

**(1987) 01 P&H CK 0005**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 1793 of 1986

Risaldar Surjit Singh

APPELLANT

Vs

T.N. Sood

RESPONDENT

**Date of Decision:** Jan. 12, 1987

**Acts Referred:**

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

**Citation:** (1987) 1 RCR(Rent) 519

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

**Bench:** Single Bench

**Advocate:** R.L. Sarin and Miss Jaishree Thakur, for the Appellant; J.N. Kaushal and Sh. Ashok Jindal, for the Respondent

**Final Decision:** Dismissed

**Judgement**

J.V. Gupta, J.

This petition on behalf of the landlord is directed against the order of the Rent Controller dated 14.3.1986, whereby the tenant was allowed to contest the ejectment application filed under sectional 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act").

2. It is not disputed that the Petitioner landlord Risaldar Surjit Singh retired from government service in September, 1962 and he purchased the site in 1967/1969 on which the premises in dispute were constructed in the year 1971-72 and rented out to the tenant T. N. Sood in the year 1973. The landlord by invoking the provisions of Section 13-A of the Act, which section was added by virtue of Punjab Act No. 2 of 1985, filed the present ejectment application on 3.1.1986 claiming himself to be a "specified landlord" as defined in Clause 2(hh) of the Act. According to the landlord, he being a retired military personnel wanted to settle at Ludhiana in his own house, i. e. the house in dispute and as he does not own any other residential accommodation in the urban area concerned, he is entitled to eject his tenant

summarily. The tenant contested the said assertion of the landlord and pleaded that he was not "specified landlord" as defined under the Act and, therefore, was not entitled to avail the benefit u/s 13-A of the Act According to the tenant, the landlord retired from military Service on 2.9.1962 and purchased the property in dispute in the year 1967/1969 and the construction was raised in the year 1970-71. Thus, according to the tenant, the Petitioner is an unborn landlord and, therefore, not entitled to the benefit of newly inserted provisions. Moreover, the landlord also filed an ejectment petition earlier on the ground of personal necessity, which was lateron dismissed as withdrawn. In that petition, the landlord has made a statement that his children have been settled abroad and that after the decision of ejectment petition, the Petitioner would be leaving for abroad. Thus, according to the tenant, neither the case of the Petitioner is covered by newly inserted Section 13-A nor the Petitioner requires the premises bonafide for his own use and occupation. All these averments were incorporated by the tenant in his affidavit

3. The learned Rent Controller, after hearing both the parties came to the conclusion that the premises were admittedly purchased by the landlord after about seven years of his retirement and the Respondent was inducted as tenant after about eleven years of his retirement and thus, the Petitioner was never a landlord at the time of his retirement, Further more, the attention of the Rent Controller was drawn to the statement of the landlord recorded in the previous ejectment petition wherein the landlord is said to have stated that his children and grand-children are settled in England and that after the decision of that ejectment petition, the Petitioner would also be going to England. In view of these assertions in his affidavit, the learned Rent Controller allowed the tenant to contest ejectment petition. Dissatisfied with the same the landlord has filed this petition in this Court.

4. Learned Counsel for the Petitioner submitted that the Petitioner falls within the definition of "specified landlord" as defined in Clause 2(hh) of the Act that the Division Bench of this Court reported in Sohan Singh Vs. Dhan Raj Sharma, relied upon by the learned Rent Controller was distinguishable as there was no such definition in Haryana Urban (Control of Rent and Eviction) Act, 1973. In any case, argued the learned Counsel, that no case was made out for granting the leave to contest the ejectment petition and discretion exercised by the learned Rent Controller was illegal. On the other hand, learned Counsel for the Respondent submitted that no revision petition was competent against the impugned order as the order was discretionary one. Moreover, in the affidavit filed by the tenant it has been specifically asserted that the landlord had no bonafide requirement for residence in the demised premises and thus, the permission has been rightly granted to contest the ejectment petition. It was further argued that the Petitioner was not entitled to the benefit of Section 13-A of the Act as he was never the landlord of the demised premises at the time of his retirement. In support of his contention he referred to a Supreme Court judgment. Mrs. Winifred Ross and Anr. v. Mrs. Ivg Fonseca A. I. R. 1984 S. C. 485, and Division Bench judgment of this Court,

Sohan Singh v. Dhan Raj Sharma (supra).

5. After hearing the learned Counsel for the parties, I am of the considered view that no case has been made out for interference in the revisional jurisdiction as the leave to contest the ejectment petition has been allowed by the learned Rent Controller on the basis of affidavit filed by the tenant, which *prima facie* discloses such facts as to disentitle the "specified landlord" for obtaining an order of eviction.

6. The main controversy between the parties is as to whether the Petitioner can be said to be a "specified landlord" as to claim the benefit of the Section 13-A of the Act or not. On the facts admitted, the premises were rented out in the year 1973 which were purchased in the year 1967/1969 after seven years of the retirement. Thus, the Petitioner was never a landlord within the meaning of Section 2(c) read with Section 2(hh) of the Act on the date of his retirement. In a similar situation, this Court has already held in Ajmer Singh v. Ranjit Singh (1986) 88 P. L. R. 666, that:

There is no scope for doubt that "specified landlord" within the meaning of Section 2(hh) of the Act is that person who is a landlord and holding or has held an appointment in respect of a public service or post in connection with the affairs of the Union or of the State. A person in a public service may be a landlord within the meaning of Section 2(c) of the Act but he shall acquire the character of "specified landlord" u/s 2(hh) and shall have the right to seek eviction of his tenant by taking resort to summary remedy provided by Section 13A of the Act within one year prior to or within one year after the date of his retirement. An essential requisite, therefore, is that he should be a landlord within the meaning of Section 2(c) read with Section 2 (hh) of the Act at least within one year prior to and on the date of his retirement. If he acquire the character of a landlord in respect of premises qua a particular tenant after his retirement he would not come within the definition "specified landlord" and cannot have recourse to the remedy of Section 13-A of the Act which provide for summary proceedings for eviction of the tenant. In my view, therefore, the case in hand is fully covered by the ratio of law laid down in Sohan Singh's case (supra) and I am bound to follow the same

In that case the landlord retired from government service on 28.2.1985 and purchased the property in dispute on 8.4.1985 whereas the tenant was already in occupation of the same. As such the said ratio of the case is fully applicable to the facts of the present case.

7. In a some what similar situation, the Supreme Court while interpreting Section 13-A of Bombay Act, held that it did not govern the case of a person who had retired long back from the Armed Forces and was gainfully employed elsewhere and while so employed had let out his premises with open eyes, it was further held that where the retired Army Officer, who had become the landlord of the disputed premises, already in possession of the tenant, by way of gift after his retirement, had filed a suit for eviction of such tenant, he would not be entitled to the benefit of Section

13-A(1). In view of these authorities, on the facts admitted, the Petitioner could not be held to be a "specified landlord" as to claim the benefit of Section 13-A of the Act. The sine-qua-non for taking benefit of Section 13-A of the Act for those who had retired is that one must be a landlord at the time of his retirement qua the premises from which the eviction is being sought. If he is so and had retired before the coming into force of the amendment Act (Punjab Act No. 2 of 1985), he can exercise his right to get the tenant evicted under the summary procedure within one year of the coming into force of the amendment Act and if he is in service when the amendment Act had come into force he can exercise that right within one year prior to his retirement as well as within one year after his retirement. That is what is the plain meaning of the opening words of Section 13-A of the Act.

8. Though the learned Rent Controller has not finally decided as to whether the Petitioner could take the benefit of Section 13-A of the Act or not, but since it has been fully argued by both the sides on the facts admitted, it is now held that the Petitioner was not a "specified landlord" as to seek summary ejectment of his tenant. Consequently, the petition fails and is dismissed with costs. The parties have been directed to appear before the Rent Controller on 2.2.1987. The ejectment application be now disposed of accordingly.