

118-3

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

**CR-373-2015 (O&M)
Reserved on : 18.01.2023
Date of decision : 24.01.2023**

Jagjit Singh (deceased) through LR

.....Petitioner

Versus

Amrik Singh and Another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. B.S. Baath, Advocate for the respondent No.1.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been preferred against the order dated 07.10.2014 passed by the Rent Controller, Gurdaspur on a petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'Punjab Rent Act') ordering the eviction of the tenant-petitioners from the demised premises.

The brief facts relevant to the present *lis* are that the landlord-respondent filed an ejectment petition under Section 13-B of the Punjab Rent Act for eviction of the tenant-petitioners from the demised premises which is a shop. It was averred in the ejectment petition that the landlord-respondent was originally a resident of Village Fateh Nangal, Tehsil and District Gurdaspur and he migrated to Canada in the year 2002 along with his family

and thereafter he was employed in the City of Edmonton in Canada. The ejectment petition was filed on the ground that the landlord-respondent was a NRI settled in Canada along with his family and that he became the owner of the demised premises in the year 1987. Previously his father was the owner of the demised premises and on his demise in the year 1987, he became the owner. It was further averred that the landlord-respondent returned to India with the intention to settle down and that the demised premises were required for his use and occupation and for use and occupation of his son, who was dependent upon him. It was further averred that the father of the landlord-respondent, Hazara Singh, constructed a building in the year 1945 which was later converted into 11 shops. 6 out of the 11 shops fell to the share of the landlord-respondent and the remaining fell to the share of his brother, Gurdial Singh. It was further averred that the shops are part of one building and were stated to have been let out to separate tenants. Out of 6 shops, one shop was stated to be in possession of the landlord-respondent and the remaining 5 shops were required by the landlord-respondent for opening a mall. It was further averred that qua the remaining 4 shops also ejectment petitions had been filed. Upon notice, the tenant-petitioner appeared and filed his reply stating therein that earlier also the landlord-respondent No.1 along with his brother filed a petition for ejectment of the tenant-petitioner from the demised premises and he was ordered to be evicted. However, an appeal was filed by the tenant-petitioner which was allowed on 18.04.1994. It was further averred that the landlord-respondent No.1 had intentionally concealed the fact that he owned a plot measuring about 4 kanals situated on GT Road within the Municipal Limits of Dhariwal which was ideal for constructing a mall. It was also averred that

2 shops had earlier been sold by the landlord-respondent No.1.

On the basis of the pleadings and the evidence on the record, the Rent Controller held that the demised premises were required by the landlord-respondent No.1 for his personal use and occupation and that of his son and the tenant-petitioner was directed to vacate the demised premises within a period of one month. Aggrieved by the said order, the present revision petition has been filed.

On 29.01.2015 the following order was passed :

“Heard.

Learned counsel for the petitioner submits that respondent/landlord, a Canadian Citizen, has filed petition seeking ejectment of revision petitioner(s) from demised premises claiming himself to be a Non Resident Indian. The leave to contest was declined to the revision petitioner by the Rent Controller relying upon the plea of respondent that he is a Non Resident Indian. The matter as to whether the nationals of other countries may be belonging to India, fall within the definition of Non-Resident Indian, is pending before the Hon'ble Supreme Court.

Notice of motion for 23.03.2015.

The order of eviction of the petitioner(s), if not already executed, shall remain stayed, till the next date of hearing, subject to the following terms:-

- (i) The petitioner(s)-tenant will pay the entire due rent upto 31st January, 2015 within two weeks.*
- (ii) They will keep on paying the advance rent/mesne profits of subsequent months on or before 7th day of each month.*
- (iii) They will file affidavit before the Rent Controller, within three weeks giving details of entire payment of rent/mesne profits due upto 31st January, 2015 and a*

copy be also placed on the record of this Court.

Default of compliance of any of the above terms will allow the respondent to seek the execution of order of ejectment forthwith.”

Learned counsel for the tenant-petitioner would contend that the landlord-respondent owns a plot measuring about 4 kanals situated on GT Road within the Municipal Limits of Dhariwal which was ideal for constructing a mall. It is further the contention that 2 shops situated on GT Road were sold by the landlord-respondent.

Per *contra*, learned counsel for the landlord-respondent has contended that the contentions being raised by counsel for the tenant-petitioner were raised before the Rent Controller and were dealt with in detail and rejected.

Heard.

Hon’ble Supreme Court in the case of **Ram Krishan Grover & Ors. Vs. Union of India & Ors. [2019 (2) RCR (Rent) 703]** *inter-alia* held that Section 13-B of the Punjab Rent Act was not arbitrary and unreasonable and further that the same was not *ultra vires* of Article 14 of the Constitution of India.

In the case of **Baldev Singh Bajwa Vs. Monish Saini [(2005) 12 SCC 778]**, which has been quoted in the case of **Ram Krishan Grover** (*supra*), it has been held as under :

“11. The amendment introduced in the Act created a special class of NRI landlords and repose special right to them to recover immediate possession from the tenants occupying their premises provided, such premises were required by them. Section 13-B intends to provide immediate possession of the accommodation to

the NRI landlord which is in possession of the tenant if the landlord requires the same for his or her use or for the use of any one ordinarily living with him/her and is dependent on him or her. Sub-section (1) of Section 13-B postulates that the NRI-landlord should be owner of the building from which he has asked ejectment of the tenant. He should require the same for his or her use or for the use of anyone ordinarily living with him/her and is dependent on him or her. He should be the owner of that building for five years before he applied to the Controller for possession of such building. The right under Section 13-B of immediate possession could be availed of only once during the life time of such an owner/NRI landlord. Sub-section (2) of Section 13-B gives a choice to the NRI-landlord to select one among several others residential building or schedule building and/or non-residential building for the purpose of eviction of the tenant from that premises. Residential building is defined in Section 2(g) to mean a building which is not a non-residential building. Scheduled building is defined in Section 2(h) of the Act which means a residential building being used by a person engaged in one or more of the professions, namely, lawyers, architects, dentists, engineers, veterinary surgeons, medical practitioners including practitioners of indigenous systems of medicine and who occupies the same partly for his business and partly for his residence. Sub-section (3) of Section 13-B puts a restriction on the landlord to deal with building of which he has taken possession by virtue of the order passed under Section 13-B of the Act of 1949. Under this Section the owner who recovers the possession of the building by virtue of the order passed under Section 13-B shall neither transfer it either by sale or by any other mode nor he shall let it out for the period of five years from the date

he took possession of the building. In case there is a breach on the part of the owner who took possession of the building, of any of the conditions, the tenant who had been evicted would be entitled to apply to the Controller for an order directing that the tenant be restored back possession of that building and on such a petition being moved, the Controller would pass an appropriate order. Apart from the restriction which is imposed by sub-section (3) of Section 13-B on the landlord's right to deal with the building of which he took possession under the provisions of Section 13-B, a further restriction has been imposed on the landlord under Section 19 (2-B) of the Act of 1949. Section 19(2-B) contemplates that when the order for possession is being passed in favour of the owner-landlord under Section 13-B, he is required to occupy the premises continuously for the period of three months from the date of eviction of the tenant. He is prohibited from letting out the whole or any part of that building from which the tenant was evicted to any other person except the tenant who had been evicted by virtue of the order passed under Section 13-B. In contravention of these restrictions, landlord is liable for a penal action and can be imposed punishment of imprisonment for a term which may extend to six months or with fine which may extend to rupees one thousand or with both.”

Learned counsel for the tenant-petitioners has not been able to dispute that the landlord-respondent in the present case is a NRI. The argument raised is that there is a vacant plot available with the landlord-respondent and that he can construct the mall thereupon. It is trite that when an eviction is sought by a NRI landlord under Section 13-B of the Punjab Rent Act, a heavy burden lies on the tenant to prove that the requirement of

the landlord is not genuine and a tenant would necessarily have to give all the facts and particulars supported by the relevant documentary evidence in support of his pleas. The argument of counsel for the tenant-petitioners that an alternate site is available for constructing the mall cannot be accepted inasmuch as a tenant is nobody to dictate to the landlord and impose any condition as to the manner in which he should use his property. Under Section 13-B of the Punjab Rent Act, a landlord is entitled to get only one building vacated irrespective of the number of tenants and the choice of the building has been left entirely to the landlord. That being so, the argument of counsel for the tenant-petitioners that a vacant piece of land is available with the landlord-respondent cannot be accepted. The second argument raised by learned counsel for the tenant-petitioners that 2 shops were sold by the landlord-respondent also deserves to be rejected on the ground that there is not an iota of evidence in support of the said contention. There is nothing on the record to show as to when the said shops were sold.

In view of the above, I do not find any infirmity or perversity in the impugned order passed by the Rent Controller allowing the ejectment petition under Section 13-B of the Punjab Rent Act. The revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

24.01.2023

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO