

(2005) 04 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1129 of 2005

Bharat Bhushan and Another

APPELLANT

Vs

Dr. K.K. Saini and Others

RESPONDENT

Date of Decision: April 25, 2005

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 12, 13, 13A, 18(8)
- Evidence Act, 1872 - Section 109, 116

Citation: (2005) 2 CivCC 370 : (2005) 141 PLR 221 : (2005) 1 RCR(Rent) 565

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: B.R. Mahajan, for the Appellant; Sudeep Mahajan, for the Respondent

Judgement

M.M. Kumar, J.

This is tenant's petition filed under Sub-section (8) of Section 18 of the East Punjab Urban Rent Restriction Act, 1949 (for brevity, "the Act") challenging ejectment order dated 24.12.2005 passed by the Rent Controller, Amritsar. The Rent Controller has allowed the ejectment application of the landlord-respondents filed u/s 13-A of the Act and has ordered ejectment of the tenant-petitioners on the ground that the landlord-respondent is a specified landlord and need to occupy the demised premises for his own use and occupation.

2. Landlord-respondents 1 and 2 filed an application u/s 13-A of the Act on 3.2.2004 claiming that Dr. K.K. Sanin applicant-respondent I was owner of the demised premises bearing No. 14, Model Town, Amritsar. It was claimed that he is a specified landlord as he has been working as Director Medical with Directorate General, New Delhi and was to retire on 31.12.2004. The landlord-respondents also claimed that accommodation was insufficient and he required demised premises for his personal use and occupation. It was, however, pleaded that applicant-respondent 2, namely, Smt. Sita Devi, has been realising the rent from the tenant-petitioners.

3. The tenant-petitioners contested the claim of the landlord-respondents and filed an application for leave to defend. It was, inter alia, pleaded that there was no relationship of landlord and tenant between the parties as the demised premises was let out by application-respondent 2 to the predecessor-in-interest of the tenant-petitioners. It was claimed that respondent No.2 is not a "specified landlord" within the meaning of Section 13-A of the Act. It was claimed that the certificate attached by him was issued by a competent authority and the same was not admissible in evidence. Even the ownership of landlord-respondent 1 and on that basis his locus standi to file the ejectment application was disputed. The tenant-petitioners further pointed out that the landlord-respondents were already in possession of sufficient accommodation and ejectment application filed earlier by the landlord- respondents u/s 13 of the Act was pending consideration of the Rent Controller.

4. The Rent Controller after considering rival contentions and pleadings of the parties rejected the plea that the landlord-respondent 1 was not a specified landlord within the meaning of Section 13-A of the Act. The relevant observations made by the Rent Controller in this regard read as under:

" ...Perusal of the The reveals that the certificate dated 7.4.2003 has issued by the Additional Director General of Police (Pers-1) Asstt. Director wherein it was mentioned that Shri S.K.Saini, Director (Medical) (IIILA-962) was going to retire from Government Service w.e.f. 31.12.2004 afternoon. As per the notification dated 3.11.1958 all the orders and other instruments made in the name of President are to be authenticated by the Deputy Director/Assistant Director in the Head Quarters/Office of Central Reserve Police Force. The above mentioned certificate was issued by the Assistant Director Shri Mann Singh Rawat, wherein it is stated in unequivocal terms that Shri S.K.Saini will retire from his service on 31.12.2004 on attaining the age of superannuation, it stands proved from the above mentioned certificate that the same was issued by the competent authority. Thus, Dr. K.K. Saini, being the specified landlord comes within the purview of specified landlord as he was holding the post in connection with the affairs of Union of India...."

5. On the question as to whether landlord-respondent 1 was the owner of the demised premises, the Rent Controller, has placed reliance on a sale-deed dated 11.11.1953. It has been concluded that the sale-deed proves the fact that the demised premises was vested with landlord-respondent 1 since the execution of the sale-deed. It has further been found from the affidavit filed by respondent No.2 Smt. Sita Devi that she was merely collecting the rent from the tenant-petitioners in respect of the demised premises because landlord-respondent I had remained posted outside Amritsar. The Rent. Controller placing reliance on two judgments of the Supreme Court in the cases of [M.M. Quasim Vs. Manohar Lal Sharma and others](#), and K.L Dewan v. Harbhajan S. Parihar 2002 (1)RCR 214 has taken the view that even if the property was let out to Shri Baikar Ram predecessor-in-interest of the

tenant-petitioners by landlord-respondent 2, the landlord-respondent 1 would continue to be the owner as well as the landlord.

6. Another contention that the landlord-respondents had sufficient accommodation for their residential purposes in property Nos. 14 and 15 as per site plan was rejected by the Rent Controller by observing that the aforementioned question is not to be adjudicated in an application u/s 13-A of the Act as the landlord is the best judge to decide the sufficiency of accommodation. Reference has been made by the Rent Controller to the judgment of the Supreme Court in the case of [Zenobia Bhanot Vs. P.K. Vasudeva and another](#), and it has been held that the Rent Controller had no authority to record a finding with regard to sufficiency of accommodation with the landlord or his further requirement.

7. Learned Rent Controller also rejected the argument that the proceedings in the application u/s 13-A of the Act were liable to be stayed as an application u/s 13 of the Act on similar grounds was pending consideration. Learned Rent Controller has placed reliance on a judgment of this Court in the case of S.K. Sharma v. Pran Seth 1992 H.R.R. 536. The view taken is that the proceedings u/s 13-A and 13 of the Act are distinct and different inasmuch as an expeditious remedy has been provided to a specified landlord u/s 13-A of the Act for recovering immediate possession of residential scheduled building. Reliance has also been placed on another judgment of this Court in Prof. Bhupinder Singh v. Schinder Singh 1992 H.R.R. 446 for the same argument.

8. On the basis of aforementioned findings, the Rent Controller rejected the argument of the tenant-petitioners based on the judgment of the Supreme Court in the case of Inderjeet Kaur v. Nirpal Singh 2001(1) S.C.C. 706 in which it was held that leave to defend to the tenant should be allowed if he brings to the notice of Rent Controller such facts which would dis-entitle a landlord from obtaining an order of ejectment against a tenant.

9. Mr. B.R. Mahajan, learned Counsel for the tenant-petitioners has argued that leave to defend has to be granted in cases of additional accommodation. In support of his submission, learned Counsel has placed reliance on an order passed by the Supreme Court in Civil Appeal No. 120 of 1990 arising out of SLP (C) No. 236 of 1990, decided on 11.1.1990 titled as Dr. S.N. Mehra v. D.D. Malik. Learned Counsel has also placed reliance on a judgment of this Court in Ravinder Nath Khanna v. T.R. Lakhanpal 1990 H.R.R. 316 in which reliance has been placed on the order of the Supreme Court. According to the learned Counsel, the question of additional accommodation cannot be considered in a summary manner and leave to defend must be granted. For the same view he has also placed reliance on numerous other judgments of this Court including the Division Bench judgment in K.G. Pillai v. Subhash Chander Pathania 1990(2) RCR 386. Learned Counsel has further argued that the grounds disclosed in the application for leave to defend along with the affidavit filed in support thereof would show that if any of the grounds raised by the

tenant-petitioners is accepted, then it would dis-entitle the landlord-respondent to the grant of an order of ejectment. Learned Counsel has maintained that at that stage, the Rent Controller was required to apply his mind, whether the landlord would be dis-entitled to seek eviction in the event of acceptance of any of the ground, rather than deciding those pleas without affording an opportunity to the tenant-petitioners to prove their case. In support of his submission, learned Counsel has placed reliance on a judgment of the Supreme Court in the case of [Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal](#), .

10. Learned Counsel has also urged that the tenant-petitioners have denied the relationship with landlord-respondent 1 and the aforementioned question is pending consideration in an application filed u/s 13 of the Act before the Rent Controller. He has emphasized that the aforementioned question has been decided by the Rent Controller without affording any opportunity to the tenant-petitioners. Learned Counsel has also emphasized that respondent No.2 is not entitled to the benefit of Section 13-A of the Act as she is not a specified landlord.

11. Mr. Sudeep Mahajan, learned Counsel for the landlord-respondents has argued that no triable issues have been raised which may warrant grant of leave to defend to the tenant-petitioners. According to the learned Counsel, the tenant is estopped from denying the relationship as per provisions of Section 116 read with Section 109 of the Indian Evidence Act, 1872. Learned Counsel has maintained that landlord-respondent 1 has not been living in the demised premises, although Kamlesh Rani wife of landlord-respondent 1 has been running her clinic in property No. 15 and Smt. Sita Devi who is mother of landlord-respondent 1 along with her daughter Krishna Devi are residing in the demised premises, Krishna Devi also has two children, namely, one son and a daughter who are also residing in that property. Learned Counsel has referred to paragraph IX of the impugned order wherein it has been pointed out that tenant-petitioners have been residing in property No. 14 and some portion of the property is rented out to one Kirti Kumar. The family members of landlord-respondent 1 are residing in property No. 15 and some portion of the said property has been rented out to one tenant Shri G.B. Singh which is completely insufficient for the residential purpose of landlord-respondent 1. Mr. Mahajan has further argued that there is no rule of law that whenever additional accommodation is required then leave to defend must be granted irrespective of any other fact.

12. Having heard the learned Counsel, at a considerable length, I am of the view that no ground is made out for interfering in the well reasoned order of the Rent Controller. It has been found that there is no other property in possession of the landlord-respondents nor they have vacated any other property in the urban area of Amritsar without sufficient cause after the commencement of East Punjab Urban Rent Restriction (Amendment) Act, 1985. It has also been found that landlord-respondent 1 is a specified landlord u/s 13-A of the Act as he was to retire

from service on 31.12.2004 which has been within a period of one year when the ejectment application was filed on 3.2.2004. It has also been found that landlord-respondent 1 is the owner of the property as he has produced sale-deed dated 11.11.1953 which categorically shows that he had purchased the property from one Karam Chand, It may be true that rent was collected by Smt. Sita Devi respondent 2 who is mother of landlord-respondent 1. But on that basis alone, it cannot be said that landlord-respondent 1 was not the landlord and would not be entitled to invoke Section 13-A of the Act. Reliance placed by the Rent Controller on a judgment of the Supreme Court in MM, Quasin's case (supra) is meritorious and does not call for interference.

13. It is well settled that in the context of Indian social conditions, the expression "for his own occupation" may have to be construed liberally as has been opined by the Supreme Court in the case of [Joginder Pal Vs. Naval Kishore Behal](#), . Therefore, joining of respondent 2 as party to the ejectment petition is justified as she is the mother of landlord-respondent 1 who used to collect the rent on his behalf from the tenant-petitioners or their predecessors-in-interest. There is no evidence to the contrary which may prima facie establish that landlord-respondent 1 was not the owner and that he was not the landlord.

14. The question whether there is a rule of law for the proposition that whenever a specified-landlord requires additional accommodation, then leave to defend must be granted and summary proceedings cannot be undertaken or that it would depend on the facts and circumstances of each case. The question can be answered from the order by the Supreme Court in the case of Dr. S.N. Mehra (supra). In that case, the landlord was in possession of ground floor and the entire second floor. The tenant was occupying the first floor. The question whether the landlord also required the first floor was considered, and it was found that the same can be decided after giving adequate opportunity to the tenant, rather than deciding the issue in summary manner. Similar were the facts in Ravinder Nath Khanna 's case (supra) on which reliance has been placed by the learned Counsel and the other cases. However, in the present case a specified landlord who was serving outside Amritsar is not himself in possession of any part of the demised premises. He has retired from service on 31.12.2004. He has no other accommodation in the urban area of Amritsar. Therefore, in the facts and circumstances of this case, it cannot be said that it is merely a case of additional accommodation if examined from the point of view of landlord-respondent No. 1. Moreover, I do not find existence of any rule of law to the effect that whenever additional accommodation is claimed, leave to contest to the tenant must be granted. It would depend on the facts of individual cases. It appears to me that in cases where the landlord is already in possession of a portion of accommodation, the summary procedure as provided by Section 13-A of the Act may not be a choiceful option because it can afford to brook delay as there would be no real hurry. However, in case like the present one, such a situation would be missing.

Therefore, I do not find any substance in the contention raised by the learned Counsel for the tenant-petitioner.

15. The other argument that relationship of landlord and tenant between the parties has been denied would not require any detailed consideration in view of the categorical findings of the Rent Controller. There is no evidence on record produced by the tenant-petitioner which may present a triable issue on that basis. The pendency of the ejectment petition filed by the landlord-respondent u/s 13 of the Act would also not constitute sufficient basis as there is marked difference between the nature of proceedings initiated u/s 12 and 13-A of the Act. The Rent Controller has rightly placed reliance on a judgment of this Court in S.K. Sharma's case (supra) and Prof. Bhupinder Singh 's case (supra). Therefore, there is no legal infirmity in the order passed by the Rent Controller.

16. For the reasons seated above, this petition fails and the same is dismissed.