

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. CR No. 2832 of 2016 (O & M)
Date of Decision : 27.2.2023

Harbinder Singh Manku

..... Petitioner

Versus

Sanjay Kumar

..... Respondent

2. CR No. 2833 of 2016 (O & M)

Harbinder Singh Manku

..... Petitioner

Versus

Arun Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present : Mr. Uday Goyal, Advocate, for the petitioner

Mr. Manoj Pundir, Advocate, for the respondent
(in CR No. 2833 of 2016)

Mr. Munish Gupta, Advocate, for the respondent
(in CR No. 2832 of 2016)

TRIBHUVAN DAHIYA, J.

By this order the aforesaid two revision petitions are being decided, since these have been filed by the same landlord, on same grounds concerning there adjacent shops against the identical orders dated 15.1.2016, vide which two rent petitions, bearing Rent Case No. 7 dated 26.7.2012 and Rent Case No. 4 dated 26.7.2012, filed on same grounds under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act of 1949') were dismissed by the Rent Controller. The facts are being taken

from CR No. 2832 of 2016.

2. The facts of the case in brief are, the petitioner/landlord (hereinafter referred to as 'the landlord') being a Non-Resident Indian (NRI), on returning to India filed an application under Section 13-B of the Act of 1949, for eviction of the respondent/tenant (hereinafter referred to as 'the tenant') from the shops in question. He claimed that his father Mohan Singh, being owner of the shops in question, along with other property falling on the backside of the shop, situated in revenue estate of Village Sutheri, near Hotel Maharaja, Hoshiarpur, had executed a registered Will dated 29.1.1980 in favour of his sons. His father expired on 28.3.1983. Thereupon, the petitioner along with his brothers inherited the estate of their father and became owners. The other co-sharers have no objection to filing of the eviction petitions and have consented to the same. It has further been pleaded that there are seven shops owned by the petitioner and his brothers, out of which two shops are in possession of the tenant herein, and other shops are in possession of other tenants, against whom separate ejectment petitions have been filed. Other property belonging to the petitioner and his brothers is at the rear of the shop, where a Saw mill is being run. They do not own or possess any other shop, nor have they vacated any such shop without any sufficient cause after enactment of the Act of 1949. On returning to India, the petitioner wanted to start his business of sale and manufacturing of wooden furniture by converting all the shops into a big showroom, and also sale of hardware items by opening Hardware Store.

3. The tenant filed written statement stating that Mohan Singh, the landlord's father, was not owner of the property in dispute as alleged.

Execution of the Will dated 29.1.1980 (Ex.P/8) by Mohan Singh was also

denied, as also the fact that the petitioner was co-sharer in respect of the shops in question. The land underneath the shops which are in tenant's possession, bearing no. 5 and 6, is owned by Gurmit Singh Manku, who got the shops constructed after getting the site plan sanctioned. After Gurmit Singh's death, shops no. 5 and 6 were leased out to tenants by his widow Balbir Kaur. Shop no. 6 was leased out vide rent note dated 12.3.1993, and shop no. 5 vide rent note dated 11.2.1995. Earlier Balbir Kaur received rent for both the shops against receipts, and later his son Amandeep Singh. Gurmit Singh Manku was exclusive owner of the shops in question which were inherited by his legal heirs after his death. House tax with respect to both the shops was being paid by the tenant, and in the Municipal records the shops were recorded in the name of late Gurmit Singh Manku. Electricity meter in both the shops from the date of construction was also installed in his name only.

4. On these pleadings, the following issues were settled by the Rent Controller:

1. Whether the applicant is Non-Resident Indian and has returned to India and requires the premises in question for his *bonafide* necessity? OPA
2. Whether the applicant has become co-sharer/co-owner of the premises in dispute for the period of five years before filing of present petition? OPA
3. Whether the petition is not maintainable? OPR
4. Relief.

5. Issues no.1 to 3 were decided together by the Rent Controller. Firstly, it was held that the landlord failed to prove that he had returned to India permanently to start the alleged business in the shops in dispute. Therefore, he was not entitled to seek eviction. On the Issue no.2, it was held that the landlord had not become owner of the shops in question as per recitals in the Will (Ex.

P-8). He, along with his brothers, became owners in possession of the shops and property only after death of their mother, Dharam Kaur, who died in the year 2009. Since the ejectment petition was filed on 26.7.2012, the period of five years had not elapsed in terms of Section 13-B of the Act of 1949. The recitals in the Will were specific that the landlord and his brothers were to become owners of the properties including the shops in question, only after death of their mother Dharam Kaur. With these findings, the ejectment petitions were dismissed.

6. Learned counsel for the parties have been heard and record perused.

7. Firstly, there is no dispute between learned counsel for the parties that as per law laid down by the Supreme Court in *Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778, the NRI landlord was not required to return to India permanently to maintain the ejectment petition under Section 13-B of the Act of 1949. In view thereof, findings of the Rent Controller holding the landlord not entitled to file the ejectment petitions in question on the ground that he had not returned to India permanently, are not maintainable.

8. Secondly, as per provisions of Section 13-B (1) of the Act of 1949, where an owner is NRI and returns to India, and the residential/non-residential building let out by him/her is required for his/her use, he/she may seek immediate possession of the same by applying to the Rent Controller. The proviso states that this right shall be available to the NRI owner only after a period of five years from the date of becoming owner of the building, and only once in lifetime. Section 13-B of the Act of 1949 is reproduced hereunder for reference:

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 anyone 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 lifetime 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.

9. It is, therefore, apparent that the primary requirement of seeking immediate possession of a building by ejectment of the tenant under Section 13-B of the Act of 1949 is that the NRI, who returns to India, has to be owner of the building concerned. In the instant case, the landlord has claimed ownership of the property on the basis of a Will dated 29.1.1980 executed by his father Mohan Singh, who expired on 28.3.1983. The Rent Controller has held that as per recitals of the Will, Mohan Singh bequeathed all his property on his wife (landlord's mother) Dharam Kaur, and only after her death in 2009, the landlord

along with his brothers became owners of the properties, i.e., self-acquired land of 0.18 *marlas* including entire business of saw mill and machinery etc.

10. Learned counsel for the landlord has contended that recitals of the Will have been wrongly read by the Rent Controller, as the landlord's mother, Dharam Kaur, only had life interest in the properties, and the succession opened on the death of Mohan Singh on 28.3.1983, whereupon the landlord along with his brothers became owners of their father's property.

11. Before considering the submission, another aspect of the matter needs to be looked into. It has been established on record that the shops in question (including the adjacent shop, subject matter of the connected petition, CR No. 2833 of 2016) were built by Gurmit Singh Manku, landlord's brother, only in the year 1988-89 after getting the site plan approved from the Municipal Authorities. These shops were also recorded in his name in the Municipal records. Further, these two shops were leased out to the tenant by Gurmit Singh Manku's widow Balbir Kaur on 12.3.1993 and 11.2.1995, after the former's death (the adjacent shop subject matter of the connected petition was rented out on 21.4.1989 by Gurmit Singh Manku himself, and after his death rent was being paid to his widow and son/legal heirs). Only they would received rent from the tenants. A reference in this regard can be made to the statement of AW-1, Amandeep Singh Manku son of late Gurmit Singh Manku, who admitted in his cross-examination that all the shops were constructed by his father (who died in the year 1991). His mother, Balbir Kaur, leased out both the shops to the tenant. The house tax in respect of both the shops was being paid by the tenant. The rent was being paid to her mother Balbir Kaur and to him; volunteered, with the consent of co-sharers. Twenty-nine rent receipts were issued by him and his mother. It is also admitted that house tax of all the shops

is assessed in the name of his late father Gurmit Singh Manku. He further admits that construction of the shops was completed in the year 1988-89 in the life time of his father which were got constructed by him. Further, the landlord Harbinder Singh, AW-2, in his testimony also admitted that the shops in question along with the adjoining shops were constructed in or about year 1988. The site plan was got sanctioned in the name of late Gurmit Singh Manku.

12. It has, therefore, come in the landlord's evidence itself that at the time of execution of the Will, dated 29.1.1980, or at the time of Mohan Singh's death on 28.3.1983, the shops in question were not in existence. These were constructed much later only in the year 1988-89, as admitted by the landlord himself as AW-2 as well as Amandeep Singh son of late Gurmit Singh Manku, AW-1. Whereas, the ejectment petition has been filed by the landlord claiming ownership of the shops in question on the basis of Will. In case, the shops were not in existence at the time of execution of the Will or up to death of Mohan Singh, the testator, the same could not have been bequeathed by the Will in question. Therefore, there is no basis for the landlord to claim ownership of the shops on the basis of his father's Will dated 29.1.1980. That being the position, the essential prerequisite for the landlord to seek immediate possession of the shops in question by applying under Section 13-B of the Act of 1949, is not established, as his ownership of the shops is not proved.

13. It has been held by the Supreme Court in *Padam Nabh and Sons v. Yash Pal*, 2021 SCC Online SC 1095, that the Act of 1949 uses only the word 'owner' in Section 13-B, which is different and distinct from the expression 'landlord' and the distinction must be kept in mind by the Courts while interpreting the provision. Paras 12 and 13 of the judgment to this effect read as under:

12. While [Section 13A](#) of the East Punjab Act was inserted by amending Act 2 of 1985, [Section 13B](#) was inserted by [Punjab Act 9](#) of 2001. [Delhi Act](#) does not contain any special provision for the benefit of NRI landlords. It is common knowledge that the major chunk of the NRI diaspora is from three states, namely, Punjab, Andhra Pradesh and Kerala. Therefore, the legislature thought fit to exempt buildings owned by NRIs from the rigors of the Rent Restriction Act. Hence, the normal rule of interpretation of a legislation for the welfare of the tenants, will give way while interpreting the provisions as applicable to the exempted categories.

13. It may be of interest to note that while carving out an exception in favour of four categories of persons, under [Sections 14A, 14B, 14C and 14D](#), the [Delhi Act](#) used only the word “landlord”. But the Punjab Act uses the word “specified landlord” under [Section 13A](#) and the word “owner” in [Section 13B](#). It is needless to mention that there is a world of difference between the expression “landlord” and the expression “owner”. While the owner of a premises may also be the landlord of the premises, a landlord, within the meaning of the expression under the Rent Control legislations, need not necessarily be the owner of the said premises. Therefore, while interpreting [Section 13B](#) of the Punjab Act, the Court must keep in mind the distinction between those two expressions.

14. Therefore, the NRI landlord herein not being owner of the shops in question, could not have filed the ejectment application under Section 13-B of the Act of 1949, and the same was rightly dismissed by the Controller.

15. In this background, there is no need to consider the other argument raised by learned counsel for the landlord that the succession opened soon after death of Mohan Singh giving ownership of the land and properties to his sons, and their mother only had a life interest in those properties.

16. In view of the aforesaid, there is no ground to interfere with the impugned orders passed by the Rent Controller which do not suffer from any error of law.

17. Dismissed.
18. Pending miscellaneous application(s), if any, stands disposed of accordingly.
19. A photocopy of this order be placed on the file of the connected case.

(TRIBHUVAN DAHIYA)
JUDGE

27.2.2023
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No