

**CR-3104-2006****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Case No. : CR No. 3104 of 2006****Date of Decision : October 15, 2024**

Narinder Pal (deceased) through his LRs Petitioners

vs.

Sudesh Kumari and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sarju Puri, Advocate
for the petitioners.Mr. Saurav Verma, Advocate
and Ms. Preeti Grover, Advocate
for the respondents.

* * *

GURBIR SINGH, J. :

1. Challenge in this petition is to the order dated 24.04.2006, passed by learned Rent Controller, Garhshankar, whereby the ejection of tenant-petitioner has been ordered under Section 13-B of the East Punjab Urban Rent Restriction (Amendment) Act, 2001 (hereinafter referred to as – the Act).

2. The brief facts of the case, which are necessary for proper adjudication of the present revision petition, are that respondent no.1 Sudesh Kumari (respondent no.1 herein) filed petition under Section 13-B of the Act for immediate possession by way of ejection of the petitioner from the shop marked as ABCD, situated in Khasra No.482, as detailed in head note of the plaint.



3. It was submitted in the petition by Sudesh Kumari that she, along with Prem Wati, Promila Kumari and Raghubans Lal, was the co-owner/landlady of the aforesaid shop, vide sale deed dated 13.12.1985 and the petitioner was tenant in the said shop @ Rs.20/- per month for the last more than 40 years. It was further averred by landlady Sudesh Kumari that she, being NRI, returned to India on 01.12.2003. On her return, she needed the shop in question for personal use and was entitled to get its immediate possession under the relevant provisions of the Act. It was brought to the knowledge of the learned Rent Controller in the present petition that earlier also, Rent Petition No.18 of 18.09.1996 was filed by Sudesh Kumari along with other co-owners against the tenant on the other grounds, under Section 13 of the Act, which was dismissed on 29.04.2002 and appeal against the same was pending before learned Additional District Judge, Hoshiarpur. In that petition, it was duly held that Sudesh Kumari was one of the co-owners of the shop in dispute and the said shop was situated in Khasra No.482.

4. Upon notice of the present petition by learned Rent Controller, the tenant (petitioner herein) filed his reply while taking preliminary objections and contending that Sudesh Kumari had no locus standi to file the petition as she was not owner of the shop in question. The said shop does not bear Khasra No.482. The sale deed dated 13.12.1986 (or 1985) produced on record was executed by one Balbir Sen and it was not related to the shop in question. Even said Balbir Sen was never owner of the disputed shop. The whole of the shop is not tenanted property but only portion marked as BCDE

is the shop and tenanted premises with the tenant. In fact, one Raj Dulari



was owner of the said shop marked as BCDE and it was she, who inducted the petitioner as tenant in the said shop about 39-40 years ago. The site beneath the verandah ABEF as shown in site plan, at that time, was a vacant space in front of the shop and was not the ownership of Raj Dulari. The petitioner even asked Raj Dulari about having any objection if he would construct a shop over that space in order to utilize it by spending his own money, to which she replied that she had no objection to the same as it was not her ownership. So, initially, the petitioner constructed a shed and then, constructed a pucca verandah in front of the rented shop by spending money from his own pocket. The said verandah ABEF in the site plan was neither a part of the shop in question nor of rented premises. The aforesaid Balbir Sen was never owner of the shop in question. In fact, Balbir Sen and Raj Dulari were exclusive owners of separate properties. At the time of tenancy of the petitioner, Balbir Sen was treating himself as exclusive owner of the shop marked as 'N' and site beneath the shops 'L' and 'M', whereas Raj Dulari was treating herself as exclusive owner of the demised shop and the shop existing at the site marked as 'P'.

5. After some time, respondents Sudesh Kumari and Promila Kumari started declaring themselves to be owners of the shop marked 'N' and the site beneath shops 'L' and 'M', alleging that they both constructed shops 'L' and 'M' but never made any claim qua those shops. It was further contended that Raj Dulari died about 19-20 years ago and was succeeded by her son Vishav Bandhu, who was the present exclusive owner and landlord of the

said shop. However, Sudesh Kumari and Promila Kumari never acquired



any title in the disputed shop. It was further mentioned that in the previous ejectment petition filed by Sudesh Kumari against the petitioner, respondents Prem Wati and Raghubans Lal falsely claimed that they had purchased the tenanted shop from Vishav Bandhu vide sale deed dated 30.05.1994 though this averment was denied by Sudesh Kumari submitting that the alleged sale deed was fake, forged, null and void document. The said petition was dismissed by the learned Rent Controller, Garhshankar, vide judgment dated 29.04.2002, meaning thereby that the said petition was in favour of the petitioner-tenant and against the respondents but the question of title remained undecided. It was also prayed in the said petition that the same be stayed in view of pendency of appeal filed against the decision passed in the earlier petition. In support of his arguments, the petitioner inter alia contended that the shop in question is the only livelihood for him and while denying the other averments of the petition, prayed for dismissal of the same.

6. From the pleadings of the parties, following issues were framed :-

- “1. *Whether the petitioner is co-owner of the demised premises for the last more than 5 years? OPP*
2. *Whether petitioner is Non-Resident Indian and returned to India? OPP*
3. *Whether there exists relationship of landlord and tenant between the parties? OPP*
4. *Whether the petitioner is in need of the property in dispute for her personal use and occupation? OPP*



5. *Whether petitioner has no locus standi to file the present petition? OPR*
6. *Whether this court has no jurisdiction to try the present petition? OPR*
7. *Whether present petition is liable to be stayed u/s 10 CPC? OPR*
8. *Whether site plan produced by the petitioner is wrong, incorrect, if so, its effect? OPR*
9. *Whether petition is collusive between the petitioner and respondent no.2, if so, its effect? OPR.*
10. *Relief.”*

5. In support of her case, petitioner Sudesh Kumari examined herself as PW-1, Satish Kumar as PW-2, Shingara Singh as PW-3 and Harish Sharma as PW-4 and also tendered some documents in evidence.

6. On the other hand, to rebut the above-mentioned evidence, petitioner-tenant examined himself as RW-1 and Santokh Singh as RW-2 and after tendering some documents in evidence, closed the evidence.

7. After appreciating the evidence on record and taking into consideration the arguments advanced by both the parties, the learned Rent Controller, vide judgment dated 24.04.2006, allowed the petition with costs. The petitioner-tenant was directed to hand over the vacant possession of the demised premises to Sudesh Kumari within a period of one month from the date of decision. Feeling aggrieved against the aforesaid judgment dated 24.04.2006, passed by learned Rent Controller, the tenant-petitioner has approached this Court by way of instant revision petition.



8. Learned counsel for the petitioner-tenant has inter alia contended that it has not even been remotely proved on record that respondent no.1 Sudesh Kumari is co-owner of the shop in question for the last more than five years, whereas it has been proved on record that sale deed dated 13.12.1985, relied upon by her, did not relate to the shop in dispute and the said shop does not even fall under Khasra No.482. It is also a matter of record that the property marked as BCDE, shown in site plan (Ex.R-1), is the rented premises and one Raj Dulari was the owner of the same and she had inducted the petitioner in the said premises as tenant. The verandah marked as ABEF, shown in site plan (Ex.R-1), was the vacant space and the petitioner, firstly constructed a tin shed and then pucca verandah over that space by spending money from his own pocket. It was never the part of the rented premises, so no ejectment order with respect to the said verandah could have been passed. It was further argued that the learned Rent Controller did not consider the fact that the original owner Raj Dulari, who died about 19-20 years ago, was succeeded by her son Vishav Bandhu, who is exclusive owner and landlord of the tenanted premises at present. Thus, respondent no.1 Sudesh Kumari could not have acquired any title in the said shop by virtue of the alleged sale deed dated 13.12.1985. The relationship of landlord and tenant between the parties was also denied but not considered. It was further prayed that the petitioner-tenant was offered to vacate the shop in question but he was not in a position to accept the offer as it was the only source of his livelihood. With all these submissions, it was

prayed that the present revision petition be allowed.



9. I have heard the submissions of learned counsel for the parties and perused the case file.

10. Section 13-B of the Act of 1949 is reproduced hereunder for ready 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 nonresidential 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.”

11. From the bare perusal of the said Section, it is apparent that primary requirement for seeking immediate possession of a building by the tenant under Section 13-B of the Act is that the NRI, who returns to India, has to be owner of the building concerned. He may return to India permanently or for temporary period. The requirement of getting accommodation by him should be genuine and he should be owner of the property for the last five years, preceding to the date of institution of proceedings for ejectment, before the learned Rent Controller. In case **Baldev Singh Bajwa vs. Monish Saini** reported as **2005 (12) SCC 778**, it is held by Hon’ble Supreme Court that the NRI landlord is not required to return to India permanently to get ejectment under Section 13-B of the Act. The relevant extract of legal position, held in the said judgment, reads as under :-

“From the aforesaid, it is absolutely apparent that even when leave would be given to the tenant to contest, legislatures have taken care of expeditious disposal of the petition for ejectment filed by the NRI landlord. Trial of the issue of bona fide requirement of the



landlord in the procedure prescribed would not take much time and thus we cannot accept the argument that the phrase “required” used by the legislature in [Section 13-B](#) would not mean bona fide or genuine requirement and the Section has to be construed as and when the allegation is made by the landlord of his need, it is to be taken as gospel truth and the tenant's right to defend on that count is completely extinguished and given a go-by. We do not think High Court is right in holding that mere prayer of the NRI landlord that tenanted premises is required by him or his dependent living with him entails decree of eviction on the mere allegation of requirement and no leave to contest can be given in respect of cases which are covered by various provisions restricting the right of the landlord to deal with the premises taken possession of by him in pursuance of the decree for eviction passed by the Controller under [Section 13-B](#) of the Act of 1949. We hold that allegations made by the NRI landlord of his requirement shall be presumed to be genuine and bona fide unless rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the stage of ‘leave to contest’ before the Controller. We feel any other interpretation would completely whittled down and deny the tenant's right to show and prove that landlord does not in fact, or in law require suit premises.

It is further contended that for according relief under [Section 13-B](#) of the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to



permanently return to India. The intention to permanently settle down in India should be read into words “return” used in Section 13-B. The specific category of NRI landlord has been created by the Legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of the NRI in Section 2(dd) of the Act, it is not necessary for the NRI-landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.

Definition of “Non-resident Indian” (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase “Indian



Origin” has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase “origin” refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of [Section 2 \(dd\)](#) and [13-B](#) of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of [Section 2\(dd\)](#) and [13-B](#) sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase “return to India” along with the definition of the “NRI” under [Section 2\(dd\)](#) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

When we read [Section 13-B](#) along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under [Section 13-B](#) of the Act. All that is required under [Section 13-B](#) is that a NRI should



return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under [Section 13-B](#), a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words “return to India” under [Section 13-B](#) of the Act denotes return to India permanently.

On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that :- (i) he is a NRI; (ii) that he has return to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the



NRI landlord's application should confine to the grounds which NRI landlord is required to prove, to get ejectment under [Section 13-B](#) of the Act. The Controller's power to give leave to contest the application filed under [Section 13-B](#) circumscribe to the grounds and inquiry to the aspects specified in the [Section 13-B](#). The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to [Section 13-B](#) and no other aspect shall be considered by the Controller.”

12. Coming to the case in hand, Sudesh Kumari herself stepped into the witness box as PW-1 and duly proved that she became owner of the shop in dispute vide sale deed dated 13.12.1985 (Ex.A-7) and endorsement Ex.A-7/A, executed by Balbir Sen son of Balkishan, in her favour as well as in favour of Promila Kumari. Raj Dulari and Balbir Sen were co-owners in Khasra No.482 and the construction existed thereon. Raj Dulari was succeeded by Vishav Bandhu, who sold his share to respondents no.2 to 4 vide sale deed dated 30.05.1994 (Ex.A-3) and endorsement of Sub Registrar (Ex.A-3/A). Mutation in this regard was also sanctioned. She also proved copy of *jamabandi* for the year 2001-02 as Ex.A-8. On the other hand, the tenant has proved copies of House Tax Assessment Register from the year 1985-86 till 2003-04 as Ex.R-3 to R-13, showing that Raj Dulari was owner of the property in question and the same was in possession of the transporter. Thus, from the evidence on the file, it is proved that after purchasing share from Balbir Sen, Sudesh Kumari had become owner and landlady of the



demised shop. The petitioner had been paying the rent. A person in possession of a property, if pays rent to the other person, then he presumes the other party to be landlord of that property. Through the evidence on the file, it is fully established that there was relationship of landlord and tenant between the parties.

13. The petitioner tenant has contended that the shop in dispute does not fall in Khasra No.482 and the petitioner was inducted as a tenant in the property marked BCDE, shown in site plan (Ex.R-1), and the same is only tenanted premises. The tenant himself constructed the shed and then pucca verandah over the space marked as ABEF, shown in site plan (Ex.R-1), by spending money from his own pocket and this premises is not the part of the tenancy. A place in front of the shop is meant to be used by the person in possession of the shop. If a tenant constructs verandah in front of the shop, then said verandah also becomes part of the rented premises. If the version of the tenant is accepted, then every tenant would encroach and construct some portion in front of the tenanted premises and would claim that same is not part of the tenanted premises and owner would be deprived of using the premises, even if the owner is put in possession of tenanted premises. Such a mischief on the part of the tenant cannot be accepted. Shingara Singh, who was appointed as Local Commissioner, was examined as PW-3. He gave his report that the shop in question was part of Khasra No.482. Moreover, tenant has not disclosed in which Khasra numbers the shop in dispute is situated and has not proved any demarcation report.



rightly held that the shop in dispute is situated in Khasra No.482. Since NRI landlord wants to come to India to start a business in the said shop, there is no ground to disbelieve his bona fide. There is neither any illegality or perversity in the impugned order, nor any misappreciation of evidence recorded by the Court of learned Rent Controller. So, the present petition is without any merit and is accordingly dismissed.

15. Pending applications, if any, shall stand disposed of along with this judgment.

October 15, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.