



Gopi Chand v. Kishan Dass (P&H HC)

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PUNJAB AND HARYANA HIGH COURT

Before: Deepak Gupta, J

CR No.7162 of 2017 (O&M)

Reserved on: 18.07.2024 Delivered on: 29.07.2024

Gopi Chand - Petitioner

Versus

Kishan Dass - Respondents

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13B – NRI landlord – Bonafide need -- Multiple ejectment petition for different shops forming part of one unit – Permissibility of -- Landlord has got possession of two shops, one shop is lying vacant for seven years and another shop from three months -- Rent petition filed in 2006, there is specific pleading as well as evidence on the part of the landlord that his wife has already retire and that he was also going to retire within a year in 2007 – After coming back to India, landlord intends to convert the entire building into one unit, which he requires for his residence as well as occupation -- It has been testified that he has four sons who are married and has also the grandchildren and they can be able to visit him only once if he settles here permanently -- Said testimony of landlord cannot disputed by the tenant, once he had deposed about his bonafide necessity – Ejectment order, upheld.

(Para 1, 4.2, 10-12)

Full text Judgment/ Order with Headnote

Note:

For easy reference of readers, alongwith Headnote, the judgment downloaded from the official website of the Court has been annexed

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Neutral Citation No.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7162 of 2017 (O&M)

Reserved on:18.07.2024

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Gopi Chand

.....Petitioner

Vs.

Kishan Dass

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Manoj Kumar Pundir, Advocate and
Mr. Puneet Munjal, Advocate for the petitioner.
Mr. Ritesh Pandey, Advocate for the respondent.

DEEPAK GUPTA, J.

This revision petition is directed against ejectment order dated 18.07.2017 passed by the Court of learned Rent Controller, NRI, Jalandhar in rent case bearing registration No.72/2006 (CNR No.PBJL02-000501-2006), whereby petition filed under Section 13-B of the East Punjab Urban Rent Restrictions Act, 1949 (*in short, 'the 1949 Act'*) by petitioner- landlord- Kishan Dass (*respondent herein*) has been allowed, directing the tenant- Gopi Chand (*petitioner herein*) to vacate the demised shop detailed in the headnote of the petition.

2. In order to avoid confusion, the parties shall be referred as landlord and tenant.

3.1 As per the case of the landlord, the tenant was inducted in the demised shop in August, 1989. The landlord and his wife had been residing in United Kingdom for the last more than 35 years, where they had gone for the purpose of employment. The landlord is a Non Resident Indian as defined in the 1949 Act. His wife has since retired from the job and the landlord is retiring from the job within a year (*from the date of filing of the petition*). They finally intend to settle down in India and enjoy their vacation from service before retirement. It was pleaded further that property in question bears one Unit number and that residence of the landlord is on the backside of the demised shop. Said residence has two small rooms, where the landlord stays as and when he visits from UK. He



is having four married sons besides grandchildren. He pleaded that grandchildren will visit them when they settle here permanently. Besides, he (landlord) wants to set a private business and that for setting a private business and residence, there is no other sufficient accommodation available to him and so, he requires the demised shop for his residence and occupation. For this reason, he needs the immediately possession of the demised shop. It was pleaded further that landlord was entitled to get the immediate possession under Section 13-B of the 1949 Act.

3.2 The said petition was filed on 24.03.2006. Leave to defend was granted to the tenant on 16.07.2018. The tenant contested the petition in his reply to the petition. After framing issues and taking evidence produced by both the parties, the ejectment petition was allowed on 18.07.2017.

4.1 Assailing the afore-said order, it is contended by learned counsel for the tenant (*petitioner herein*) that landlord concealed the material fact regarding occupation of other urban properties in Jalandhar. Landlord is also guilty to conceal the fact that there are other tenants in other shops and about concealing the factum of filing various ejectment petitions against the other tenants. The Rent Controller overlooked the documents Ex.R1 and Ex.R2 i.e. other ejectment petitions filed by the landlord against the petitioner and others tenants, which were dismissed on merits. Besides, finding has not been given regarding the withholding of the true and material facts by the landlord. It is further contended that landlord has the right to apply for eviction under Section 13-B of the 1949 Act only once in the lifetime and only for one Unit and that he has not disclosed the factum of other shops available with him and some of the shops lying vacant in his possession in the same locality.

4.2 Ld. Counsel for the tenant- petitioner has drawn attention towards the fact that as per the own admission of the landlord, shop No.4 is lying vacant for the last seven years; whereas other shop, which was in possession of one Sarabjit, was lying vacant for the last three months and that this admission on the part of the landlord itself indicates that landlord is seeking ejectment of the petitioner-tenant from the demised premises only on whimsical grounds. It is contended further that landlord is well-settled in UK and that the only purpose of filing this petition is to get the demised shop vacated, so that the landlord can sell



it off.

With all these submissions, prayer is made to set aside the impugned order and dismiss ejectment petition.

5. Refuting the afore-said contentions, it is argued by counsel for the landlord (*respondent herein*) that there is no concealment of fact. The landlord does not own any other building. Merely because, landlord has got vacated some of the shops of the same building and now he has in occupation some of the shops of the same building, does not mean that he owned any other building. Learned counsel further submits that various petitions can be filed for getting the building vacated, if it is divided in different units and let out to the different tenants. Learned counsel has referred to a judgment of Hon'ble Supreme Court rendered in ***Zenobia Bhanot vs P.K. Vasudeva And Anr, 1995 SCC (6) 770***. Learned counsel contends further that landlord as well as his wife have the bonafide necessity as they want to convert the entire building into one unit for their residential use and also to run their business. Learned counsel further contends that the tenant cannot doubt the intentions of the landlord, once he has deposed about his bonafide necessity.

By defending the impugned order as passed by the Rent Controller, learned counsel for the landlord prayed for dismissal of this revision.

6. I have considered submissions of both the sides and with the able assistance of both the counsels, have also perused the paper book and the trial Court record.

7. As Section 13-B of the 1949 Act provides a right to the NRI to recover immediate possession of a building as let out to him, a similar right is provided under Section 13-A of the Act to the persons, who are going to retire within a year and who had already retired. The provisions of Section 13-A also contain the word 'building', which word came for consideration before the Hon'ble Supreme Court in the **Zenobia Bhanot's case (supra)**.

7.1 In that case, landlord owned a building i.e. House No.2, Sector 18-A, Chandigarh, which had been let out in four portions to four separate tenants. After retirement, owner expired and his widow filed four applications under



Section 13-A of the 1949 Act seeking their ejectment from the building, i.e. from different portions. Two of the petitions were allowed. In the revision filed by these two tenants, High Court held that the landlord was entitled only to one portion of the building and not the other three, as he could use his right to get it vacated under Section 13-A of the Act only once in his lifetime. Consequent to this order, two other ejectment petitions against other tenants were dismissed by Rent Controller. Landlady filed revisions.

7.2 As there were divergent opinions, a Single Judge referred the matter to the Division Bench for consideration by making the following reference:-

"The underlying purpose in enacting the East Punjab Rent Restriction (Amendment) Act, 1985 as revealed by the statement of its Objects and Reasons, is to provide a summary procedure for eviction of tenants of Defence personnel and other Central and State Government employees, from residential premises, which on retirement, they may require for their personal occupation. It needs to be appreciated, in this context, that when any residential premises are let out and are taken on rent, what prevails are the needs and requirements of the tenant and these may not necessarily be in accord with those of the landlord when he seeks back possession thereof for his personal occupation. To illustrate a specified landlord, in terms of Section 13-A of the East Punjab Urban Rent Restriction Act (hereinafter referred to as 'the Act') owning a single residential unit consisting of three bed-rooms, lets out each bed room separately to different tenants, while he and his family comprising his wife and three grown up children reside in government residential accommodation, provided to him, while in service. Would the purpose as envisaged by the Legislature be fulfilled, if on retirement, one bed room is all the accommodation that he can obtain by this summary procedure.

To take another example, while in service, a specified landlord buys a plot of land and builds two huts thereon leaving the other construction to be done after retirement from service. In the meanwhile he lets out these two huts to two different tenants. On retirement, is he to be granted the facility of summary eviction from only one such hut? Many other instances of similar anomalous situations can be visualised and would indeed arise. Absurdity cannot, however, be imputed to the Legislature.

As is apparent, the Amending Act of 1985 was enacted to fulfil a specific need and to serve a definite purpose. It is imperative, therefore, that its provisions are so construed, as to be in accord with the clear legislative intent.



The relevant provisions must thus be read to imply that a specified landlord would be entitled to recover.

By the summary procedure, such accommodation, not exceeding one residential house, as could meet his requirements for personal accommodation. Seen in this light, the judgment of this Court in Sohan Lal of Patiala vs. Col Prem Singh Grewal and another, 1989(2) PLR 139 and Civil Revision 1260 of 1989 (Bhupinder Singh vs. Smt. Zenobia Bhanot), decided on November 6, 1989, deserve reconsideration." (Bhupinder Singh's case is reported in 1990 (2) PLR 335)."

7.3 On the above reference, the Division Bench upheld the view to the effect that the landlord could get eviction order against the tenant only in respect of one unit. The matter ultimately reached Hon'ble Supreme Court.

7.4 Hon'ble Supreme Court noticed the Statement of Objects and Reasons for incorporating Section 13-A of the Act and then held that view taken by the Division Bench could not be sustained. Hon'ble Supreme Court held as under :

"10. The title to Section 13A states that the right is given to a 'specified landlord' to recover immediate possession of residential or scheduled building. The Statement of Objects and Reasons also states that the summary procedure for eviction of tenants from the residential and scheduled buildings is provided in Section 13A. The crucial words in Section 13A, clearly point out that, where a specified landlord, at any time within one year.....applies to the Rent Controller.....to recover possession of his residential building for his own occupation....., there shall accrue, on and from the date of such application to such specified landlord,....., a right to recover immediately the possession of such residential building.....or any part or parts of such building, if it is let out in part or parts. The provisions of the Statute are clear. **The right is given to a specified landlord to recover immediate possession of the residential building.** He should have retired from the service and should file an affidavit that he does not own and possess any other suitable accommodation to reside. In such a case, he can require possession of his residential or scheduled building for his own occupation. The right is given to the landlord notwithstanding any other provision in the Act or any other law or any contract to the contrary, to recover immediately the possession of such residential building. **If such residential building is let out in parts, the landlord is given the option to recover immediately the possession of such residential building itself or any part or parts of such building, in cases where it is let out in part or parts. In cases**



where the building is let out in parts, the parts so let out, will form part of the building itself. All that the second provision provides is that the said right shall not enable the landlord to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof, if the building is let out in part or parts. There are no words in Section 13A of the Act to import the idea that if a residential building is let out in parts, each part will become a residential building thereby fettering the specified landlord to avail the concession only from a part. Section 13A, which gives a special right to the landlord, is to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. In interpreting the Section, it is a far-cry to state, that the question as to whether the accommodation with the landlord after taking possession from one of the tenants is sufficient for his personal requirement or not, is not to be gone into in such proceedings. The right is given to the landlord, in case where he does not own or possess any other suitable accommodation to recover possession of his residential building. If the building is let out in parts, any or all such parts can also be recovered, since the part or parts let out, form part of the building. Section 13A clearly points out that the landlord has an option to get the recovery (the immediate possession) of the said residential building or any part or parts of such building, in a case where the building is let out in parts. The option so given to the landlord by the concluding words in the opening clause of Section 13A, in cases where the building is let out in part or parts, either to recover the whole building or to recover in part or parts thereof is reinforced by the second proviso. By no stretch of reasoning, the second proviso to Section 13A can be construed as nullifying the main provision of Section 13A and, in particular, the concluding words in the opening clause of Section 13A whereby the option is given to the landlord to recover the possession of residential building itself or any part or parts thereof in cases where the building is let out in part or parts. We hold that the reasoning and conclusion to the contrary in the two reported judgments of the Punjab and Haryana High Court and also in the judgment under appeal dated 20.7.1992 are clearly erroneous and unjustified. On the other hand, the reasoning contained in the order of reference dated 26.11.1990, appeals to us, as reasonable and fair and the same is in accord with the legislative intent and the language of Section 13A of the Act. We set aside the judgment of the Division Bench of the Punjab and Haryana High Court dated 20.7.1992 appealed against herein and allow the appeals.”

[Bold under-lined portion emphasised by this court]



8. It is, thus, clear that it is not necessary for the landlord that he can file only one ejectment petition against the tenant only of one unit of the same building. He can file different ejectment petitions against tenants of the different units of the same building.

9. In the light of the afore-said view taken by Hon'ble Supreme Court, the contrary view taken by different Benches of this High Court in **Lt. Col. Suraj Parkash (Retd.) Vs. Bhoop Singh Chaudhary, 2009(2) R.C.R. (Rent) 470** and **Prabha Kanta Sharma Vs. Smt. Gian Mala Verma, 2007(1) PLR 711**, cannot give any advantage to the tenant.

10. In the present case also, it is not in dispute that the landlord has filed different ejectment petitions regarding different shops forming part of the same building. It is also not disputed that the landlord has got possession of shop No.4 which is lying vacant for seven years and has also got vacated another shop from one Sarabjit for three months. However, it is not in dispute that these shops form part of the same building. The tenant could not place on record any document to the effect that the landlord owns any other building in the same urban area of Jalandhar. In these facts and circumstances, the contention of the tenant to the effect that there has been concealment on the part of the landlord regarding owning other buildings in Jalandhar City, is without any merit.

11. The contention of counsel for the tenant to the effect that landlord is well settled in UK and he has no intention to return to India is also without any merit. There is specific pleading as well as evidence on the part of the landlord that his wife has already retired and that he was also going to retire within a year. This petition was filed way back on 24.03.2006, which means that he had retired in 2007 and now we are in 2024, which means petitioner his retirement long back, is now more than 75 years of age, which fact is not disputed even by counsel for the tenant. There is specific averment and evidence on the part of the landlord to the effect that entire property forms one unit and that residence of the landlord is at the backside of the demised premises having small rooms and that after coming back to India, he intends to convert the entire building into



one unit, which he requires for his residence as well as occupation. It has also been testified that he has four sons who are married and has also the grandchildren and they can be able to visit him only once if he settles here permanently. The said testimony of landlord cannot be disputed by the tenant, once he had deposed about his bonafide necessity.

12. On the account of the entire discussion as above, it is held that Ld. Rent Controller did not commit any error in directing the ejectment of the tenant (petitioner herein) from the demised shop. Impugned order is accordingly upheld. Finding no merit in the present revision petition, the same is hereby dismissed.

July 29, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No