

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

Decided on : August 19, 2010

C.R. No. 6787 of 2008

Gurdial

...Petitioner

Versus

Kabul Singh Nagla

... Respondent

C.R. No. 6795 of 2008

Bahadur Singh

...Petitioner

Versus

Kabul Singh Nagla

... Respondent

CORAM: HON'BLE MR. JUSTICE ALOK SINGH.

1. Whether reporters of local news papers may be Allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.S. Ghuman, Advocate,
for the petitioner(s).

Mr. Sarju Puri, Advocate,
for the respondent.

Alok Singh, J.

Present revision petition is filed by the tenant under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act), assailing the order dated 03.09.2008 passed by the learned Rent Controller,

Nawanshahr, whereby the learned Rent Controller refused to grant permission to the tenant to contest the eviction application as well as directing the eviction of the tenant from the demised premises.

The brief facts, inter-alia, of the present case are that the landlord-respondent herein preferred an eviction petition under Section 13-B of the Act for recovery of immediate possession. Eviction of tenant from the demised shop is sought contending landlord is a Non-Resident Indian. Earlier he had migrated to U.S.A. in the year 1989 and remained there till 1996. Thereafter, he migrated to Canada and started residing at Canada. The landlord intends to permanently shift to India as the landlord-respondent has started keeping bad health due to the cold climate of Canada. The petitioner wants to start his own business of hotel and restaurant by way of constructing a multi storey building in the existing Guru Nanak Market of which shop in dispute is one part. It is further averred that the landlord is owner of the building in question for the last five years, prior to the filing of the eviction petition. It is also asserted by the landlord in the eviction petition that he has no other vacant building available with him and he also undertook that he would be using the demised shop after reconstruction of hotel for his personal use and occupation.

Tenant revisionist preferred an application under Section 18A of the Act seeking permission to contest the eviction petition. In the application, tenant has contended that there is a vacant plot adjoining the disputed shop and that vacant plot is in possession of the landlord and landlord has not asserted that vacant plot is not sufficient for the alleged demand of construction of hotel. It is also asserted by the tenant in the application that the landlord does not fall within the definition of NRI.

Learned Rent Controller in the impugned order has recorded that from the perusal of the sale deed dated 24.03.1972, it is proved that landlord is the owner of the building for five years prior to the filing of the eviction petition. It is also recorded by the learned Rent Controller that from the perusal of the passport, landlord is proved to be a Non-Resident Indian. Learned Rent Controller has also recorded that relationship of the landlord - tenant between the parties is proved. Learned Rent Controller has also held that tenant has not stated in the application nor filed any affidavit in support of the application stating that landlord has any other vacant building available with him to satisfy his need for starting his business of hotel.

Learned counsel for the tenant vehemently argued that the alleged need of the landlord cannot be presumed to be correct and an opportunity should be granted to the tenant

to controvert the alleged need of the landlord. It is also argued by the learned counsel for the petitioner – tenant that landlord has absolutely no intention to return to India. He has filed the eviction petition with ulterior motive.

The Hon'ble Apex Court in the matter of Baldev Singh Bajwa vs. Monish Saini, reported in (2005) 12 Supreme Court Cases, 778, had occasioned to deal with the scope of section 13-B of the Act and also had occasioned to deal with on what contingencies permission to contest the petition under Section 13-B of the Act should be granted to the tenant. Hon'ble Apex Court in the matter of Baldev Singh Bajwa (supra) in paragraph nos. 19, 20 and 24 has held as under:-

“19. The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under Section 18-A of the Act of 1949 which requires the Controller to take up the matter on day-to-day basis till the conclusion of the hearing of an application. The Legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction, it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of

*ejectment to special category of landlord who is NRI (Non Resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-s. (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended upto six months. **These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine.** Landlord, after the decree for possession, is bound to possess the accommodation. Landlord is prohibited from transferring it or letting it*

out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it improbable for any NRI landlord to approach the Court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. **The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenant's right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona**

fide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine.

20. We cannot subscribe to the submission of the learned counsel appearing for the respondents/landlords, that if the inquiry in the allegation of landlord's need regarding the bona fide and genuineness is permitted, the legislative intent of immediate delivery of possession of the accommodation owned by them would be defeated. Time and again this Court has laid down that

legislative intent has to be ascertained according to plain language used in the enactment and basic rule of statutory construction should be preferred which advances the purpose and object of a legislation and not which leads to anomalies, injustice or absurdities. To refer some, they are K.P. Verghese v. Income Tax Officer, Ernakulam and Anr., [1981] 4 SCC 173; Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik and Ors., [1984] 2 SCC 50 and Ravulu Subba Rao and Ors. v. Commnr. of Income-Tax, Madras, AIR (1956) SC 604.

24. 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."

In view of the dictum of the Apex Court in the case of Baldev Singh Bajwa (supra), the need of the landlord shall be presumed to be correct and a heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself in support of the application seeking leave to defend. The mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine. In the present case contents of application, moved by the tenant seeking leave to defend, are vague and ambiguous. Tenant has not stated any ground to

disprove the need of the landlord. Nor has he stated that landlord has other suitable vacant building available to meet his need to start hotel and restaurant. In the opinion of this Court, as per the dictum of Apex Court in the case of Baldev Singh Bajwa (supra) need of the landlord shall be presumed to be bonafide.

In view of the fact that the landlord has shifted to U.S.A. long back and thereafter Canada and is having passport containing all the relevant entries, he is an NRI. Tenant is not denying that landlord is not owner for the last five years before the institution of the eviction proceedings. No fault can be found in the impugned order.

Petition is devoid of merit, hence, is dismissed.

A photocopy of the order be placed on the file of connected case.

August 19, 2010
vkd

(Alot Singh)
Judge