

(1989) 02 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 418 of 1988

Dr. B.R. DULLAR

APPELLANT

Vs

Dr. C.P. Sethi

RESPONDENT

Date of Decision: Feb. 21, 1989

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13A

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: M.L. Sarin and Miss Jaishree Thakur, for the Appellant; Ashok Bhan and Sh. Sunil Parti, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.

This petition is directed against the order of the Rent Controller whereby the ejectment application filed by the landlord u/s 13-A of the East Punjab Urban Rent Restriction Act, as amended, was dismissed.

2. Dr. B. R. Dullar, the landlord retired from the service of Civil Surgeon with effect from 31.10.1984. Section 13-A was introduced by way of Amendment Act, 1985 which came into force with effect from 16.11.1985. The landlord filed the present ejectment application u/s 13-A of the Act on 22.1.1986 alleging that he was a specified landlord and the tenant was occupying the demised premises on a monthly rent of Rs. 425/- payable in advance besides house-tax. He was in arrears of rent with effect from January, 1982 He has got two sons and a wife. One of his sons namely Brij Deepak is married and is living in rented premises due to insufficient accommodation. The other son Rajiv Dullar is of marriageable age. In a family arrangement, it has been mutually decided that the tenanted premises would be occupied by the Petitioner for his personal use and occupation as he does not own and possess any other suitable accommodation in the local area nor he has vacated

any such building in the urban area. The accommodation where the Petitioner landlord and his family members are living would be occupied by both the sons in two separate portions. The tenant moved an application for leave to contest the ejectment application which was allowed, and filed his written statement in which it was pleaded that he was using the upper portion for his residence whereas ground floor was used for running of clinic. According to him, he paid rent regularly in advance till January, 1986. He further pleaded that all the sons of the Petitioner reside in the residential building situated at Munshian Street, Nabha. The ejectment application has been filed with malafide intention and the landlord does not require the same for his personal use and occupation. In the replication, the landlord reiterated the plea taken in the ejectment application and he controverted the plea taken by the tenant. On the pleadings of the parties, seven issues were framed.

3. It appears that neither the counsel for the parties nor the learned Rent Controller were aware of the provisions of Section 13-A as such as the same was introduced only two months prior to the filing of the present application. If the same had been kept in view, the question of framing those issues could not arise. According to the findings of the learned Rent Controller, the application was malafide because the landlord retired on 31.10.1984 whereas the present ejectment application was filed on 22.1.1986. In case he required the demised premises for his use and occupation after his retirement, he should have made the application immediately thereafter. He further found that eviction on the ground of personal necessity would be ordered only if the landlord strictly proved his bonafide of personal necessity and if he is not occupying any other residential building in the urban area concerned. Since the landlord is owning land a residential building which is sufficient for occupation by 2-3 families, the plea of personal necessity could not be held to be bonafide. On this finding, the ejectment application was dismissed.

4. Learned Counsel for the Petitioner submitted that the whole approach of the learned Rent Controller was wrong, illegal and improper. According to the learned Counsel, the provisions of Section 13-A which was recently introduced were not adhered to. u/s 13-A, sufficiency or insufficiency was not the criterion to be taken into consideration. What was required was suitability which was subjective to be seen by the landlord himself and it was not for the Rent Controller to go into the question of suitability. Moreover, argued the learned Counsel, the application could not be said to be malafide in any manner nor the question of bonafide or malafide required to be gone into u/s 13-A as such. The written statement filed by the tenant was quite vague and, therefore, the application filed u/s 13-A which was duly supported by the affidavit, should have been allowed. In support of this contention, he referred to Dr. Dim Nath v. Smt. Santokh Kaur etc (1987) 91 P. L. R. 171. He also referred to Surjit Singh v. Harbans Singh (1989) 95 P. L. R. 6., to contend that the tenant has to be clear and not vague, positive and not negative in his pleas in the written statement. According to the learned Counsel, the plea was too vague and, therefore, the same could not be taken into consideration u/s 13-A of the Act.

5. On the other hand, the learned Counsel for the Respondent-, tenant submitted that neither in the ejectment application nor in the statement, it has been stated by the landlord that the present accommodation was not suitable. That being so, argued the learned Counsel, it has been rightly held by the Rent Controller that the present accommodation in occupation of the landlord was suitable and, therefore, he was not entitled to eject the tenant. According to the learned Counsel, the application was not bonafide nor any family partition, as alleged by the landlord, has been produced on record. Thus, argued the learned Counsel, the landlord was not entitled to any eviction u/s 13-A as he owned and possessed the other suitable accommodation in the local area concerned.

6. I have heard the learned Counsel for the parties and have also gone through the relevant evidence on the record. As observed earlier, the Rent Controller did not follow the procedure as prescribed under Section 18-A for dealing with the ejectment application filed u/s 13-A of the Act. The ejectment application could not be held to be malafide in any manner. The landlord retired on 31.10.1984 whereas Section 13 A was introduced in November, 1985 and the present application was filed immediately after two months thereafter on 21.1.1986. Apart from that ejectment application could not be filed earlier u/s 13-A on the ground of personal requirement as the building was a schedule one. It was only u/s 13-A that a specified landlord could seek ejectment of his tenant from the residential building or scheduled building. In these circumstances, the finding of the learned Rent Controller in this behalf was wholly misconceived, illegal and improper.

7. The only other requirement u/s 13-A is that the landlord 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 or scheduled building. Averment to this effect was made in the ejectment application in para 2 and it was duly supported by the affidavit dated 20.1.1986 in which it was stated that "I do not own and possess any other suitable accommodation in the local area in which the tenanted premises is situated where I intend to reside." In support of this averment, the landlord also appeared in the witness-box as AW1 and he produced his son Brij Deepak as AW2. The only other satisfaction of Section 13-A is that the landlord does not own and possess any other suitable accommodation in the local area concerned. According to the Rent Controller, the building in Munshian Street in which the landlord is residing at present was efficient and suitable for his occupation whereas according to the landlord the said accommodation was neither sufficient nor suitable for him and is to be occupied by his two sons according to the family arrangement and the demised premises are much bigger than the one occupied by him and, therefore, the same were most suitable for his purpose particularly when he is to run his clinic after his retirement.

8. The question of suitability came up for consideration before this Court in Dr. Dina Nath's case (supra) wherein it was held that the words "He does not own and

possess any other suitable accommodation in the local area and intends to reside" in Section 13-A have different connotation and are not be equated with words "he is not occupying any other residential building in the urban area concerned and requires it for his own occupation" occurring in Section 13(3)(a)(i) of the Act.

9. Thus on the facts and circumstances of the case, it could not be successfully argued on behalf of the tenant that the present accommodation was sufficient and suitable for the landlord. It was for the landlord to see after his retirement as to which, out of the two premises, that is one presently occupied by him, and the other demised premises, one is more suitable for him. Sufficiency or insufficiency is not the criterion to be gone into u/s 13-A of the Act. Apart from that the tenant did not disclose any fact as to which other buildings are owned and possessed by the landlord. The allegations were too vague and merely disputing the claim made by the landlord would not be sufficient to enable the tenant to the grant of relief. Such averments would be regarded as vague and bald allegations and these could not be regarded as facts so as to disentitle the landlord from obtaining an order for recovery of possession as held by this Court in Surjit Singh's case (supra). Moreover, it has been explained by the landlord and his son as AW2 that there is no other building which is in their possession except the building in Munshian Street where they are residing at present. The second son, even according to the Rent Controller, is living in a rented premises and after the tenant is evicted from the demised premises, he will shift to the building in Munshian Street as per family arrangement.

10. Thus on the facts and in the circumstances of the case, the landlord has proved on record that he does not own and possess any other suitable accommodation in the local area concerned and, therefore, he was entitled to the eviction of his tenant u/s 13-A of the Act.

11. It will not be out of place to mention here that by virtue of the amending Act Section 19 of the Principal Act was also amended. Now it has been provided that if the specified landlord does not occupy the building after getting an order of ejectment u/s 13-A for a continuous period of three months from the date of such eviction or lets out the same or any such part of the building to any person, he shall be punishable with imprisonment which may extend to six months or with a fine which may extend to Rs. 1,000/- or both. It has been so stated that in case the landlord fails to occupy the premises, he will incur the said liability. Consequently, this petition succeeds, the impugned order of the Rent Controller is set aside, and eviction order is passed against the tenant with costs.

12. However, the tenant is allowed three months' time to vacate the premises provided all the arrears of rent, if any, along with advance rent for three months is deposited with the Rent Controller within one month with a further undertaking in writing that after the expiry of the said period, vacant possession will be handed over to the landlord.