
(2014) 11 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4308 of 2014 (O and M)

S.S. Fertilizers and Others

APPELLANT

Vs

Kultaran Singh and Others

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13B, 13-B, 18-A, 2(dd)

Citation : (2015) 178 PLR 264 : (2015) 1 RCR(Rent) 373

Hon'ble Judges : Bharat Bhushan Parsoon, J.

Bench : Single Bench

Advocate : Gulzar Mohammad, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Bharat Bhushan Parsoon, J. This revision petition arises out of an eviction order of 16.4.2014 passed by the Rent Controller against the tenants, petitioners herein, after their application for grant of leave to contest the petition, was dismissed. Eviction of the petitioners-tenants was sought under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter mentioned as the Act) which is a special provision introduced in the Act for Non-Resident Indians providing them right to recover immediate possession of residential, scheduled or non-residential building. For ready reference, Section 13-B of the Act is reproduced as below:

"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 nonresidential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinary 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 life time 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."

2. At this stage, it would be relevant to refer to the provisions of Section 2(dd) of the Act for understanding the domain and sweep of the term, "Non-Resident Indian", which is as under:

"(dd) "Non-resident Indian" means a person of Indian origin, who is either permanently or temporarily settled outside India in either case-

(a) for or on taking up employment outside India; or

(b) for carrying on a business or vocation outside India; or

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period."

3. Petition under Section 13B of the Act was filed by landlord Kultaran Singh, respondent No. 1 herein, against tenants M/s. S.S. Fertilizers and others, now petitioners, for their ejection from the premises in dispute. On service of statutory notice in terms of Section 13-B of the Act, respondents appeared and preferred an application under Section 18-A of the Act seeking leave to defend claiming therein that neither their service was proper nor the landlord was owner of the shop for the last 5 years which inter alia was a statutory requirement for ejection of the tenants from the premises. It was also claimed that the landlord had not come to the Rent Controller with clean hands and had rather suppressed the material facts.

4. To adjudicate the claim of the tenants qua leave to defend the petition under Section 13-B of the Act and further to evaluate and appreciate merits of the petition, an elaborate exercise was undertaken by the Rent Controller.

5. Concededly, earlier, Ishar Singh father of the landlord was owner in possession of the building in dispute in terms of document dated 12.5.2006 (Annexure-1) on purchase of the same from Government of Punjab, Chandigarh. After the death

of Ishar Singh on 5.7.1986 vide death certificate (Annexure-B), building was inherited by his two sons including the landlord and the widow. Merely because the landlord is recorded as owner of the 1/2 share in the shop ipso-facto does not raise any triable issue because the legal proposition that a co-owner can file petition for ejectment is no more res-integra.

6. Admittedly, earlier owner Ishar Singh died on 5.7.1986. Succession never remains in abeyance. Ishar Singh had died leaving behind his two sons, namely, Pritam Singh and Kultaran Singh and widow Smt. Ranjit Kaur. After the death of his father, Kultaran Singh, landlord was co-owner of the demised premises for more than 5 years is not a question of debate. Merely because record was corrected by authorities of Mandi Township only on 19.6.2013 is not a circumstance to blur the date of death i.e. 5.7.1986 of the owner and immediately on his death, his succession having opened, had made landlord Kultaran Singh to be co-owner of the property. It is a settled proposition of law that a co-owner can file a petition for eviction as he has ownership rights in every inch of the property.

7. Rights of a co-owner have been debated and discussed in many judicial verdicts and this aspect has also been dealt with by Hon''ble Supreme Court of India. A co-owner has a right, title and interest in the entire property co-owned by him with others and he has such interest in every parcel of it. In fact, possession of one co-owner is taken to be possession of all. Matter of rights of co-owners was adjudicated in *Bhartu v. Ram Swamp*, 1981 PLJ 204 and *Ram Chander Vs. Bhim Singh and Others*, by this Court. Hon''ble Apex Court in *Pokhar (Dead) by L.Rs. v. Ram Singh*, 2002 (3) R.C.R. (Civil) 600 : 2009 (16) SCC 625 has, in fact, affirmed the Full Bench judgment of this Court in *Bhartu's* case (supra). A co-owner has an interest in the whole property as also in every parcel of it, is a proposition of law reiterated and re-affirmed in *Jai Singh and Others Vs. Gurmej Singh*, . Support may also be had from *Vir Bhan Vs. Avtar Krishan and Another*, .

8. So far as right of a co-owner to seek eviction is concerned, by now, it is also well-settled. Reference may be made to *Ram Piari v. Dr. Kesho Ram*, 1980 (2) RCR (Rent) 137 and *Mathura Dass Vs. Ram Piari*, . Even Hon''ble Apex Court in *Sri Ram Pasricha Vs. Jagannath and Others*, has accepted this proposition.

9. It is the undisputed case of the landlord that the petition was filed by him with consent of other co-owners and, in fact, there is no dissent from the other co-owners qua the petition of the landlord. Plea of the tenant that the landlord was not owner for the last 5 years as is the statutory requirement to maintain the petition under Section 13-B of the Act and was also not full owner of the building, are the grounds of no importance.

10. Landlord having become co-owner after the death of his father Ishar Singh on 5.7.1986 was fully competent to file the petition for eviction of the tenant being an NRI who had decided to come back to India to settle here.

11. Once the evidence had become available before the Rent Controller that the landlord had intention to come to India and was to reside here and thus, required the premises under tenancy to be vacated by the tenant to start his business, such intention is clearly bonafide.

12. Apprehension of the tenant that it was merely a camouflage to get the premises vacated to sell the building at lucrative rates is an apprehension without any supportive material on the file and does not inspire confidence. Even if it be taken so, there is statutory right of re-entry with the tenant and this statutory backing in favour of the tenant cannot be obliterated. There is no material or evidence produced by the tenant to show any triable issue whereby his leave to contest should have been allowed for him to adduce evidence to substantiate his claim.

13. So far as plea of the tenant that the landlord has no personal bona fide necessity is concerned, this is not a question open for debate in revisional jurisdiction particularly when this aspect has already been dealt with at length by the Rent Controller and no infirmity or illegality or impropriety has been pointed out by the counsel for the petitioner. At this stage, it may, however, be mentioned that even otherwise, when eviction is sought on the ground of bona fide necessity, there is initial presumption that the premises are so required by the landlord. Support may be had from P. Suryanarayana (D) by Lrs. Vs. K.S. Muddugowramma, .

14. In similar tone, this Court in Anil Kumar Vs. Harpal Singh Banwait and Another, also held that a landlord who establishes the prima facie existence of his necessity, is entitled to raise a presumption in law, that his need is bona fide and onus thereafter shifts to the tenant that plea of landlord was malafide, on this aspect, personal bona fide necessity had been held in favour of the landlord. There is no material or circumstances with the tenant to challenge this finding.

15. The tenant has also not been able to even prima-facie show that the landlord has any other premises or building to stay or start business in India when he is to shift to India and is to start business. The Rent Controller was right in coming to a definite conclusion that application of the tenant for leave to contest was having neither any triable issues nor had any merit. Said application thus, was rightly rejected. On the material and circumstances available on record, the Rent Controller had further came to a finding that necessity of the landlord for ejection of the premises in dispute of the tenant, was genuine and bonafide.

16. When the matter is viewed from another angle, need of landlord cannot be determined by tenant. Landlord is entitled to seek vacation of multiple premises. This view is supported by Kewal Krishan Vs. Amrik Singh--> and Vijay Kumar Vs. Sushil Kumar and Others, . Keeping in view the totality of facts and circumstances as mentioned earlier, no ground is made out to interfere with the impugned order dated 16.4.2014 of the Rent Controller and affirming the same, this petition, being without any merit, is dismissed in limine.