

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4308 of 2015 (O&M)
Date of Order: 28.02.2020

M/s Green Roadways/Green Carriers

..Petitioner

Versus

Darshan Singh Bhambra

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.S.Sachdev, Advocate,
for the petitioner.

Mr. Munish Bhardwaj, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

Tenant-petitioner has filed the present revision petition against the order passed by the learned Rent Controller declining to grant leave to contest vide order dated 15.04.2015.

Legislature has amended East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act') in the year 2001, so as to give right to get immediate possession to the Non Resident Indians from a building. Such opportunity is once in life time opportunity available to the Non Resident Indians. For such purpose, Section 13-B of the 1949 Act was added.

Such petitions is to be tried in accordance with the procedure laid under Section 18-A of the 1949 Act, which is extracted as under:-

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 acknowledgement 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 acknowledgement 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 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 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 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.”

In the present case, landlord filed 6 petitions against 6 different tenants of one building. 5 tenants have already been ordered to be evicted

and possession thereof has been delivered to the landlord. This is the 6th one. In the present case, learned Rent Controller ordered eviction, however, the matter remained pending in this Court, awaiting for judgment passed by a Larger Bench in **Ram Krishan Grover and others v. Union of India and others** (Civil Appeal No.8597 of 2019, decided on 14.11.2019).

Learned counsel for the petitioner submitted that the present petition was filed in May 2014, whereas the Punjab Rent Act, 1995 came into force with effect from 30.11.2013. He, hence, submitted that the petition under the old Act which stood repealed was not maintainable. He further submitted that the landlord-respondent is not one of the co-owner of the property as the landlord claims property on the basis of a sale deed which is with respect to a residential premises.

On the other hand, learned counsel for the respondent has drawn attention of the court to the order passed by a Division Bench in Civil Writ Petition No.25507 of 2013, decided on 18.09.2014 (**Bar Council of Punjab and Haryana vs. State of Punjab**), to contend that the further amendments came into force only on 29.08.2014, whereas the present petition was filed before that date. He further submitted that from the reading of the sale deed in favour of the landlord, it is apparent that the property purchased was having 6 rooms on the ground floor which are being used for commercial purpose and while filing application for leave to contest, tenant has admitted that the petitioner is one of the co-owner.

This court has considered the submissions of learned counsel for the parties and analyzed their arguments.

At the outset, it must be noticed that Punjab Rent Act, 1995 was enforced with effect from 30.11.2013. However, powers of Rent

Controller were given to the Executive Officers. Thus, a writ petition was filed in this regard. During the pendency of the writ petition, the eviction petitions before the Rent Controller were being filed in the entire State of Punjab, as per the interim order passed by this court, under the provisions of the 1949 Act. Thereafter, Division Bench disposed of the writ petition after noticing that Punjab Rent (Amendment) Act, 2014 has been enforced, conferring powers upon the Subordinate Judges Ist Class as Rent Authorities and the District & Sessions Judges as Appellate Authorities. The order passed by the Division Bench is extracted as under:-

Bar Council of Punjab and Haryana has filed this Public Interest Litigation (PIL) wherein they have prayed for issuance of a writ in the nature of certiorari quashing of Chapter Nos. V and VI of the Punjab Rent Act, 1995 being unconstitutional.

*The main grievance raised in the present petition was with regard to the powers conferred under section 74 of the said Act of Rent Authorities and Additional Rent Authorities on Sub Divisional Magistrates, Sub Registrars and Joint Sub Registrars as per Rule 5 as also qua constitution of the Rent Tribunal as per Rule 7. The challenge to the aforesaid provision was made on the ground that it is in clear violation of the constitutional mandate of separation of powers between the judiciary and the executive and in this regard reliance was placed on the judgment of the Hon'ble Supreme Court in **Namit Sharma v. Union of India 2012 AIR SCW 5523**. Upon notice, the respondents put in appearance.*

On the last date of hearing, learned counsel appearing for the State had made a statement that the matter has been reconsidered and an amendment has been passed by the Vidhan Sabha for conferring the powers of Rent Authorities and Rent Tribunals on the

judicial officers instead of Sub Divisional Officers etc. It was further stated that the bill is pending before the Governor for assent.

Mr. Amit Sethi, Addl. Advocate General, Punjab today states that assent of the Governor has been received and the amendment has become as Punjab Rent (Amendment) Act, 2014. As per the amended Act, the judicial powers have now been conferred upon the Subordinate Judges Ist Class as Rent Authorities and the District & Sessions Judges as Appellate Authorities. It is further stated that the amended Act has been notified on 29.08.2014.

In view of the fact that the judicial powers have now been conferred to the Subordinate Judges Ist Class as Rent Authorities and the District & Sessions Judge as Appellate Authorities, the writ petition has rendered infructuous and is accordingly disposed of.”

In view thereof, the rent petition filed under the 1949 Act is maintainable, particularly when it was filed before 29.08.2014.

Still further, it is not in dispute that such special right available to the Non Resident Indians-land owners has also been provided under the Punjab Rent Act, 1995 under Section 24 of the Act. Therefore, it would not be appropriate to reject the petition at the stage of revision without any evidence of the fact that the tenants has suffered any prejudice. At the most, it is well settled that merely because a wrong provision of law has been referred to would not debar the court from passing appropriate orders in accordance with law in absence of proof of prejudice caused to the party aggrieved.

Now let's examine the second argument of learned counsel for the petitioner.

On careful reading of the application for leave to contest, it is apparent that in one paragraph, tenant-petitioner has admitted that respondent-owner is one of the co-owner. Of course, subsequently, it has been pleaded that he is not even the co-owner. However, no material has been produced on record to prove that the respondent is not owner. In the present case, respondent-landlord had purchased the property through a registered sale deed dated 23.07.2007. It is recorded therein that the premises purchased has 6 rooms on the main road. In such circumstances, in the absence of any material to the contrary, learned Rent Controller has rightly concluded that the respondent-landlord is the owner of the property.

In view thereof, there is no ground to interfere.

Dismissed.

February 28, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No