

the State Government to achieve the desired objection of not intending to create monopoly in favour of a individual or group of individuals. The only difference being that in earlier year, the names of different individuals were used, but in the year 2009-10, one individual can submit as many applications as he likes. Therefore, submission of large number of applications by one person would infact lead to monopolization of the trade.

12. In view of the above, we do not find any ground to interfere in the allotment of liquor vends for the year 2008-09. However, the State Government shall be well advised to take suitable steps to achieve its declare objectives of not to create monopoly in allotment of liquor vends in the subsequent years.

13. With the said observation, the writ petition stands dismissed.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: K. Kannan, J.

Civil Revision No.3351 of 1996 (O&M)

Decided on: 29.01.2009

Sudarshan Kumar Bhatia

Petitioner

Versus

Dharam Pal Sharma

Respondent

For the Petitioner: Mr. M.L. Sarin, Sr. Advocate with Ms. Alka Sarin, Advocate.

For the Respondent: Mr. B.R. Mahajan, Advocate.

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 2(hh), 13-A – Specified Landlord – Residential building – Non-residential building -- Section 13-A of the Act could be attracted only if any portion of the building or building in the hands of a tenant is for residential purpose -- If the property is let for non-residential purpose and such user is not prohibited in terms of any zoning requirement, the application under Section 13-A cannot avail to the "specified landlord".

(Para 10)

Cases referred:

1. Hari Mittal Vs. B.M. Sikka (1986-1) 89 PLR 1.
2. Dr. Jagjit Singh Mehta Vs. Dev Brat Sharma 1987 HRR 680.
3. Dev Brat Sharma Vs. Dr. Jagjit Mehta 1990(2) AIRCJ 431.
4. Raghbir Singh and others Vs. Ram Swarup and another Vol.CIV(1993-2) PLR 487.
5. Gopi Ram Vs. Jagan Nath 2003(1) RCR 664.
6. Nirmal Singh of Amritsar Vs. Kuldip Raj 1992(2) RCR 483
7. Shiv Kumar Vs. Krishan Kumar 1996(1) RCR 593.
8. Sardarni Sampuran Kaur and another Vs. Sant Singh and another 1983 HRR 152.

9. Harnam Singh Vs. Krishan Kharma and others(1997-1) PLR 818.
10. Pritpal Singh Vs. Devinder Kumar and another 2008(1) L.A.R. 429 = 2008(2) HRR 259.
11. Kewal Krishan Vs. Bhagwani 1993 HRR 176.
12. Rajinder Kumar Vs. Niranjana Lal and another 2006(2) L.A.R. 510 = 2007(1) PLR 443.
13. Bachan Lal Vs. Yogeshwar Lal Mehta 2006(2) L.A.R. 123 = 2006(2) RCR 395.
14. Harjit Singh Vs. M/s Daya Ram Sat Narain 2003(1) RCR 270 (P&H).
15. Zenobia Bhanot vs. P.K. Vasudeva and another 1996(1) PLR 220.
16. Bhupinder Singh Vs. Zenobia Bhanot (1990) 2 PLR 335.

JUDGMENT

K.KANNAN, J.—

I. Scope:

1. The above revision petition comes up for hearing after a report that has been obtained pursuant to the directions issued by this Court in an elaborate order dated 23.04.2003 to an application filed by a "specified landlord" under Section 13A complaining of subletting by the tenant and also requiring the premises for his bona fide use and occupation.

II. No prohibition or zoning or schedule for use for non-residential purpose in a residential area: (on facts)

2. The plea taken by the tenant was that the shop in occupation of the tenant was a non-residential building and the landlord was not entitled to secure eviction for a residential purpose. The Rent Controller found the plea of subletting to be not true but still held the requirement of the landlord to have been established, considering the fact that the demised shop premises was a part of an integral whole of residential building situated over a residential locality and hence held that the demised premises was required to be vacated. The directions of this Court became necessary to find out whether the demised premises was in any particular specification of zoning relating to the locality used for non-residential purposes. The interim order of this Court calling for report directed three questions to be answered:-

- "1. Whether the building constructed by the landlord is in pursuant to a sanctioned plan by a competent authority or the scheme duly framed by a competent authority?
2. The character of the building has been defined to be residential or can be used for a mixed purpose.
3. If no such constraints as aforesaid are applicable upon the premises, is the building existing or existed at the time of being let out, in the hub of the commercial area/centre."

3. The Rent Controller has filed the report which reads as follows:-

".....this court is constrained to hold that there was neither any sanctioned plan nor there was any necessity for the same nor any

scheme has ever been framed by any competent authority.

But originally as is clear from the statements of the witnesses of both the parties and documents placed on record, this shop in dispute was integral part of residential house as it has been constructed originally.

But at the time when the shop was let out, the property in dispute was under the control of Gram Panchayat and cannot be said to be situated in the hub of commercial area....."

4. From the reading of report, it is evident that there are particularly no zoning requirements in Amritsar and therefore, it is not possible to state that in a residential area, a tenant could not have been inducted for a non-residential use of a tenant or vice versa.

III. Full Bench Decision in Hari Mittal's case explained:

5. Before me, the contention of the learned Senior Counsel for the revision petitioner is the decision of the Full Bench in **Hari Mittal Vs. B.M. Sikka (1986-1) 89 PLR 1** dealt with a property falling within the jurisdiction of Chandigarh Administration where there are specified areas for residential and non-residential purposes. By consideration of the said decision, it could be seen that if a building is in a residential area and even if it is used for a nonresidential purpose, it must be considered only as a residential building for attracting the provisions of Section 13A. For a proper appreciation of the rival contentions of the parties, it becomes essential to reproduce Section 13-A of the East Punjab Urban Rent Restriction Act, 1949:-

"13-A. A right to recover immediate possession of residential or scheduled building to accrue to certain persons.-- Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Controller:-

- (a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such

commencement;

- (b) in the case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death;
- (c) in the case of death of such specified landlord, after such commencement and the date of his retirement, with one year of the date of such retirement.

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant;

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts:

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation:- For the purposes of this section, the expression "retirement" means termination of service of a specified landlord otherwise than by resignation."

IV. Section 13A could be invoked only for residential requirements of landlord from a tenant, who had a residential building for such purpose.

6. From the above Section, even as the title to the Section makes it clear, it deals with right to recover immediate possession of residential or scheduled building (underlining mine). It is an admitted case that it is not a scheduled building as defined under the Act. The only question is whether the property could be availed by a person who seeks to recover immediate possession of residential building. Since Hari Mittal's case (supra) referred to a portion of a residential building used for a non-residential purpose, which use was impermissible by the application of the restrictions of user under the relevant development rules, there was no difficulty for the Court to treat the property in possession of the tenant as a residential building to entitle a landlord to secure eviction. If on the other hand, the use of a portion of the building is admitted to be for a non-residential purpose and there is no prohibition in the local laws or regulations to prohibit such a user, it is a moot point if the landlord would be entitled to secure eviction under Section 13-A. Both the parties have placed authorities to support their respective contentions.

7. Learned Senior Counsel appearing for the revision petitioner refers to a decision of this Court in **Dr. Jagjit Singh Mehta Vs. Dev Brat Sharma 1987 HRR 680** which while dealing with the entitlement of a specified landlord to obtain eviction by resort to Section 13-A found the premises in dispute which was a shop disconnected from the rear part of residential house would come in the definition of only non-residential building, being a part of the building let out

for the said purpose, coming within the definition of Section 2(d) read with Section 2(a) of the East Punjab Urban Rent Restriction Act. Consequently it was held that the Rent Controller had no jurisdiction to order eviction under Section 13-A. This decision was affirmed by the Hon'ble Supreme Court in **Dev Brat Sharma Vs. Dr. Jagjit Mehta 1990(2) AIRCJ 431**. This decision, according to the counsel for the revision-petitioner, completely governs the issue at hand that the landlord had no right to resort to Section 13-A to obtain eviction. This situation is further expounded by several decisions in **Raghubir Singh and others Vs. Ram Swarup and another Vol.CIV(1993-2) PLR 487; Gopi Ram Vs. Jagan Nath 2003(1) RCR 664; Nirmal Singh of Amritsar Vs. Kuldip Raj 1992(2) RCR 483; Shiv Kumar Vs. Krishan Kumar 1996(1) RCR 593**. All these decisions referred to letting of portions of premises for non-residential purpose and the non-entitlement of landlord to obtain eviction for residential purpose under Section 13-A. In some decisions, the reference to the predominant use of the building had been referred to but the uniform view in all the decisions is that a landlord would not be entitled to invoke the provisions of Section 13-A in a case where the property is held for a non-residential purpose by the tenant and there was no bar for user of such premises for non-residential purpose.

V. Respondent's contention, falacious:-

8. In response to the contentions raised by the learned Senior Counsel for the revision-petitioner, learned counsel for the respondent placed before me a chain of decisions that purports to hold the opposite view. Each one of the decisions have considered the issue of letting out a portion of the building which is an integral part of a larger portion of the remaining building and barring a few decisions, all other decisions have no bearing to interpretation of Section 13-A of the Act. In **Sardarni Sampuran Kaur and another Vs. Sant Singh and another 1983 HRR 152**, a Division Bench of this Court upheld the claim of the landlord for eviction on the ground that the building in possession of the tenant was in a dilapidated condition and the point for adjudication was whether a tenant, who was in possession of a demised premises, which was part and parcel of a bigger building was liable to be ejected in order to enable the landlord to reconstruct the dilapidated structure, if the other portion of the building in the possession of the landlord was found to be unsafe for human habitation. It must be pointed out that the decision was not rendered in the context of Section 13-A and the answer to the reference made to the Division Bench that if a substantial portion of the integrated larger building had become unsafe and unfit, the demand for eviction of the tenanted premises would be justified. Similar was the reasoning in **Harnam Singh Vs. Krishan Kharma and others(1997-1) PLR 818** and other decisions in **Pritpal Singh Vs. Devinder Kumar and another 2008(1) L.A.R. 429 = 2008(2) HRR 259; Kewal Krishan Vs. Bhagwani 1993 HRR 176; Rajinder Kumar Vs. Niranjan Lal and another 2006(2) L.A.R. 510 = 2007(1) PLR 443**.

VI. Ratio in Zenobia Bhanot's case, explained:-

9. The two decisions which have specifically adverted to Section 13-A that support the contention of the landlord are the decisions in **Bachan Lal Vs. Yogeshwar Lal Mehta 2006(2) L.A.R. 123 = 2006(2) RCR 395** and **Harjit Singh Vs. M/s Daya Ram Sat Narain 2003(1) RCR 270 (P&H)**. Both the decisions considered the issue of application of Section 13-A of the Act in

relation to a building, a portion of which had been rented out for a non-residential purpose. The former decision took a view that a portion of building used by a tenant as a shop ought to be considered as a residential building to which Section 13-A could apply. The latter decision held that if a building is used for both purposes i.e. residential and non-residential, it would be treated as a residential building and cannot be considered as non-residential building alone. It said no one would be entitled to convert a residential building into a non-residential building without the prior consent of the Rent Controller. The latter decision made specific reference to the observations of the Full Bench in **Hari Mittal's case (supra)** and the order on reference by the Division Bench. The judgment also refers to a decision of the Hon'ble Supreme Court in **Zenobia Bhanot vs. P.K. Vasudeva and another 1996(1) PLR 220** where the Hon'ble Apex Court had considered the issue relating to the requirement of a landlord under Section 13-A. Most significantly, the decision related to property in Chandigarh, where the zoning requirements for residential and non-residential purposes existed, a la **Hari Mittal's case**. In that case the tenants were not contending that they were nonresidential tenants. The issue before the Supreme Court was an interpretation placed in an earlier reasoning of this Court, while deciding **Bhupinder Singh Vs. Zenobia Bhanot (1990) 2 PLR 335**. The Supreme Court reversed the interpretation placed by this Court that the landlord, who had rented out several portions to more than one tenant, could obtain eviction only in respect of one portion. The Supreme Court said that several portions which were a part of the integral whole could be claimed by landlord from even more than one tenant, if the need had been established. In the said decision, the Hon'ble Supreme Court was interpreting the Section in the context of proviso and it was not a case of any portion in the occupation of a tenant for non-residential purpose. Even if it was, being a property in Chandigarh, the relevant building regulations showed that the property was in a residential area. Non-residential use was prohibited and hence Section 13A was attracted. The reliance on this judgment of the Hon'ble Supreme Court was perhaps not justified. The ratio laid down by the Hon'ble Supreme Court, in my respectful view, was clearly misunderstood in **Harjit Singh's case (supra)**.

VII. The legal position re-stated:

10. The law laid down by this Court in **Dr. Jagjit Singh Mehta Vs. Dev Brat Sharma 1987 HRR 680** as confirmed by the Hon'ble Supreme Court in **1990 (2) AIRCJ 431** comprehensively answers the issue at hand and in view of the specific decision of Hon'ble Supreme Court on the subject, I uphold the contention of the revision petitioner and set aside the order of the Rent Controller. To postulate the correct proposition, I am to state that Section 13-A of the Act could be attracted only if any portion of the building or building in the hands of a tenant is for residential purpose. If the property is let for nonresidential purpose and such user is not prohibited in terms of any zoning requirement, the application under Section 13-A cannot avail to the "specified landlord".

11. The Revision petition is, therefore, allowed in the above terms.

Petition allowed.

SUPREME COURT OF INDIA**Before: Dr. Arijit Pasayat, V.S. Sirpurkar & Asok Kumar Ganguly, JJ.**

Criminal Appeal No. 1600 of 2009

Decided on: 06.03.2009

(Arising out of SLP (Crl.) No.4258 of 2007)

Yumnam Ongbi Tampha Ibemmma Devi

Appellant

Versus

Yumnam Joykumar Singh & Others

Respondents

For the Appellant: Hijam N.K. Singh, Sr. Advocate with Ashok Kumar Sharma, Lenis S. Hijam and Rahul Joshi, Advocates.

For the Respondents: E.C. Agrawala and Gourab Banerjee, Sr. Advocate with Gautam Jha, A. Mohendro Singh, Amit Pawan, Sapam Biswajit Meitei, Anil Kumar Pandey and Ashok Kumar Singh, Advocates.

A. Indian Succession Act, 1925 (39 of 1925), Section 63 – Will – Execution of -- For the due execution of a Will (1) the testator should sign or affix his mark to the Will; (2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a Will; (3) the Will should be attested by two or more witnesses, and (4) each of the said witnesses must have seen the testator signing or affixing his mark to the Will and each of them should sign the Will in presence of the testator -- Attestation of the Will in the manner stated above is not an empty formality, it means signing a document for the purpose of testifying of the signatures of the executant -- Attested witness should put his signature on the Will animus attestandi.

(Para 6,7)

B. Indian Succession Act, 1925 (39 of 1925), Section 63 – Indian Evidence Act, 1872 (1 of 1872), Section 68 -- Will – Execution of – Proof of -- Will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will -- Attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator.

..... Since a Will is required by law to be attested, execution has to be proved in the manner laid down in section and the Evidence Act which requires that at least one attesting witness has to be examined for the purpose of proving the execution of such a document. Therefore, having regards to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a Will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator.

(Para 7)**Cases referred:**

1. Girja Datt Singh v. Gangotri Datt Singh, AIR 1955 SC 346.