

but the contest was on the fact that the petitioner had not stated anywhere that he was returning to India and that the petitioner had stated that he was arriving in India. The expression used by the landlord was an obvious euphemism and the Rent Controller had correctly adverted to the issue as one of distinction without a difference and found the maintainability of the petition in favour of the landlord.

6. The reasonings of the Rent Controller have been brought out on four basic premises: (i) a person born in Rawalpindi before partition was a person of Indian origin and he was entitled to invoke Section 13-B; (ii) the gift deed in favour of Gurudwara by the petitioner's father had been found to be nullified by a judgment of a Civil Court in Ex.A-7 and the petitioner's status as a landlord to whom rent had been paid through his power of attorney could not be denied; (iii) the dictionary meaning of the word "arrive" was reaching the destination and if the landlord used word "arrive" instead of "return", same would not make any difference; (iv) Referring to the decision of this Court in **Mukesh Kumar Vs. Santosh Kumari and others 2007 1 RLR 621 (P&H)**, if different portions of one integrated building had been let out to different tenants, then all the tenants could be evicted. The Rent Controller pointed out that once the requirement of both the shops was established by the disclosure of a proposal to erect the shopping complex-cum-residence and the fact that one portion of the building had become available even before filing of the petition would not be a factor to discount the requirement of the landlord. According to the Rent Controller, the right to seek eviction related to a building and not to a tenant and the process of eviction of a constituent of a building which is a larger whole was perfectly justified, under the circumstances.

7. I have detailed all the lines of reasoning of the Rent Controller only to bring home that all the legal submissions have been properly adverted to by the Rent Controller and the decision taken by the Rent Controller accords fully with law and facts brought before it. There is thus, no scope for interference in revision and the revision petition is dismissed.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: K. Kannan, J.

Civil Revision No. 6258 of 2002 (O&M)

Decided on: 28.04.2009

Inderjit Sharma

Petitioner

Versus

Moti Lal

Respondent

For the Petitioner: Mr. Jasbir Rattan, Advocate.

For the Respondent: Mr. R.K. Gupta, Advocate with Mr. M.S. Joshi, Advocate.

A. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13-B – Non-Resident Indian landlord – Ownership – Fractional ownership – Succession -- If the father had a son, who is the legal heir, it ought to be taken as obvious that the son inherited the property unless the

succession to the property is shown to have been defeated -- Fact that the assessment has not been made in the name of the son after the lifetime of the father cannot take away the right of the son in the property, an entry in the tax assessment register of a municipal committee is a method of collecting revenue for the State but does not deflect from the title residing in the person who claims as a heir -- Ownership to the property of the person claiming to be the landlord as a heir to his father cannot, therefore, avail to the tenant -- At worst, landlord could have been a co-heir but even a fractional ownership of the property is sufficient for a landlord to invoke the claim under Section 13-B.

As regards the contention that the landlord had not shown himself to be the owner of the property, the admitted case is that the property is one of six shops, two of which belonged to the father and the father had died on 08.01.1986. He claimed himself to be a heir to the father and there was no document that the father had made any disposition in his favour or he had cast his other relatives as a heir to him by any instrument inter vivos. It is precisely this point, which is taken up by the counsel for the petitioner to state that in the absence of an document, it could not be stated that the landlord had become the owner of the property as heir to the father. He pointed out to the fact that the municipal assessment has not been shown to be mutated in the name of the landlord. There was no other document of transfer from the father. This submission also, in my view, is not legally sound for a title to the property cannot hang in vacuum. It has to reside somewhere and if the father had a son, who is the legal heir, it ought to be taken as obvious that the son inherited the property unless the succession to the property is shown to have been defeated by some instrument of transfer by the father during his lifetime. The fact that the assessment has not been made in the name of the son after the lifetime of the father cannot take away the right of the son in the property and an entry in the tax assessment register of a municipal committee is a method of collecting revenue for the State but does not deflect from the title residing in the person who claims as a heir. The ownership to the property of the person claiming to be the landlord as a heir to his father cannot, therefore, avail to the tenant. At worst, he could have been a co-heir along with his mother but even a fractional ownership of the property is sufficient for a landlord to invoke the claim under Section 13-B. The contention in that regard is, therefore, not accepted.

(Para 5)

B. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13-B – Bonafide need – Subsequent events – Relevancy of -- Subsequent event may have a bearing on the bona fides of the requirement of the landlord is always relevant, though may not be conclusive to test the ground of bona fides.

A subsequent event that may have a bearing on the bona fides of the requirement of the landlord is always relevant, though may not be conclusive to test the ground of bona fides. While the eviction of the tenant of yet another building might not conclusively show that the landlord had not proved the bona fides but still it has to be seen as to what the landlord had contended with reference to the other building in the occupation of the tenant....

(Para 8)

C. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13-B – Bonafide need – Subsequent events – Relevancy of -- During the course of the proceedings landlord secured possession of yet another building of the similar measurement, there is no ground to believe that the landlord intended to take both the premises for his business --

Landlord had not set out his imminent need of the adjacent building in the petition – Landlord secured such possession during the course of the proceedings assumes significance and lend weight to the contention that landlord's requirement was not fully established.

.... It was not his contention in the pleadings that he was taking action for eviction against yet another tenant and he was requiring the premises from this tenant also so that he could have the benefit of space of both the shops. If at the time of presentation of the petition yet another tenant had been in possession of adjacent building and he had not disclosed any detail about what he intended to do with the other tenant, it should only be understood that the landlord was seeking to secure possession of a shop in the dimension of 10 ½' x 28' for his business and he required no further portion. If it turns out in the course of the proceedings that he has been able to secure possession of yet another building of the similar measurement, there is no ground to believe that the landlord intended to take both the premises for his business. Having regard to the fact that the landlord had not set out his imminent need of the adjacent building in the petition and the fact that he had secured such possession during the course of the proceedings assumes significance and lend weight to the contention of the tenant that the landlord's requirement was not fully established.....

(Para 8)

D. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13-B – Bonafide need – Concealment of facts -- If landlord has another business, which was in his name, the fact ought to have been disclosed in the petition and the landlord must have stated that he was in requirement of the premises for yet another business of yet another building -- Landlord attempted to conceal facts, which were relevant and such a person shall not obtain the benefit of special provisions contained under Section 13-B of the Act.

.... This is seen as a complementary fact to the issue that landlord was actually in possession of another building and was running another business in his own name at the time of presentation of the petition but he had not disclosed the same in so many words in the petition. His attempt to show that the business was being run only by the wife must be understood in the context of what he had done subsequent to the filing of the petition. The assessment and the business was admittedly in his own name on the date when the petition was filed on 26.04.2001. The assessment in his name was closed only subsequent to the filing of the petition on 25.07.2001. A contention which might have been possible for the landlord that the business that was being run in his own name was indeed meant to be only the wife's business and that he wanted to start yet another business was not a case that was put forward by the landlord at any time. If there is such an argument now, then such a contention found no support in his pleadings. The eviction order that is issued by the Rent Controller makes no reference at all to the fact that the cloth business was actually in his name on the date of the filing of the petition. The order of the Rent Controller again makes no reference to the fact that the change itself had been occasioned only subsequent to the filing of the petition. The order makes the assumption that the wife was at all times the owner of the cloth business and therefore, the landlord's requirement of yet another premises had been properly established. In my view, the reasoning of the Rent Controller suffers from the vice of non-consideration to an important feature that the other business actually was being run only in the name of the petitioner and therefore, the landlord was actually requiring the petition mentioned premises for another business apart from the business which he was already running. This is not the legislative intendment of even Section 13-B. It may not be law that a landlord could have only one business but the person that invokes Section 13-B would be entitled to obtain eviction only one premises for a business or residential purpose as the case may be. If there was another business,

which was in his name, the fact ought to have been disclosed in the petition and the landlord must have stated that he was in requirement of the premises for yet another business of yet another building. The landlord, in my view, has attempted to conceal facts, which were relevant and such a person shall not obtain the benefit of special provisions contained under Section 13-B of the Act. This decision is made by a further consideration of the fact that the landlord has obtained eviction of an adjoining premises of a dimension similar to the dimension of the property, which is in dispute and even if he was to start another business, he has the other property at his command to resume one. Under the circumstances, the order of eviction, which is made by the Rent Controller is set aside and the civil revision is allowed.....

(Para 8)

JUDGMENT

K.KANNAN, J. (ORAL)-- The revision is against the order of eviction rendered by the Rent Controller in a petition filed by an NRI under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949. The contention of the landlord found favour with the Rent Controller, who upheld the bona fides of his contention and directed eviction.

2. Learned counsel for the revision petitioner adopts essentially three strands of arguments: (i) the landlord is not an NRI entitled to invoke provisions of Section 13-B; (ii) he had not established his ownership in relation to the property, which is relevant for consideration under Section 13-B and (iii) the bona fides of requirement of the landlord had not been established. Each one of this contentions is sought to be defended in reasonable detail by learned counsel for the landlord.

3. As regards the NRI status, the contention of learned counsel for the petitioner is that the document Ex.R-1, Ration Card showed that he had been issued a Ration Card along with his wife and other members of the family, which showed that he was a resident only of India. He has been an income-tax assessee, which assessment would not have been made if he was residing permanently outside India. A telephone connection stood in his name and that also would indicate that he has his permanent residence only in India. He had not filed even the original passport and merely a copy of the passport was produced, which was objected at the time when it was tendered in evidence. According to him, no explanation had been given for the non-production of the original or any justification for production of secondary evidence.

4. The issue relating to the NRI status itself does not appear to be a very serious one that has any major obstacle for the landlord. Even without reference to the copy of the passport, it is brought out in evidence that the birth certificate showed that the landlord was born in Singapore, he had studied there and had served the Singapore Army as a citizen of that country and relieved from the Army only in the year 1999. The certificate of service in the Army and his permanent residence status at Singapore have also been filed in Court and considered by the Rent Controller. According to the landlord, he returned to India on 25.06.2000 and he fulfills the definition of Section 2 (dd) of the East Punjab Urban Rent Restriction Act, 1949, which defines an NRI to be a person settled either permanently or temporarily outside India for taking up employment outside India or for carrying on a business or a vocation outside India or for any other purpose. If he had been not doing any other business,

the fact that he was born in Singapore and served the Army as a citizen of that country would allow him to invoke the residuary clause contained in Section 2(dd) (c) that a person who was residing for any other purpose could still be an NRI, if he had been a person of Indian origin. It was brought out in his evidence that his father was a person of Indian origin but had migrated to Singapore and later returned to India. A son of a person of Indian origin would also be a person of Indian origin and entitled to claim the status as such. The contention on behalf of the tenant that the landlord was not entitled to invoke the provisions of Section 13-B is, therefore, rejected.

5. As regards the contention that the landlord had not shown himself to be the owner of the property, the admitted case is that the property is one of six shops, two of which belonged to the father and the father had died on 08.01.1986. He claimed himself to be a heir to the father and there was no document that the father had made any disposition in his favour or he had cast his other relatives as a heir to him by any instrument inter vivos. It is precisely this point, which is taken up by the counsel for the petitioner to state that in the absence of an document, it could not be stated that the landlord had become the owner of the property as heir to the father. He pointed out to the fact that the municipal assessment has not been shown to be mutated in the name of the landlord. There was no other document of transfer from the father. This submission also, in my view, is not legally sound for a title to the property cannot hang in vacuum. It has to reside somewhere and if the father had a son, who is the legal heir, it ought to be taken as obvious that the son inherited the property unless the succession to the property is shown to have been defeated by some instrument of transfer by the father during his lifetime. The fact that the assessment has not been made in the name of the son after the lifetime of the father cannot take away the right of the son in the property and an entry in the tax assessment register of a municipal committee is a method of collecting revenue for the State but does not deflect from the title residing in the person who claims as a heir. The ownership to the property of the person claiming to be the landlord as a heir to his father cannot, therefore, avail to the tenant. At worst, he could have been a co-heir along with his mother but even a fractional ownership of the property is sufficient for a landlord to invoke the claim under Section 13-B. The contention in that regard is, therefore, not accepted.

6. The bona fides of the contention of the landlord is the only issue of immediate relevance, for it is not merely the status nor indeed the fact that he is the owner that decides the issue. In this case, the landlord's contention was that he was not in possession of any other property and that he required the premises for establishing a business in electrical goods. This contention was stoutly resisted by the tenant and he wanted to point out through documentary evidence that the landlord had concealed the relevant fact that on the date when the petition was filed, the business of cloth, which was being run in Shop No.1 under the name Singapore Cloth Store was really the business, which the landlord was running in his name. The income tax assessment for the business had been shown in the name of the landlord as a proprietor of the cloth shop for the years 1999-2000, 2000-2001, 2001-2002. The documentary proof rendered through the income tax assessments were sought to be discounted by the counsel for the landlord by urging that the assessment showed that it had been taken in his name even at the time when he was not in India. His

contention was that his father after he migrated from Singapore to India was running the cloth business and after the death of his father, his wife was running the business. He was himself not adept in the cloth business but he had started a business in electrical goods at Singapore after he was discharged from Army. It was this business, which he wanted to start in India after obtaining eviction of the property from the tenant.

7. The landlord's bona fides were sought to be made a further dent by the tenant by contending that yet another shop adjacent to the shop in door No.5, which was in the occupation of another tenant had been vacated during the pendency of the proceedings and the shop, which is vacated is even larger than the shop which was in his occupation. The fact that the property was vacated itself is not denied but through a counter-affidavit, the landlord sought to contend that the said property was also necessary for running his business and his intention was to remove the wall that existed between Shop Nos.5 and 6 and have a larger building.

8. A subsequent event that may have a bearing on the bona fides of the requirement of the landlord is always relevant, though may not be conclusive to test the ground of bona fides. While the eviction of the tenant of yet another building might not conclusively show that the landlord had not proved the bona fides but still it has to be seen as to what the landlord had contended with reference to the other building in the occupation of the tenant. It was not his contention in the pleadings that he was taking action for eviction against yet another tenant and he was requiring the premises from this tenant also so that he could have the benefit of space of both the shops. If at the time of presentation of the petition yet another tenant had been in possession of adjacent building and he had not disclosed any detail about what he intended to do with the other tenant, it should only be understood that the landlord was seeking to secure possession of a shop in the dimension of 10 ½ ' x 28' for his business and he required no further portion. If it turns out in the course of the proceedings that he has been able to secure possession of yet another building of the similar measurement, there is no ground to believe that the landlord intended to take both the premises for his business. Having regard to the fact that the landlord had not set out his imminent need of the adjacent building in the petition and the fact that he had secured such possession during the course of the proceedings assumes significance and lend weight to the contention of the tenant that the landlord's requirement was not fully established. This is seen as a complementary fact to the issue that landlord was actually in possession of another building and was running another business in his own name at the time of presentation of the petition but he had not disclosed the same in so many words in the petition. His attempt to show that the business was being run only by the wife must be understood in the context of what he had done subsequent to the filing of the petition. The assessment and the business was admittedly in his own name on the date when the petition was filed on 26.04.2001. The assessment in his name was closed only subsequent to the filing of the petition on 25.07.2001. A contention which might have been possible for the landlord that the business that was being run in his own name was indeed meant to be only the wife's business and that he wanted to start yet another business was not a case that was put forward by the landlord at any time. If there is such an argument now, then such a contention found no support in his pleadings. The eviction order that is

issued by the Rent Controller makes no reference at all to the fact that the cloth business was actually in his name on the date of the filing of the petition. The order of the Rent Controller again makes no reference to the fact that the change itself had been occasioned only subsequent to the filing of the petition. The order makes the assumption that the wife was at all times the owner of the cloth business and therefore, the landlord's requirement of yet another premises had been properly established. In my view, the reasoning of the Rent Controller suffers from the vice of non-consideration to an important feature that the other business actually was being run only in the name of the petitioner and therefore, the landlord was actually requiring the petition mentioned premises for another business apart from the business which he was already running. This is not the legislative intendment of even Section 13-B. It may not be law that a landlord could have only one business but the person that invokes Section 13-B would be entitled to obtain eviction only one premises for a business or residential purpose as the case may be. If there was another business, which was in his name, the fact ought to have been disclosed in the petition and the landlord must have stated that he was in requirement of the premises for yet another business of yet another building. The landlord, in my view, has attempted to conceal facts, which were relevant and such a person shall not obtain the benefit of special provisions contained under Section 13-B of the Act. This decision is made by a further consideration of the fact that the landlord has obtained eviction of an adjoining premises of a dimension similar to the dimension of the property, which is in dispute and even if he was to start another business, he has the other property at his command to resume one. Under the circumstances, the order of eviction, which is made by the Rent Controller is set aside and the civil revision is allowed. There shall be, however, no direction as to costs.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: K. Kannan, J.

Civil Revision No. 6638 of 2007

Decided on: 21.04.2009

S. Tarlochan Singh

Petitioner

Versus

Smt. Harbhajan Kaur

Respondent

For the Petitioner: Mr. Puneet Jindal, Advocate.

For the Respondent: Mr. G.S. Sandhawalia, Advocate with Mr. Deepak Sabharwal, Advocate with Mr. S.K. Pruthi, Advocate.

East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13-B, 18-A(5) – Maintainability of petition -- Leave to defend – Landlord requiring premises for residential premises, which is being used by tenant as a shop -- Question whether a property held by the tenant was merely a portion of a larger residential house, which may be relevant could still be found out only after due consideration of evidence -- Leave