

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5377 of 2015(O&M)
Date of Order: 20.05.2022

Inderjit and another

..Petitioners

Versus

Ravi Bhushan

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S.Manaise, Advocate,
for the petitioners.

Mr. Alok Jain, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

The sole question which arises for consideration is “as to whether under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act'), a specified landlord is entitled to seek eviction of a tenant from a non-residential building or not?

Section 13-A was added in the Statute in the year 1985, which is extracted as under:-

"13-A. A right to recover immediate possession of residential or scheduled building to accrue to certain persons.- Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord,

notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Controller:-

(a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such commencement;

(b) in the case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death;

(c) in the case of death of such specified landlord, after such commencement and the date of his retirement, with one year of the date of such retirement.

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant;

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts:

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation:- For the purposes of this section, the expression "retirement" means termination of service of a specified landlord otherwise than by resignation."

It is evident that the legislature has restricted the right to recover immediate possession only to residential or scheduled building in favour of the specified landlords. This was done with the object of mitigating the bonafide requirements of the landlords who are retiring from defence forces or other Central or State Governments. The question is “whether in view of the judgment passed by the Supreme Court in **Harbilas Rai Bansal and another vs. State of Punjab, (1996) 1 SCC 1**, the Court should interpret the expression “residential” to includes the “non-residential building” or not?

It may be noted here that in **Harbilas Rai Bansal (supra)**, the Supreme Court was examining the validity of amendment brought in Section 13 of the 1949 Act by the State legislature in the year 1956. The Court, after discussing the provisions of the 1949 Act and the Constitution, held that such distinction qua the ground of bonafide necessity of the landlord with respect to “residential” and “non-residential” is unconstitutional.

From reading of the definition of specified landlord provided in Section 2(hh), it is evident that such right is restricted to the persons who are holding or have held an appointment in a public service or post in connection with the affairs of the Union or of a State. On careful reading of the objects and reasons to bring 1985 amendment specifically noticed that this amendment has been brought in with a view to mitigate the hardship being faced by the defence personnel and other Central or State Government employees to enable them to seek eviction of the tenants from residential and scheduled buildings. The 1949 Act defines expressions, “non-residential building”, “residential building” and “scheduled building” in

Section 2(h), in the following manner:-

“2(d);- “non-residential building”- means a building being used solely for the purpose of business or trade: provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a “non-residential building” to a “residential building”.

2(g)- “residential building” means any building which is not a non-residential building.

2(h) “scheduled building” means a residential building which is being used for a person engaged in one or more of the professions specified in the (schedule 1) to this Act, partly for his business and partly for his residence.”

The learned counsel representing the petitioners contends that such right of the specified landlord is restricted to “residential buildings” and “scheduled buildings” as held in **Dr. Jagjit Mehta vs. Dev Brat Sharma, 1988 (1) R.C.R.(Rent) 308** and **Savinder Kaur vs. M/s Pindi Paint Stores Agency, 1996 (2) RCR(Rent) 611 (P&H)**. It has been brought to the notice of the Court that the aforesaid judgment has been upheld by a larger Bench of the Supreme Court in **Dev Brat Sharma vs. Dr. Jagjit Mehta, 1990 (Sup) SCC 724**.

It may be noticed here that a Division Bench of this Court while noticing the distinction between the provisions of the 1949 Act, the Haryana Urban (control of Rent & Eviction) Act, 1973, in **Vinod Kumar Jain vs. M/s Harindera Scientific Works, Gur Bazar, sadar, Ambala Cantt, 2011 (3) PLR, 762**, held that in the State of Punjab, the right of the specified landlord is restricted to “residential buildings” and “scheduled

buildings”. Whereas in the Haryana because of language used in the Statute, the specified landlords are entitled to seek eviction of the tenants with respect to the “non-residential building” also.

However, the learned counsel representing the respondent with never give up spirit, tried to persuade the Court. He submits that in view of the judgment passed in **Harbilas Rai Bansal (supra)**, the Court should interpret the provisions of the 1949 Act in such a manner so as to entitle the specified landlord to seek eviction of the tenant from the “non-residential building”.

The rules of interpretation cannot be stretched to such an extent in order to defeat the object of the statute. Once the expression employed by the statute is clear and categoric, the Court cannot use its interpretative tools to defeat its object. The first rule of interpretation is to take the literal meaning of the language implied. In the present case, Section 13-A of the 1949 Act is specifically restricted only to the “residential” and “scheduled building”. In 1985, the legislature in its wisdom did not extend its applicability to the “non residential building”. Under Section 13 of the 1949 Act, the landlord is entitled to evict the tenant from “non-residential building” which is extracted as under:-

“13. Eviction of tenants.- (1) *A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, ¹[or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947 (VI of 1947), as subsequently amended].*

(2) *A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is*

satisfied-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the applications for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid,

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or

(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or

(v) that where the building is situated in a place other than a hill station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause,

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(i) in the case of a residential 2[***] building, if-

(a) he requires it for his own occupation;

(b) he is not occupying another residential 2[* * *] building, 2[* * *] in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

³[(d)] it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.]

⁴[(i-a) in the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in action 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act.

Explanation.- For the purposes of this sub-paragraph-

(1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and

(2) "family" means such relations of the landlord as ordinarily live with him and are dependent upon him;]

(ii) in the case of ⁴[* *] rented land, if-*

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such ⁵[* *] rented land, ⁵[* * *] and*

(c) he has not vacated such ⁶[* *] rented land without sufficient cause after the commencement of this Act, in the urban area concerned;*

⁷[(iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation.]

(iv) in the case of ⁸[any residential building] if he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical Registration

Act, 1916, (II of 1916) or for the residence of his son who is married, if-

(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord ⁹[shall not except under sub-paragraph (i-a), be entitled] to apply under this sub-section before the expiry of such period:

Provided further that where the landlord has obtained possession of ¹⁰[a residential building or rented land] under the provisions of sub-paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the possession of any other building of the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-paragraph (iv) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building for the use of, or as the case may be, for the residence of the same son.

(b) The Controller shall, if he is satisfied that the claim of the landlord is bona fide make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

¹¹[(c) where an application is made under subparagraph (i-a) of paragraph (a), it shall be disposed of, as far as may be, within a period of one month and if the claim of the landlord is accepted, the Controller shall make an order directing the tenant to put the landlord in possession of the building on a date to be specified in the order and such date shall not be later than fifteen days from the date of the order.]

(4) Where a landlord who has obtained possession of a building or rented land in pursuance of an order under subparagraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3) ¹²[does not himself occupy it or, if

possession was obtained by him for his family in pursuance of an order under sub-paragraph (i-a) of paragraph (a) of sub-section (3), his family does not occupy the residential building, or, if possession] was obtained by him on behalf of his son in pursuance of an order under sub-paragraph (iv) of paragraph (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under sub-paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly.

(5) Where the Controller is satisfied that any application made a by landlord, for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding one hundred rupees be paid by such landlord to the tenant.”

However, such benefit has not been extended under Section 13-A of the 1949 Act. It may be noted here that the legislature while amending the provisions of the Act in the year 2001, introduced Section 13-B in order to enable the Non Resident Indians to seek immediate eviction of the tenants from “residential” or “scheduled building” and or from the “non residential building. Even at that time, the legislature did not amend Section 13-A of the Act and did not include the expression “non-residential” in it. Section 13-B of the 1949 Act is extracted as under:-

“13B. 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 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.

(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.”

The learned counsel representing the respondent submits that the matter should be referred to the Division Bench because in **Dr. Madan Lal vs. Rattan Singh, 2010(4) R.C.R.(Civil), 203**, a Coordinate Bench has held that Section 13-A is also applicable to the “non-residential building”.

It may be noted that this Court would have referred the matter in absence of the judgment passed by a larger Bench of the Supreme Court in **Dev Brat Sharma's case (supra)**.

Keeping in view the aforesaid facts, the order under challenge cannot be sustained.

Hence, the revision petition is allowed.

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

May 20, 2022
nt

(ANIL KSHETARPAL)
JUDGE

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