Punjab And Haryana High Court

Dr. Bharat Bhushan, J.

**Neeli Tv and Electronics v. Ravinder Sachdeva**

Civil Revision No. 1928 of 2012

04.08.2014

**East Punjab Urban Rent Restriction Act, 1949, S. 13-B – Resort to vacation of premises only of one building irrespective of number of the tenants therein can be made in terms of provisions of Section 13-B read with Section 2 (dd) of the Act – Unit is the building and not the premises – There may be multiple premises with multiple tenants but the building sought to be vacated is required to be one. [Para 12]**

Held,

Location of the shop qua which eviction is sought, is established to be in one building from where other tenants under special provisions of Section 13-B of the Act have suffered eviction. Since right of eviction available to a specified landlord under Section 13-B is restricted to a building which may even have multiple tenants there is no doubt that the respondent-landlords are within their statutory rights to claim eviction of the present premises in terms of the Section 13-B of the Act notwithstanding the fact that they have already got their tenants evicted from the building in question.

**East Punjab Urban Rent Restriction Act, 1949, S. 13-B – Attorney – Merely because landlords have their attorney, does not disentitle them from resorting to provisions of Section 13-B of the Act, when they are covered under the provisions of Section 2(dd) of the Act explaining the term NRI so far as it relates to the provisions of Section 13-B of the Act. [Para 16]**

****

**Dr. Bharat Bhushan, J.**—Pursuant to an applica-tion filed by the landlord under Section 13-B of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter mentioned as the Act) for ejectment of the petitioner-tenant from the shop (situated on Dhangu Road, Pathankot, detailed and described in the title of the impugned order dated 01.02.2012), the Rent Controller ordered ejectment of the tenant, which has brought the tenant in this Court, invoking civil revisional jurisdiction.

2. The ejectment of petition was preferred by the landlord invoking special provisions of Section 13-B of the Act. It is claimed by the tenant i.e. the petitioner herein that the landlord had neither come to India nor had legally authorised his brother Sunil Sachdeva and mother Mrs. Aggya Wanti to file the ejectment petition. It is averred that signatures of the appli-cants/petitioners/landlords Ravinder Sachdeva and Manoj Sachdeva are forged. It

is averred that there is no proper and legal attorney of Ravinder Sachdeva and Manoj Sachdeva-applicants in favour of Sunil Sachdeva. It is claimed that mutual settlement of the respondents-landlords is fake transaction merely brought into existence for the purpose of thwarting the claim of the petitioner-tenant. It is also urged that two premises have already been got vacated by the landlord and the shop in question even though is separate and distinct from the said two premises and also does not form part of the same building, even then it is sought to be vacated under special provision of Section 13-B of the Act. Claiming the impugned order of the Rent Controller to have been passed illegally, acceptance of the revision petition has been sought.

3. Strong objections were taken by the petitioner-tenant before the Rent Controller by way of leave to defend challenging the petition. It was allowed. The petition was taken for adjudication. Both the parties were given opportunity to produce oral as well as documentary evidence considering which the Rent Controller had come to a firm finding against the tenant and ejectment order was passed against him.

4. When several objections questioning correct-ness of the ejectment order against him as men-tioned earlier have been raised by the tenant, contention of the counsel for respondents is that there is nothing to impugn validity and legality of the order of ejectment against the petitioner-tenant.

5. Counsel for the parties have been heard, while going through the impugned judgment, grounds of revision and other facts as also circumstances becoming available while perusing the paper book.

6. Provision of Section 13-B in the Act was spe-cially introduced therein to provide for an expeditious mode of recovery of possession of the building of a Non Resident Indian by him for settling back in India.

7. This provision is available for such an NRI who on account of his bonafide needs is entitled to recover immediate possession from his tenants on such building provided he is owner of such a building for the last for 5 years at least. For his bonafide need, such an NRI has to show his intention to come to India and is required to prove the conditions stipulated in Section 13-B to be successful in his venture of getting vacant possession of the premises.

8. Concedingly, Ram Lal Sachedva was the origi-nal owner of the building. He executed a Will dated 14.02.1984, it was registered on 17.02.1984. He bequeathed this property in fa-vour of his wife Smt. Aggya Wanti, four sons Ra-vinder Sachdeva, Sunil Sachdeva, Manoj Sachde-va, Pradeep Sachdeva and also his grandson San-deep Sachdeva. His fifth son Vijay Sachdeva and three daughters were disinherited by him.

9. During his lifetime said Ram Lal Sachdeva had rented out the premises forming part of the said building to the respondent. After the death of Ram Lal Sachdeva, author of the Will hereinbe-fore mentioned, pursuant to a mutual settlement agreed to among beneficiaries of the Will, these premises interalia came to the share of the respondent-landlords and they agreed to file a petition for ejectment of the petitioner-tenant under Section 13-B of the Act. It was filed on 10.03.2003. The plea of the petitioner-tenant is that the premises in dispute

had neither come to the share of the landlord vide the Will nor any mutual settlement was arrived at among them.

10. Counsel for the petitioner has further urged that two premises out of the same building have already been ordered to be vacated in favour of respondent-landlord and this shop being not part of the said building, but forming part of another building, does not give any right to the respondent-landlord to get the same vacated under Section 13-B of the Act, wherein premises of only one building could be got vacated.

11. A tenant has no right to challenge family par-tition or mutual settlement among the co-owners is a proportion of no legal debate. Reference may be made to Vijay Kumar v. Sushil Kumar, (2005-1)139 PLR 855 .

12. There is no dispute that resort to vacation of premises only of one building irrespective of number of the tenants therein can be made in terms of provisions of Section 13-B read with Section 2 (dd) of the Act. Unit is the building and not the premises. There may be multiple premises with multiple tenants but the building sought to be vacated is required to be one.

13. The petitioner-tenant to prove his plea that the shop in question does not form part of the same building from where the tenants viz. Alla-habad Bank and National Insurance Company had already been evicted had examined Vipan Kumar Nanda as RW1 but in his cross-examination affected by the respondent landlord, he has categorically admitted that the shop in dispute under tenancy of the petitioner-tenant is in the same building in which Allahabad Bank and National Insurance Company had their offices and have suffered eviction at the hands of the respondent-landlord.

14. Even, when Anil Kumar for the petitioner-tenant has entered the witness box as RW2, he has conceded that Ram Lal was earlier owner of the entire building and the landlords are his sons. Even his witness Rajesh Kumar RW4 failed to prove that the shop in dispute is located in some other building. Site plans Ex. A-4 and Ex. R-7 reveal existence of the shop in dispute in the same building, where Allahabad Bank and National Insurance Company had their branches.

15. Thus location of the shop is established to be in one building from where other tenants under special provisions of Section 13-B of the Act have suffered eviction. Since right of eviction available to a specified landlord under Section 13-B is re-stricted to a building which may even have mul-tiple tenants there is no doubt that the respon-dent-landlords are within their statutory rights to claim eviction of the present premises in terms of the Section 13-B of the Act notwithstanding the fact that they have already got their tenants i.e. Allahabad Bank and National Insurance Company evicted from the building in question.

16. Merely because respondent-landlords have their attorney, does not disentitle them from resorting to provisions of Section 13-B of the Act, when they are covered under the provisions of Section 2(dd) of the Act explaining the term NRI so far as it relates to the provisions of Section 13-B of the Act. There is nothing to show that the respondent-landlords-owners lack any of the qualifications mentioned in Section 2(dd) as are relatable

to the provisions of Section 13-B of the Act.

17. Similarly, there is nothing brought on record or in evidence by the petitioner-tenant that the respondent-landlords-owners have suffered any disability to invoke the provision of Section 13-B of the Act. Sunil Sachdeva appearing as AW1 for and on behalf of the respondent-landlord-cum-owners has abundantly brought on record by way of his testimony that respondents are Non Residential Indians and being owners of the building for the last 5 years are within their right to invoke the provisions of Section 13-B of the Act. This building locates the premises in dispute. The respondents are owners for the last more than 5 years and have bonafide requirement of the premises for which they are returning to India and are to use the same for themselves.

18. As far as claim of the petitioner-tenant that the respondent-landlords would not use the premises and that the petition is malafide, is concerned, it is entirely baseless apprehension unsupported by any material or evidence on record. In any case, there is a statutory protection provided to a hitherto tenant as he has a right of restoration of possession in terms of Section 13-B of the Act, in case of any default is made by the respondent-landlord in entering to the premises.

19. In view of the well written impugned order of the Rent Controller, there is no merit in the petition. Affirming the order of the Rent Controller, the revision petition is dismissed.