

(2022-1)205 PLR 291 (SC)

SUPREME COURT OF INDIA

Before: Justice Sanjay Kishan Kaul, Justice Dinesh Maheshwari, Justice Hrishikesh Roy.

BALWANT SINGH ALIAS BANT SINGH And Another – Appellants,

versus

SUDARSHAN KUMAR And Another – Respondents.

Civil Appeal Nos. 231-232 of 2021 (Arising out of SLP (C) Nos 10793-10794 of 2020)

(i) East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13 - It is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate - The adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate.

[Para 11, 13]

(ii) East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13B - Age of the landlord - Age cannot be factored against the landlords in their proposed business - Case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business - On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises - Therefore, age cannot be factored against the landlords in their proposed business. [Para 11]

(iii) East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13B - The special procedure for NRI landlord was deliberately designed by the Legislature to speedily secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative intent to confer the right of summary eviction, as a one time measure cannot be frustrated, without strong reason - Leave to defend.

[Para 13]

(iv) East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13B - Leave to defend - Genuine need of the appellants (NRI) to secure vacant possession of the premises for the proposed business is found to be established - Adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate - Tenants have failed to provide adequate reason to secure the right to contest the summary proceedings and they should not be allowed to widen the scope of the limited defense under Section 13B - To fulfil their bona fide requirement, the landlords have availed only one opportunity under the summary procedure of Section 13B and their business requirement is not seriously contested by the tenants - Moreover, the required

safeguard measures to prevent misuse of the special provisions are also found to be satisfied and that is why the leave to contest was denied to the tenants - Order of High court [(2020-3)199 PLR 508] set aside.

[Para 14, 15]

(Arising out of impugned final judgment and order passed by the High Court Of Punjab & Haryana At Chandigarh reported as **(2020-3)199 PLR 508**)

ORDER

(27.01.2021) - Leave granted.

2. The landlords/appellants challenge the judgment dated 6.3.2020 of the High Court of Punjab and Haryana whereunder the respondents/tenants were granted leave to contest the eviction proceedings, overturning the decision of the Rent Controller, Khanna, whereby leave to contest was refused to the tenants.

3. The appellants are the owners of the premises and the two shops therein for which, the eviction proceedings were initiated against the tenants. The subject shops on the ground floor of the building were situated in the urban area of Khanna. The appellants are Non-Resident Indians (NRI) within the meaning of Section 2(dd) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act"). They sought immediate recovery of possession of the rented premises by invoking the provisions of Section 13B read with Section 18A of the Act. The landlord moved the Rent Controller claiming that the appellant No. 1 desires to start the business of sale, purchase and manufacture of furniture and for the proposed business, the property already in possession of the landlord, is insufficient. It was also indicated that after shops in question are vacated, the building will be renovated as per the requirement of the proposed business.

4. On receipt of notice, the two tenants filed identical application seeking leave to contest, as provided under Section 18A(5) of the Act. The tenants alleged that the appellants have failed to disclose their past litigation with M/s. Sudarshan Interior Decorators qua Rent Application No. 6/2005 and also the other litigation with Diwan Chand qua Rent Application No. 32/2005. As the landlord have secured possession of the two shops through those litigations, it was projected that the landlords are in occupation of four shops adjoining each other and in that available space, the furniture business can be conveniently conducted.

5. In their reply to the pleadings of the tenants, the appellants contended that there is no concealment of necessary facts in the eviction petitions, inasmuch as the concerned proceedings were decided much prior to the institution of the present proceedings under Section 13B of the Act. It was further stated that the shops in possession of the landlords were disclosed but the space is insufficient for the proposed business. Therefore, the shop premises in occupation of the present tenants are needed to be secured.

6. The Rent Controller considered the rival submissions and noted that the three necessary ingredients for initiating proceedings under Section 13B of the Act were satisfied by the appellants. Firstly the landlord is NRI, secondly, the landlord has returned to India; and

thirdly, the landlord has been the owner of the property for five years. The relationship of landlord and tenant was also found between the contesting parties. It was further noticed that the previous eviction proceedings against M/s. Sudarshan Interior Decorators and against Diwan Chand was filed under Section 13 and not under Section 13B of the Act and since they were decided much earlier, non-disclosure of those proceedings will not affect the merit of the present proceedings, under Section 13B of the Act. The Rent Controller rejected the objection of the tenants that a portion of the premises would be sufficient for the proposed business.

7. Aggrieved by the decision of the Rent Controller refusing leave to contest, the tenants filed separate Revision Petitions before the High Court to challenge the orders of the Rent Controller. The High Court in the impugned judgment had focused on the fact that the landlord had earlier recovered possession of two adjoining shops through proceedings initiated under Section 13 of the Act and those shops are lying vacant. The Court also noted that the first floor of the tenanted premises is let out to a bank for which no eviction petition was filed. It was accordingly held that leave to contest should be granted to the tenants. The order passed by the Rent Controller was then set aside and further proceeding was directed before the Rent Controller with grant of leave to contest to the tenants.

8. Assailing the legality of the judgment of the High Court, Mr. Neeraj Kumar Jain, learned Senior Counsel contends that when there is no dispute that the appellants are covered within the meaning of "Non-Resident Indian" under Section 2(dd) and required the premises (under their ownership for over five years) for business needs, the tenant cannot seek leave to contest, inasmuch as, the right to recover immediate possession is granted to NRI landlords under the special mechanism of Section 13B and Section 18A of the Act. Mr. Jain refers to the appended site map of the vacant shops to show that it is for the landlord to assess his need and space for the proposed business and the tenants cannot contest eviction on their understanding of what would be adequate for the appellant's business. Since the vacant possession of the other two shops is clearly indicated in the proceedings initiated before the Rent Controller, it is argued that there is no concealment and the High Court should not have allowed the Revision in favour of the tenants primarily on the ground of the said two vacant shops.

9. Per contra Mr. Manoj Swarup, learned Senior Counsel refers to the site map (Annexure R-10), to argue that the landlord has sufficient space available in their possession for the proposed furniture business and therefore, the bona fide need of the landlord is rightly questioned by the tenants. The non-disclosure of the two earlier eviction proceedings is also highlighted by the learned Senior Counsel to contend that the right to contest was rightly ordered in favour of the tenants in the present eviction proceedings. It is next projected that appellant No. 1 holds Canadian citizenship and considering his age, the proposed business venture should not be accepted as a bona fide need, of the landlords.

10. We have considered the submission of the learned counsel for the parties. The tenants do not challenge the NRI status of the landlord but they contend that the space available with the landlord would be adequate for the proposed furniture business and there is no need to seek eviction of the respondents, from their respective shops.

11. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business. On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises. Therefore, age cannot be factored against the landlords in their proposed business.

12. The Rent Controller in denying right to contest to the tenants and ordering handover of vacant possession to the landlord had noted that the landlord had returned to India and required the premises for his bona fide need and accordingly, the summary proceedings under Section 13B for recovery of possession of the entire building was found to be justified. It was also adverted that the present proceedings under Section 13B is the first one filed by the landlord to secure eviction and the earlier proceedings was under Section 13 of the Act. Moreover, there is no bar for a Non-resident Indian to get a building of choice vacated, under Section 13B of the Act.

13. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established. According to us, the adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate. The special procedure for NRI landlord was deliberately designed by the Legislature to speedily secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative intent to confer the right of summary eviction, as a one time measure cannot be frustrated, without strong reason.

14. Having regard to the contentions raised by the tenants to oppose the Section 13B applications, we feel that the tenants have failed to provide adequate reason to secure the right to contest the summary proceedings and they should not be allowed to widen the scope of the limited defense under Section 13B. To fulfil their bona fide requirement, the landlords have availed only one opportunity under the summary procedure of Section 13B and their business requirement is not seriously contested by the tenants. Moreover, the required safeguard measures to prevent misuse of the special provisions are also found to be satisfied and that is why the leave to contest was denied to the tenants.

15. In view of the foregoing, we have no hesitation in setting aside the impugned judgment and order of the High Court and say that the tenants have failed to make out any case to contest the applications of the NRI landlords.

16. The Rent Controller as far back as on 13.2.2009, had allowed three months' time to the tenants to vacate and handover possession of the concerned premises but the landlords are yet to secure possession. Be that as it may, since the premises are commercial in nature, subject to all rental obligation, we feel that the respondents be allowed time until 31.12.2021 to handover vacant physical possession of the premises. It is ordered accordingly. This is subject to filing of the usual undertaking before this Court, within three

weeks from today.

17. The appeals are accordingly allowed without any order on cost.

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