available under Section 13-B of the Act.

On the other hand, learned counsel for the respondents has submitted that Smt. Raj Rani was owner of the property. She died in the year 1982. Immediately on her death, by way of natural succession the property fell to the share of the respondents herein along with other. Succession never remains in abeyance. Late updation of the municipal record cannot be a ground to deny the relief to the land owners. Updation of the municipal record is not transfer of ownership but is only for the purpose of making an entry for the purpose of collection of house tax. Rakesh Kumar is only one of the 7 co-owners. All the seven owners are Non Resident Indians, however the present petition filed by four of them jointly. The landlords wish to come back to their home country and re-built the entire building consisting of five shops and start business.

On analysis of the arguments of learned counsels for the parties this court has come to a conclusion that there is no substance in the present revision petition. It is well known that succession never remains in abeyance even for split of second. On the death of Raj Rani, title passed on to the legal heirs, at the very next moment. Municipal record is revised/updated only for the purpose of collection of house tax and to maintain record. Municipal record is not record of title.

As regards second argument, it may be noted that Section 13-B of the 1949 Act gives a right to the owner to seek eviction. The owner

includes one of the co-owner. It is undisputed that the respondents are co-owners of the property. Hence, they have right to recover possession under Section 13-B of the 1949 Act.

As regards last contention of learned counsel, learned Rent Controller has dealt with the aforesaid issue in detail and found no reason to disbelieve the bonafide requirement pleaded by the landowners. Learned Rent Controller has not ordered eviction on the ground that building has become unfit and unsafe in fact. The ground of eviction that the building has become unfit and unsafe was superfluous/unnecessary and was not required to be pleaded because Section 13-B is only restricted to bonafide requirement.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

February 19, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No