

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

**CR-2382 of 2016 (O&M)
and other connected cases
Date of decision: 31.10.2022**

Gagandeep Singh

..Petitioner

Versus

Balwinder Singh Gill and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Sodhi, Advocate,
for the petitioner (in CR-2382 and 2374 of 2016)

Mr. Nitish Garg, Advocate,
for the petitioner (in CR-2384 to 2388 of 2016)

Mr. D.R.Bansal, Advocate,
for the petitioner (in CR-2788 of 2016)

Mr. Anand Chhibbar, Sr. Advocate with
Mr. A.P.S.Sandhu, Advocate and
Mr. Paras Choudhary, Advocate and
Ms. Shyati Sharma, Advocate,
for the respondent(s)

ANIL KSHETARPAL, J(Oral)

1. Through these 9 revision petitions, the tenants challenge the correctness of their eviction orders passed by the Rent Controller. Though the tenants (the petitioners) are different, however, their landlords are common. In all these cases, eviction has been sought on the identical ground of bonafide necessity.

2. As per Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act'), Non Resident Indians

(NRI) have been conferred privilege to seek immediate possession of the tenanted property if they require the same for their bonafide use. However, the tenant is entitled to seek leave to contest on the grounds which, *prima-facie*, show that the eviction petition is liable to be dismissed. In the present case, applications filed by the tenants under Section 18-A of the 1949 Act by the tenants for seeking leave to contest the eviction petition have been dismissed. Resultantly, the petitioners (tenants) have been ordered to be evicted from the respective tenanted premises by separate but similar orders.

3. The learned counsels representing the petitioners contend that under Section 13-B of the 1949 Act, the landlords are entitled to immediate possession of one building only, whereas, as many as 9 petitions were filed with respect to different shops located on Plots no.42 and 57. While referring to the sale deeds of the constructed building on plot no.42 and 57, he submits that these two separately constructed buildings were purchased by the respondents (landlords), therefore, they are only entitled to seek eviction from one building and not from multiple buildings under Section 13-B of the 1949 Act.

4. Per contra, the learned senior counsel representing the respondents, while drawing the attention of the Court to the layout plan of the entire building constructed on both the plots, submits that the staircase for going to the first and second floor of the building is common and the building on both the plots, namely, Plot No.42 and 57 has been constructed in a manner which prove that all the shops form part of a single/common building constructed partly on one plot and partly on another plot.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book as well as the impugned orders passed in various revision petitions.

6. Section 13-B was added by Act No.9 of 2001 on 31.05.2001 in the East Punjab Urban Rent Restrict Act, 1949. Before analyzing the arguments of the learned counsels, it is important to take a note of the statement of objects and reasons for inserting such a provision as well as the relevant Sections 2(a), 13-B, 18-A and 19(2-B) of the 1949 Act. The same are reproduced as under:-

"The State Government had been receiving representations from various N.R.I.s individuals and through their associations highlighting the plight of Indian residents returning to India after long years abroad. It was represented that the NRIs having spent long years of their life abroad did not find conditions congenial in their own country on their return either to settle down or to take up any business. On account of rigid legal provisions of existing Rent laws, the NRIs were unable to recover possession of their own residential building from the tenants. Government having considered the situation had decided that the existing Rent Legislation viz. East Punjab Urban Rent Restriction Act 1949 should be amended to provide relief to NRIs to enable them to recover possession of a residential or scheduled building and/or one non residential building for their own use."

Section 2(a)-building"- means **any building or part of a building** let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house;

Section 13-B: Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to non- resident 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 required for his or her use, or for the use of any one ordinarily living with the

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.

(2) Where the owner referred to in sub-section (1) has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly."

18A. 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 purporting 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 desentitle 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.

Section 19 (2-B) *The owner, who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under **Section 13-B**, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of **Section 13-B**, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both.”*

7. Now, the stage is set for analyzing Section 13-B of the 1949 Act, which has been extracted above. Sub-Section (1) of Section 13-B of the 1949 Act enables an owner who is a Non Resident Indian (NRI) to apply to the Controller to seek immediate possession of such building or buildings as the case may be. Though, it gives an impression that the NRI landowner can apply for multiple buildings, however, such impression is not correct in view of Section 13-B(2) which clearly provides that the NRI owner can file an application under this provision in respect of only one residential building and/or one scheduled building and/or one non-residential building, as elected by him or her. It is also evident that the enabling power under Section 13-B

of the 1949 Act can only be exercised once during the lifetime of such an owner. Further, before filing the petition under Section 13-B of the 1949 Act, an NRI owner is required to fulfill the conditions laid down in the proviso to Section 13-B of the 1949 Act. While keeping in mind all these considerations, the Court is required to interpret the provision. Thereafter, the Court has to fall back upon the definition of building in Section 2(a) of the Act. On a perusal whereof, it is evident that the term 'building' means any building or a part of a building let out for any purpose whether being actually used for that purpose or not. In other words, the legislature was conscious of the fact that in a building especially in bigger buildings, some portion of the building can also be separately let out. Now, the question is 'whether the enabling right under Section 13-B of the 1949 Act is required to be restricted only to a portion of such building or it can be claimed with respect to the entire building. It is evident that Section 13-B of the 1949 Act does not refer to only a part of the building. The legislature has used the expression 'building' or 'buildings'. Thus, it is safe to conclude that word 'building' would derive its meaning from Section 2(a) of the Act which would include the seeking eviction from the entire building.

8. Moreover, it is obvious that the term 'building' cannot be restricted to one which is constructed on a single plot. A common building can very much be constructed on two or more plots.

9. The following reasons prove the fact that the building constructed on two plots, in the present case, is a single/common building:-

- 1) Firstly, the staircase going to the first and second floor of the building constructed on Plot No.42 and 57 is

common.

- 2) Secondly, on the ground floor, there are shops, whereas on the first floor, there are two halls and multiple cabins.
- 3) Thirdly, the toilet is constructed on the second floor of the building for the common use of all occupants of the building. Apart from that, there is a room on the second floor.
- 4) Fourthly, from a bare perusal of the layout plan prepared by the Amritsar Improvement Trust, Amritsar, it is evident that Plot No.42 and 57 are adjacent to each other and both the plots are located in one corner. In fact, Plot No.42 has opening towards North and East, whereas, Plot No.57 has opening towards the Eastern side. In other words, the Eastern boundary of Plot No.42 and the Western boundary of Plot No.57 is common.
- 5) Fifthly, the manner in which the buildings are constructed on both the plots clearly prove that they all form part of a single integrated building and not of two separate buildings as discernible from the layout plan.
- 6) Sixthly, on a careful perusal of the five sale deeds placed in the paper book by the tenants, it is evident that some constructed portion on plot no.42 has been sold by three different sale deeds executed on 21.12.1987, whereas, the remaining portion of plot no.42 has been sold by Sh. Rachpal Singh and Sh. Sahib Singh, sons of Sh. Avtar

Singh, on 29.06.1998. Similarly, vide sale deed dated 13.05.1990, ½ share of plot no.57 along with constructed portion thereof has been sold. Hence, it is evident that various sale deeds were executed with respect to the undivided share of a larger building.

7) Lastly, all the vendors are descendants of a common ancestor, particularly when the sale deed dated 13.05.1990 has been executed by Sh. Gurcharan Singh son of Sh. Natha Singh. Sh. Natha Singh is also the father of Sh. Mandeep Singh and Sh. Manjit Singh (vendors in the sale deeds dated 21.12.1987).

8) Moreover, from the perusal of the sale deeds, it is evident that three sale deeds dated 21.12.1987 were executed by Sh Mandeep Singh and Sh. Manjit Singh sons of Gurcharan Singh. Whereas, sale deed dated 13.05.1990 and 29.06.1998 were executed by Sh. Avtar Singh, Sh. Gurcharan Singh, Sh. Rachhpal Singh and Sh. Sahib Singh. Sh. Rachhpal Singh and Sh. Sahib Singh are sons of Sh. Avtar Singh, one of the vendor in the sale deed dated 13.05.1990.

10. In these circumstances, the argument of the learned counsel that there are two separate buildings i.e one on plot no.42 and 57 each cannot be accepted. If the vendee purchases various portions of the same building through different sale deeds, the portion in each sale deed would not, necessarily, constitute a separate building, particularly when the definition

of the expression 'building' is wide enough to include the entire common building let out in parts to various tenants and constructed upon two or more plots.

11. Thus, the aforementioned factors sufficiently indicate that the building in the present case, is a single building which falls within the definition under Section 2(a) of the the 1949 Act and the NRI landlord is entitled to seek eviction for the entire building under Section 13-B of the 1949 Act.

12. Furthermore, as per the various eviction petitions filed by NRI owners, it is evident that they require the entire premises for construction of a hotel. It has been projected that before starting such business, the possession of all the parts of the tenanted building is required to be delivered to them. It has been also projected that many hotels are already carrying their business on the Railway Road, Amritsar, where the building in question is situated and all such hotels are doing good business. As such, it is quite suitable and appropriate for the applicants to run a hotel business from the building in question. The landlords have also stated that they are not in possession of any other residential building within the urban area of Amritsar except for one small shop, recently, vacated by Sh. Sewa Singh and one room on the top floor of shop.

13. In the light of these circumstances, the requirement of the landlords is required to be examined. If the argument of the learned counsel representing the petitioners (tenants) is accepted, then in that case, the result would be that the NRI owners shall be entitled to only a fraction of the building which would not be suitable for their requirement of operating a

hotel. As per the statement of objects and reasons, it is evident that the legislature intended to come to the rescue of NRI owners, who wish to seek immediate possession of one building in each category for the running a business or returning back to their motherland or both. Further, one building can be let out in many parts. In the present case, various shops have been let out, to the different tenants, in the same building. The landowners want to start a hotel business which cannot be, ordinarily, run from a single shop but rather the entire building is required to be vacated for the fulfillment of such a project. Hence, the bonafide requirement of the NRI owners is required to be seen in that context.

14. If the argument of the learned counsel is to be accepted, it would amount to incorrect interpretation of the definition of the word 'building' which includes the entire 'building' as well as its parts. Thus, the legislature itself envisaged that the word 'building' would include various parts of the building which may be separately let out. The Supreme Court, while examining the applicability of Section 13-B of the 1949 Act in **Zenobia Bhanot vs.P.K.Vasudeva and another (1995) 6 SCC 770**, held that the term 'residential building' or 'scheduled building' includes the entire building and is not restricted to only some portion thereof. Moreover, the Hon'ble Supreme Court, while contemplating the legislative intent, in **Sawmi Nath vs. Nirmal Singh (2010) 9 SCC 452**, in different facts, held as under:-

13. Reliance was placed on the decision of this Court in Baldev Singh Bajwa v. Monish Saini [JT 2005 (12) SC 442] where the same question had come up for

consideration and it was observed that on a plain reading of the provisions of [Section 13-B](#), it would be obvious that once in a life-time possession is given to an NRI to get one building vacated in a summary manner. It was also submitted that the ownership of the Respondent/landlord in respect of only one building had not been disputed by the Petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the second time to a particular building, which contention had been negated by the Courts below.

14. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made on behalf of the Petitioners. The interpretation sought to be given to the proviso to [Section 13-B\(1\)](#) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of [Section 13-B](#) by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

15. Further, Section 13-B is in the nature of a summary special remedy and any attempts to delay or defeat the same should be nipped in the land as intended in the present case.

16. Therefore, in view of the aforesaid detailed discussion, once it has been, sufficiently, proved that the entire building constructed on both the plots, namely, Plot No.42 and 57 is common, then there is no occasion to

differ with the findings of the Rent Controller that the shops are a part of one and the same building.

17. Learned counsel for the petitioners did not take up any other argument.

18. Hence, no ground to interfere is made out.

19 Dismissed.

20. All the pending miscellaneous applications, if any, are also disposed of.

October 31, 2022

**(ANIL KSHETARPAL)
JUDGE**

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*