

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-223 of 2010 (O&M)
Date of decision: 06.08.2022

Raj Kumar and another

..Petitioners

Versus

Bhupinder Kaur Aulakh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate, with
Mr. Chetan Salathia, Advocate
for the petitioners.

Mr. Arun Jindal, Advocate and
Mr. Arihant Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. The tenants assail the correctness of the order of the Rent Controller passed while dismissing their application for leave to defend the petition seeking their eviction.

2. The respondents (landlords) have filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act'), seeking the eviction of the petitioners herein from the shop in question. Section 13-B of the 1949 Act enables a Non Resident Indian to recover immediate possession of residential, scheduled or non-residential building. Section 18-A of the 1949 Act provides that the tenant may file an application within the time prescribed along with his affidavit stating the grounds on which he seeks the leave to contest the application. The Rent Controller may grant leave to contest if the affidavit

filed by the tenant discloses such facts as would disentitle the specified landlord from obtaining the order of recovery of possession.

3. In the present case, the eviction of the petitioner has been sought from a portion of the property bearing Municipal No.84/12. The tenants, while filing the affidavit sought leave to contest. He apart from other defences have also asserted as under:-

“6. That the petitioners own a large number of residential and non residential buildings, plots etc. within the limits of municipal council of Ahmedgarh. The petitioners have wrongly alleged in para no.8 of their ejectment petition that the petitioners do not possess any other shop/building within the municipal limits of Ahmedgarh and they have also wrongly alleged that they have not vacated any such shop or building after the commencement of the Rent Act without any sufficient cause. The petitioners have intentionally concealed the other buildings/shops owned by them and the same consists of 3 shops on the ground floor and chobaras on first floor and it bears Municipal No.56/12 situated in the main market, opposite Gurudwara Singh Sabha, Railway Road, Ahmedgarh. It is important to note that previously this big building was in possession of a tenant namely Inklaab Singh @ monthly rent of Rs.1665.00 under petitioners and a few months ago, the petitioners got vacated the said building from above mentioned Inklaab Singh and after paying him a handsome money as “PAGREE” and after vacation, the said building was demolished by the petitioners and they reconstructed the same through their relatives and at the same place the petitioners reconstructed 3 shops and staircase on ground floor and chobaras on first floor and about 4, 5 months ago, the petitioners again let out these shops to tenants namely (i) Raghwinder Singh son of Jaiveer Singh at the rate of rs.3500.00 p.m as rent and Rs.525.00 per House Tax, (ii) To Mohinder Pal son of Jagjit Singh at the rate of rs.3500.00 p.m, as rent and Rs.525.-- as House Tax and (iii) to Shyam at the rate of rs.3000.00 p.m, as rent and chobaras are lying vacant. This property No.56/12 is entered in the House Tax assessment register of municipal council Ahmedgarh and the same will be proved by summoning the record of Municipal Council Ahmedgarh. The latest position of this property has been shown in the site plan Mark-Y attached with this application. The photo copies of rent receipts of tenants Raghwinder Singh and Mohinder Pal

are attached herewith. On this ground alone the respondent is entitled to leave to contest from the Hon'ble Court."

4. The Rent Controller did not grant leave to contest to the petitioners. Thus, this revision petition has been preferred challenging the aforesaid order declining leave to contest the eviction petition.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

6. The learned senior counsel representing the petitioners contends that the Rent Controller has not even adverted to the property belonging to the petitioners bearing Municipal No.56/12 situated in the main market opposite Gurudwara Singh Sabha, Railway Road, Ahmedgarh, while passing the impugned order.

7. Per contra, the learned counsel representing the respondents submits that the property bearing Municipal No.56/12 belongs to respondent no.1 (petitioner no.1 before the Rent Controller). However, respondent no.2 has no concern with the same.

8. Two landlords have jointly filed a petition under Section 13-B of the 1949 Act. The Rent Controller was required to consider the assertions made in the affidavit filed with a prayer to grant leave to contest. Failure to consider the same has resulted into a material irregularity which goes to the root of the matter.

9. Consequently, the order under challenge is set aside. The Rent Controller is requested to decide afresh the question of entitlement of the petitioners (tenants herein) to leave to contest, within a period of two months, from today, positively.

- 10. The parties through their counsels are directed to appear before the Rent Controller, on 05.09.2022.
- 11. The revision petition is allowed.
- 12. All the pending miscellaneous applications, if any, are also disposed of.

August 06, 2022
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(ANIL KSHETARPAL)
JUDGE

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