

Ram Krishan Chhokar Vs The Jagmohan Singh Ahluwalia

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 31, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 11
East Punjab Urban Rent Restriction Act, 1949 â€” Section 13, 13A, 18A(8)

Citation: (1995) 111 PLR 533 : (1995) 2 RCR(Rent) 632

Hon'ble Judges: Amarjeet Chaudhary, J

Bench: Single Bench

Advocate: R.K. Chhokar, for the Appellant; Raj Kumar Sharma and Ashish Kapoor, for the Respondent

Final Decision: Dismissed

Judgement

Amarjeet Chaudhary, J.

The question which has cropped up for adjudication is whether an Advocate can be evicted from a scheduled

building by specified landlord u/s 13-A of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 and can such a tenant claim un-

ejectable tenancy? The history of the case is that there is a house No. 1199, Sector 8-C Chandigarh, the ownership of which has changed from

Smt. Rajinder Kaur Bains to Sh. Om Parkash Goel, Sr. Advocate and then to Sh. Jagmohan Singh Ahluwalia, present respondent. However, Sh.

Ram Krishan Chhokar remained the tenant of the abovenamed persons. Smt. Rajinder Kaur Bains and Sh. Om Parkash Goel had filed rent

applications seeking eviction of the petitioner unsuccessfully. Thereafter, the third owner of the house Sh. Jagmohan Singh Ahluwalia had also filed

rent application u/s 13-A of the East Punjab Urban Rent Restrictions Act, applicable to Chandigarh (hereinafter called the "rent Act) for ejectment

of the petitioner from House No. 1199, Sector 8-C, Chandigarh, claiming that he was specified landlord and had purchased the said house from

its owner Shri Om Parkash Goel on 16.4.1994 when the respondent was in service. The respondent-landlord was serving as D.L.M./Loco

Inspector at Sabarmati (Ahmedabad) in Western Railway and was due to retire on May 31, 1994. As mentioned earlier, prior to retirement the

abovesaid Jagmohan Singh Ahluwalia had filed the application on 24.9.1993 which was allowed by the learned Rent Controller, Chandigarh,

whereby the petition u/s 13-A of the Rent Act was accepted and application of the petitioner for leave to contest was rejected. The petitioner,

who is a practising lawyer at Chandigarh has filed a civil revision u/s 18-A (3) of the Rent Act challenging the order dated 11.1.1994. The petition

was filed by the respondent on 24.9.1993 duly supported by an affidavit to the effect that he does not own or possess any other suitable

accommodation in the local area of Chandigarh and he requires the accommodation for his own occupation and also supported by a certificate

issued by the Railway Administration that he would be retired from service on attaining the age of superannuation on 31.5.1994.

2. The Motion Bench admitted the Civil Revision and ordered its hearing on April 11, 1994, keeping in view the date of superannuation of the

respondent on May 31, 1993 and the dispossession of the petitioner was stayed during the pendency of the revision petition vide order dated

17.3.1994.

3. The case advanced by the petitioner is that he is a tenant in the house in question since February, 1969 having been let out by one Smt. Rajinder

Kaur Bains who had also sought his ejectment on the ground of personal necessity by way of R.A. No. 29 of 1979 which was rejected by the

Rent Controller Chandigarh vide order dated 9.3.1981 holding that the building was a scheduled building and that the petitioner/tenant could not

be evicted on the ground of personal necessity. Appeal filed against the said judgment also failed. That judgment had become final and barred all

future adjudications in this matter on the general principle of resjudicata. It is also the stand of the petitioner that Smt. Rajinder Kaur Bains

transferred the house in question to Shri Om Parkash Goel on 3.3.1983 who also instituted Rent Application No. 110 of 1984 for the ejectment of

the petitioner on the ground of personal necessity which was dismissed in default. Consequently the future ejectment proceedings against the

petitioner were further barred under Order IX, Rule 9, Civil Procedure Code. Not only this Shri Om Parkash Goel further filed two ejectment

applications bearing Nos. 4 and 5 of 1987 under Sections 13 and 13-A of the Rent Act respectively. Both the petitions were also dismissed and

Shri Goel filed an appeal against the order of Rent Controller passed in rent application No. 4 of 1987 and during the pendency thereof, the

respondent/landlord purchased the house and thereafter the appeal was also dismissed for non-prosecution, hence further supporting the case of

the petitioner on the principle of lis pendens.

4. Besides the aforementioned pleas the petitioners also argued that the respondent/landlord was not specified landlord. He was not issued a

certificate by the competent authority and the ownership of the respondent/landlord was not properly proved and he was a dummy person and the

sale was benami et cetera. The petitioner broadly based his case on the principle of res judicata, bar created by Order IX, Rule 9, Civil Procedure

Code, lis pendens and that Smt. Rajinder Kaur Bains could not confer a better title on Mr. Om Parkash Goel as the petitioner was un-ejectable

tenant. So Mr. Goel also could not confer a better title on the respondent accordingly.

5. In support of his contention, the petitioner relied upon Mehtab Singh Vs. Tilak Raj Arora and Another, Lal Chand (Dead) by Lrs. and Others

Vs. Radha Krishan, , Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others, , Jai Kishan Dass and Others Vs. Smt

Nirmala Devi and Others, , Kalawathibai v. Sairvabai 1991 S.C. 1581 The Regional Director, Employees"State Insurance Corporation Vs. M/s.

High Land Coffee Works of P.F.X. Saldanha and Sons and another, , Raja Reshee Case Law Vs. Jarilal Mahapatra and Others, Tarini Charan

Bhattacharjee and Others Vs. Kedar Nath Haldar, Govindeswami Pillai v. Sivarama Rao AIR 1934 Mad 292 Surindra Nath v. Saralia Hindi

Mahajani School AIR 1950 P&H 282 Santa Singh Gopal Singh and Others Vs. Rajinder Singh Bur Singh and Others, Mst. Parmeshwari

(Deceased) Represented by her Legal Representatives Vs. Mst. Santokhi, Simla Banking and Industrial Co. Ltd. Vs. Firm Luddar Mal Khushi

Ram and Others, Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, and Gowri Kour v. Audh Kour ILR 10 Cal 1087.

6. On the other hand the counsel for the respondent landlord argued that his case is squarely covered under the provision of Section 13A of the

Rent Act as he does not own and possess any building at Chandigarh and that the respondent has also retired from the Government service on

31.5.1994 and that the certificate was issued by the Competent Authority and that he was a bona fide purchaser of the house.

7. The counsel for the respondent also cited Dr. DM. Malhotra v. Kartar Singh 1988 1 P.L.R. 394 (S.C.) Gurdarshan Singh Mann v. Shri

Manmohan Singh Kapoor 1989 H.R.R. 315, Jagdish Lal and Anr. v. feet Parkash 1989 H.R.R. 602 and Joginder Singh v. Nahar Singh 1989(1)

R.L.R. 563.

8. I have considered the arguments of the petitioner in person and counsel for the respondent advanced at the Bar and have examined the record

minutely and perused the law cited by the parties.

9. Before dealing with the respective contentions of the parties it is necessary to consider the relevant provisions of Section 13-A of the Rent Act

which is reproduced below:-

13-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 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 immediate the possession of such residential building or scheduled

building or any part of parts of such building if it is let out in part or parts.

10. The perusal of Section 13-A (supra) leaves no doubt that this provision excludes 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) customs or usage to the contrary.

11. Bare persual of this Section shows that once the owner/landlord satisfies the conditions of Section 13-A then he has 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. It

goes without saying that Rent Act is a complete code and the provisions of other Acts or law will not be applicable to the proceedings under this

Act to the extent there is specific provision under the Act.

12. In order to satisfy myself about the genuineness of the Sale Deed and the retirement of the respondent/landlord, I had called for the original

sale deed and the retirement order of the respondent/landlord. Though copy of Sale Deed and certificate showing the date of retirement of

respondent on superannuation w.e.f. 31.5.1994 issued by the Sr. D.M.E. were already on the record, yet I had called for the same as the

petitioner was arguing vehemently that the respondent landlord was dummy person and he was not a specified landlord and certificate was not

issued by the competent authority in his favour et cetera. Original sale deed is in favour of the respondent and the certificate was issued by the

authority who was competent to remove him from service.

13. On the court query the petitioner admitted that he had paid rent to the respondent/landlord in rent petition filed by the respondent/landlord in

the Court of Rent Controller and the petitioner could also not dispute that the respondent/landlord who was present in the court was not a person

who purchased the property, whose photograph is also attested and pasted on his identity cum-retirement card issued by the Railway

Administration.

14. Now, I will deal with the pleas raised by the petitioner one by one.

15. As regards res judicata, the plea taken by the petitioner is not sustainable in as much as the earlier petition filed by Smt. Rajinder Kaur Bains

and Sh. Om Parkash Goel were on the grounds of personal necessity and the nature of building being scheduled, the said ground was not available

either to Smt. Rajinder Kaur Bains or Sh. Om Parkash Goel u/s 13 of the Rent Act as the petitioner who is an advocate was tenant under them.

The second application filed by Mr. Om Parkash Goel as a specified landlord could not succeed as he had purchased the house in question after

his retirement. It is well settled that the landlord can take the benefit of Section 13-A as a specified landlord only if he is owner of the building on

the date of retirement. Admittedly the respondent/landlord had purchased the house in question on 16.4.1993 and had filed the petition u/s 13-A

on 24.9.1993 who retired from the Government service on 31.5.1994. Hence, he falls under the definition of specified landlord which was not the

case in respect of Smt. Rajinder Kaur Bains and Sh. Om Parkash Goel. So the earlier litigation initiated by the previous owners cannot operate as

res judicata as it was not between the same parties and issue involved was not the same and even cause of action was different. Hence, the plea of

res judicata is not available to the petitioner tenant. The authorities relied upon the petitioner on this point cannot be applied to the facts of the case

which I will discuss in the subsequent paras, rather principle incorporated u/s 14 of the Act applies to the proceeding under Rent Act which is not

attracted in the facts and circumstances of the case.

16. As regards contention of the petitioner regarding Bar under Order IX, Rule 9, Civil Procedure Code, It is suffice to say that no proceedings

were initiated by the present landlord and it is not on the same cause of action on which the earlier proceedings were initiated, hence even if, for the

sake of arguments, the provisions of Order IX, Rule 9, Civil Procedure Code, are made applicable to the rent proceeding, the petitioner is not

going to gain anything.

17. So far as lis pendens is concerned, the litigation between Smt. Rajinder Kaur Bains and the petitioner or between Shri Om Parkash Goel and

the petitioner cannot stand in the way of Respondent in view of the provision of Section 13 A of the Act as this provision excludes all other law or

provisions of this Act and contract or agreement which is contrary to Section 13 A. So the petitioner does not stand to gain on this count also.

18. There is no merit in the plea of the petitioner/ tenant that he was an un-ejectable tenant. There is no such terminology under the Rent Act nor

there is any agreement or contract on the record, so the petitioner is not entitled to continue for ever as a tenant. Even otherwise such an,

agreement is not enforceable in view of provision of Section 13 A itself.

19. On the other hand, there is force in the contention of the learned counsel for the respondent that in such a case the principle of resjudicata is

not applicable and that the earlier litigation and second litigation should be between the same parties and on the same cause of action, whereas in

the present case parties are different, points at issue are different and the circumstances/cause of action are changed.

20. In Dr. D.M. Malhotra's case (supra) relied upon by the respondent, it has been held that landlord must be a specified landlord at the time of

his retirement qua the premises in dispute.

21. The same proposition has been laid down in Gurdarshan Singh Mann's case (supra). It was also argued by the learned counsel for the

respondent that all the authorities cited by the petitioner-tenant were on transfer of properties or other Acts under the general law which were not

applicable to the rent proceedings.

22. Now I will deal with the authorities cited by the petitioner.

23. In Mehtab Singh's case (supra) it was held that provisions of Order XXIII Rule 1 of CPC are applicable to rent petition also. However, the

said authority is distinguishable because the petition was filed on the same cause of action and the same relief was claimed and it was held in the

said authority that if such second petition is allowed, it will be violative of Maxim that no one can be vexed twice over the same cause of action

whereas in the present case the facts are clearly different.

24. In Lal Chand's case (supra), the position was the same that the second petition was filed for ejectment of the tenant on the ground on which

the earlier petition was got dismissed as withdrawn without liberty to file fresh one. Hence it was held as barred and not maintainable whereas in

the present case the position is entirely different. Similarly in Ishwardas's case (supra) the cause of action and issues were which were in the earlier

litigation and it was held that even if some party has claimed a right under some other party in earlier litigation, they will be governed by the

principle of res judicata. But here the respondent-landlord has not claimed anything under earlier parties rather he is claiming the relief in his own

independent right and the cause of action and issues are different. Similarly, Khemchand Shankar Chaudhary" case (supra) deals with Section 54

of Transfer of Property Act and deal with the partition of Estate and separation of the shares, which is not the situation in the present case.

Similarly, Jai Kishan Dass's case is based on principle of res judicata in which it is held that finding in the earlier litigation between the parties or

their predecessor on a particular issue was operative as res judicata. The case of Kalawatibai (supra) is a proposition of Hindu Succession Act

and right of property of Hindu women known as limited owner which is not even remotely connected with the present case. The Regional Director,

Employees State Insurance Corporation's case (supra) deals with the provision of Employees State Insurance Act, 1948 and defines the seasonal

factory which has nothing to do with the controversy in the present case. In Lal Chand's case (supra) the stress has also been laid down on

principle of res judicata in the larger public interest that all the litigation must sooner or later come to an end. There is no dispute about the legal

proposition. This authority is not applicable to the present case. Similarly, Raja Rashee's case (supra) relates to Order XXI Rule 100 of CPC and

deals with the legal representatives of the auction purchaser under the Bengal Tenancy Act which has no relevancy to the present case. Similarly

Tarini Charan Bhattacharji's case (supra) deals with the provisions of Section 11 of the CPC which have been made applicable even if there is

alteration in the law by the subsequent decision. However, it has been held in the said authority that different interpretation of law by judicial

decision does not effect the principle of res judicata, but the legislature may do it, that is what has happened in the present case by making special

provision u/s 13-A of the Act, special rights have been created in favour of the specified landlord. So this authority goes against the petitioner. As

regards Mst. Sant Kaur's case (supra), in support of doctrine of lis penden's, the petitioner is not going to gain anything because this authority is

on pre-emption, which is not applicable to the Rent Act and moreover in the cited case the vendee had transferred the suit property to the better

claimant/pre-emptor than the plaintiff after expiry of period of limitation for filing suit. So the rule of lis pendens was applied in that case.

Govindaswami's case (supra) is an authority on res judicata in case of assignee substituted in place of holder of pronote in the schedule of

creditors after notice to the holder and it was held that the principle of res judicata will be applicable, which is not the case here. In Surinder

Nath's case, (supra) it is held that statute are made for specific purpose. The effect should not be given to any departure from ordinary law. So this

authority is of no help to the petitioner. Similarly Santa Singh's case (supra) deals with Section 52 of the Transfer of Property Act and it was held

that this Section is not applicable to the forcible possession. The position in that case was that "A" filed a suit for possession and declaration

against "B" in 1940. "B" was dispossessed by "A" during the pendency of suit in 1945 and "B" filed a suit for possession in 1959 after 12 years

on the ground of lis pendens but the contention of "B" was rejected on the ground of limitation. Hence, this authority is not applicable to the

present case. Similarly, Mst. Parmeshwari's case (Supra) deals with the Hindu Succession Act - right of a female who is possessed of land under

gift made by the limited owner prior to enforcement of Act held that she does not become full owner after the enforcement of Act, which is not

applicable to the present case. The Simla Banking's case (Supra) is based upon the principle of subrogation and Transfer of Property Act, but the

petitioner is trying to convince this court with his plea of res judicata and lis pendens which judgment is not applicable at all to the present case as

the respondent-landlord is claiming the possession of the building in his own right under the special statute. Similarly, Mst. Gindori's case (Supra)

deals with the Transfer of Property Act and not to the Special Act like the Rent Restriction Act and it was a case where the suit filed by the G

against D decreed where G was held owner and D as tenant. D transferred his rights during the pendency of the suit to S. The plaintiff "S" cannot

re-agitate the question of tenancy in subsequent suit for ejectment brought against him. Similarly, in Gowri Koer's case (supra), it was held that

where a Division Bench of the High Court decided as a point of law, that a property had not passed under a certain deed of sale, and,

subsequently, the decision on that point of law was in another case disapproved of by Full Bench; the decision of the Division Bench (where the

same plaintiff has again sued to recover the same property relying on the same deed of sale), is not res-judicata, because it may have been founded

on an erroneous view of the law, or a view of the law which a Full Bench has subsequently disapproved. This authority also goes against the

petitioner.

25. So keeping in view the bare provision of Section 13-A of the Rent Act and the fact that the respondent-landlord fulfils all the requirements duly

supported by an affidavit and certificate issued by the competent authority, which have been placed on the file of learned Rent Controller, the

respondent is held to be specified landlord. The contention of the petitioner that the certificate produced in the Code is not a genuine one as the

same was not issued by the competent authority loses its importance as the retirement orders were produced in the Court. I see no ground for

interference in the case and the respondent-landlord is held entitled to recover the possession from the petitioner. Suffice it to say that sufficient

safeguard has been provided under the Rent Act, if the landlord does not occupy the building after getting it vacated from his tenant, in shape of

Section 19, Sub-section 2(a) of the Rent Act, which provides that if a landlord does not occupy the accommodation for a continuous period of

three months from the date of vacation or lets out the whole or any part of the building from which the tenant was evicted to any person other than

the tenant in contravention of the provision of Sub-section 4(A) of Section 13, shall be punishable for imprisonment which may extend to six

months or a fine which may extend to Rs. 1000/-.

26. Before parting with the judgment, I would also like to dispose of Civil Misc. No. 10130 of 1994 filed by the petitioner for placing on record

the detailed facts as supplementary to the earlier affidavit for leave to contest. The respondent-landlord contested this application by filing a

detailed reply and controverted the contention raised by the petitioner in this petition and raised preliminary objection during the arguments that the

tenant cannot be allowed to supplement the affidavit at this stage. I agree with the contention of the counsel for the respondents landlord that such

an affidavit cannot be accepted at this stage as whatever defence was disclosed by the petitioner in support of his application for leave to

defend/contest, was to be placed before the Rent Controller and not at revisional stage when only legality and propriety of the order of Rent

Controller is to be seen. Hence, I reject the Civil Misc. No. 1013 of 1994.

27. For the reasons recorded above, there is no merit in the revision petition and the same is hereby dismissed leaving the parties to bear their own

cost. However though the respondent-landlord retired on 31.5.1994 and had filed the rent application on 24th September, 1993 and had no

accommodation at Chandigarh, yet in the interest of justice, the petitioner is allowed one month's time to vacate the premises subject to the

condition that he pays upto date arrears of rent including for the period of one month during which he is to vacate the premises to the landlord

within week from today and also files an undertaking that he would vacate the premises within one month from today and the said undertaking is

filed in this Court within one week from today.