

OM PARKASH MEHTA v. GURDIAL MAL SHARMA , 2017 PLRonline 0107

Punjab and Haryana High Court

G.S. SANDHAWALIA, J.

OM PARKASH MEHTA v. GURDIAL MAL SHARMA

CR 631 of 2014

22.05.2017

East Punjab Urban Rent Restriction Act, 1949 (III of 1949) - S. 13-B

Bona fide requirement has been held to be a recurring cause of action and a petition which has been dismissed on same ground cannot bind the parties down for time to come

Present: Mr. R.D. Sharma, for the petitioner. Mr. D.K. Gupta, for the respondent.

G.S.SANDHAWALIA, J. – The petitioner-tenant challenges the order dated 19.11.2013 passed by the Rent Controller, Pathankot whereby, eviction has been ordered under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short ‘the Act’) after leave to contest was granted in a revision petition filed under Section 18-A of the Act. On 08.05.2017, the following contention was noted:-

A perusal of the record would go on to show that eviction has been ordered under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 (in short ‘the Act’) after leave to contest had been granted. A finding has been recorded by the Rent Controller that the respondent- landlord has to stay in hotels while visiting the home town at Pathankot. The premises are required for reconstruction and only a portion of the property is available with the landlord. The argument raised that on an earlier occasion in a petition filed in the year 1997 the ground of bona fide requirement had been decided against the landlord does not carry much weight since the second petition was filed under Section 13-B of the Act. Even otherwise, it is settled principle that the issue of bona fide requirement can arise on a subsequent occasion to the landlord. The eviction petition in question was filed on 08.08.2007 after a period of 10 years. In such circumstances, the Rent controller was well justified in rejecting the said argument raised and has rightly ordered eviction.

Faced with this situation, counsel for the petitioner submits that since he is a tenant since 1976, time is required for relocation and time be granted to file necessary undertaking to vacate the premises.

Accordingly, the proceedings are deferred for the said purpose for 22.05.2017.

2. Proceedings were deferred for 22.05.2017 whereby, counsel submitted that the

petitioner does not want time for relocation and the matter be decided on merits. Accordingly, the present revision petition is being dismissed for the reasons given as under:-

3. The Rent Controller based his findings on the ground that the rented property which is two rooms, kitchen, bath room, which was described in the site plan as 'ABCDEF' and which is part of the residential building whereby, the tenant is using a common courtyard and an open compound was owned by the father of the respondent alongwith his sister. The respondent was an NRI since he was having a passport issued by the United States of America and he required the premises for his own use and living as he wanted to reconstruct the whole building. The premises which were available to him are very small and the entire building needed to be reconstructed and the house in question was approximately measuring 93 marlas. He was also unable to use the portion in his occupation on account of the conduct of the tenant. It was opined by the Rent Controller that the premises had been taken on rent from the father of the respondent which was admitted by the tenant and that there were two legal heirs namely the respondent and the sister Shakuntla Sharma. Resultantly, keeping in view the principles laid down in Baldev Singh Bajwa v. Monish Saini, 2005 (12) SCC 778, eviction has been ordered.

4. Counsel for the petitioner has vehemently submitted that on an earlier occasion, a petition under Section 13 of the Act had been filed on 16.01.1997 which was decided against the respondent on 14.06.2001. It was accordingly argued that the same was upheld on 04.06.2008 and once the bonafides have been doubted as such, the Court was not justified in ordering eviction in a petition which was instituted during the pendency of the appeal of the first petition filed under Section 13 of the Act. Reliance was accordingly been placed upon the judgment in Pawan Kumar Gupta v. Rochiram Nagdeo, 1999 (2) SCR 767 that it would now operate as res judicata.

5. The said argument is liable to be rejected as the judgment in question pertains to a finding regarding the principles of res judicata on the issue of title and ownership inter se the same parties regarding subsequent litigation. It was accordingly held that on account of the non-filing of the appeal regarding the earlier proceedings, the findings that who was the real owner had become final and if the appeal had not been filed, there would be a bar of res judicata in agitating on the issue regarding the title to the building. Section 13-B under which the present petition was instituted, was inserted on 31.05.2001 in the Act, has been held to be a beneficial piece of legislation to entitle the NRIs to seek the possession of their buildings let out by them and for the use of their living and the persons dependent on him or her provided that there is a ownership of a period of 5 years prior to the filing of the petition. The Apex Court in Kamaljit Singh V. Sarabjit Singh' 2014 (4) PLR 828 has held to the said effect and that the NRIs are entitled for eviction from the premises by summary proceedings and the object of Act would be frustrated if they have to go through the normal trial and contest the petitions. The relevant observations read thus:-

18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are

living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.

6. The petition under Section 13 of the Act was filed way back on 16.01.1997 on various grounds including the fact that the premises were required for personal use and occupation. It was noticed by the Rent Controller at that point of time that the respondent's case was that he had been invited for delivery of lectures in CSIR as a Faculty Professor and nominated as Principal of Research Advisory Council which was located at Delhi and, therefore, it could not be claimed that he was going to settle at Pathankot and travel to Delhi even if he had been offered any appointment on 12.12.1997. The same has accordingly been also upheld by noting that they were mere offers given as such regarding the invitations by the Regional Research Laboratory, Thiruvananthapuram and the National Institute of Oceanography, Goa and it was not sufficient to show that there was any bona fide requirement as he was the permanent resident of USA.

7. The petition, as noticed, was filed 10 years later and has been filed under a different provision which has been explained by the Apex Court in Baldev Singh Bajwa's case (supra) wherein, it has been held that there is a presumption under Section 13-B of the Act regarding the bona fide requirement of an NRI. The relevant portion in Baldev Singh Bajwa's case (supra) reads thus:-

24. 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 Nonresident 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.

25. 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.

8. Even otherwise, it is to be noticed that the bona fide requirement has been held to be a recurring cause of action and a petition which has been dismissed on same ground cannot bind the parties down for time to come. Reference can be made to the Apex Court judgment passed in K.S. Sundaraju Chettiar v. M.R. Ramchandra Naidu, 1994 (2) SCR 20 wherein, it has been held as under:-

11. After giving our careful consideration to the facts and circumstances of the case, it appears to us that non-mention of a reasonable ground for eviction in the notice for eviction on the basis of which a claim for eviction is later on founded usually raises a suspicion about the existence of such ground but such non-mention by itself cannot disentitle a landlord to claim eviction on such ground. If a claim for eviction founded on such ground in the petition for eviction is proved to be well-founded and the same is consistent with the grounds on which eviction is permissible in law, the landlord will be entitled to a decree for eviction notwithstanding the fact that such ground was not mentioned in the notice for eviction. In our view, the appellate authority has rightly indicated in the facts of this case, that the partnership business under the name and style of Govindammal and Company was in existence even prior to giving notice for eviction by the landlord. Such partnership business was registered and the licence for the business was obtained and the business had been subjected to assessments made by the income tax authorities. Hence, such business was not brought into existence only for the purpose of making a foundation for eviction of the tenant with mala fide intention. Hence, in the facts and circumstances of the case, it cannot be reasonably held that the claim of bonafide requirement on account of the

said partnership business is per se mala fide and should not be taken into consideration simply because the case for bona fide requirement on that account had not been mentioned in the notice for eviction. There is no manner of doubt that the bona fide requirement is required to be considered objectively with reference to the materials on record and it is necessary to determine the real intention of the landlord on the basis of evidences adduced in a case. If the materials on record clearly justify a case of bona fide requirement, there will be no occasion for the court to hold that the landlord did not require the premises bona fide simply because on a previous occasion the action of the landlord for bringing an eviction case was not bona fide. It should be borne in mind that cause for eviction is a recurring cause of action and even if the existence of such cause of action had not been found in a previous proceeding for eviction, the same cannot be discarded if such claim is established by cogent evidences adduced by the landlord in a subsequent proceeding. It will not be correct to hold that only because after a tenant was evicted by the landlord on the ground of reasonable requirement for building and reconstruction, the landlord did not make the alleged reconstruction but let out the premises to another tenant after obtaining possession, any subsequent eviction case for the said premises deserves to be dismissed in limine. The landlord, in our view, may bring an action for eviction of the tenant on subsequent cause of action justifying a case of bona fide requirement. Similarly, rejection of a case for building and reconstruction by itself will not disentitle the landlord to get an order of eviction if the eviction on such ground can be founded in a changed circumstance. We may also indicate here that the contention that the Rent Act is a legislation for protecting a tenant will be over simplification of the legislative import of the Rent Act. In our view, it will be more appropriate to hold that the Rent Act regulates the incidence of [tenancy](#) and inter se rights and obligations of the landlord and tenant.

9. The said view was followed in *N.R. Narayan Swamy v. B. Francis Jagan*, [2001 SCR 109](#). The relevant observations read as under:-

In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have a bona fide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed.

10. It would be clear from the above sequence of events that in the present eviction petition which has now been filed, it has been stated that he has retired as a Professor and has come back to India after his retirement and wants to settle in his native town. The rooms in his possession are not sufficient to house him and also his wife and sister. Renovation was required of the premises in question and, therefore, eviction has been sought. The relationship as such having been admitted inter se the parties and it was also specifically averred that there was an appeal pending pertaining to the earlier litigation, the

landlord has, thus, come to the Court with clean hands. The Rent Controller accordingly came to the valid conclusion that under Section 13-B of the Act, it is a separate right which is provided to the NRIs and recorded a finding that he was one such said person of Indian origin and, thus, falls under the definition under Section 2 (dd) of the Act having left India in 1965. Sufficient material has come that he was staying in hotels when he came to India and also that his family members were staying in other relatives' houses. Possession was also being retained of part of portion but he was not able to use the same which is obviously not as per his status and, therefore, he wants to construct on the premises after getting the petitioner evicted. The right as such given under the special provisions incorporated subsequently would be a separate and independent right and, therefore, having satisfied the necessary four ingredients which are provided regarding the ownership aspect which is not disputed and that he wants to permanently return to India and being an NRI, counsel for the petitioner could not show that the requirement was not bona fide or it was a mere pretext to get the accommodation vacated.

11. The necessary ingredients, thus, having been met out and the landlord having appeared in the witness box to depose personally about his need, thus, satisfies the requirement in view of the law laid down by the Apex Court in Baldev Singh Bajwa's case (supra) and which has been further followed by three Judge Bench in Swami Nath v. Nirmal Singh, (2011-1)161 PLR 127 (SC), wherein, it had been held that a restrictive definition was not justified. The relevant part reads as under:-

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made on behalf of the Petitioners. The interpretation sought to be given to the proviso to Section 13- B(1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly.

12. Resultantly, keeping in view the above discussion, this Court is of the opinion that the orders passed do not suffer from any illegality or infirmity which would require interference in revisional jurisdiction and accordingly the present petition is dismissed.