

**(2011) 05 P&H CK 0301**

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

**Case No:** Civil Revision No. 3690 of 2007

Vinod Kumar Jain

APPELLANT

Vs

M/s Harindera Scientific Works,  
Gur Bazar, Sadar, Ambala Cantt.

RESPONDENT

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**Date of Decision:** May 18, 2011

**Acts Referred:**

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2), 13(3), 13A, 13A(1A)

**Citation:** (2011) 163 PLR 762

**Hon'ble Judges:** Hemant Gupta, J; A.N. Jindal, J

**Bench:** Division Bench

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**Judgement**

Hemant Gupta, J.

The matter has been placed before us in pursuance of an order passed by the learned Single Judge of this Court on 14.12.2009, whereby the question whether a specified landlord can seek eviction of his tenant in a summary manner from a non-residential building in terms of Section 13-A(1A) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short "the Act") was sought to be decided by larger Bench.

2. Some facts in brief and legislative provisions would be necessary to note. The petitioner herein sought the ejectment of the respondent from a tenanted premises consisting of a room in terms of Section 13-A(1A) of the Act. The said petition was dismissed by the learned Rent Controller, inter-alia, on the ground that such provisions would be applicable only to the residential premises and not to commercial premises (non residential building). It was further held that neither the premises in question are residential nor the petitioner-landlord requires the same for residential purposes.

3. Learned Single Judge of this Court while hearing the present petition observed that after the Judgment of the Hon"ble Supreme Court in Harbilas Rai Bansal v. the State of Punjab, (1996-1) 112 PLR 227, in respect of the provisions of the East Punjab Urban Rent Restriction Act, 1949 and the Division Bench judgment of this Court in Ved Parkash Gupta v. State of Haryana and Another (1997-2)116 PLR 775 in respect of the provisions of the Act, there is no restriction of eviction of the tenant from a non residential building for a bona-fide residential use. Therefore, the question posed was whether a specified landlord can be denied eviction of his tenant from a "non-residential building" u/s 13-A of the Act, when sub-section (1-A) thereof expressly enables him to seek eviction of the tenant on the ground mentioned in sub-clause (i) of clause (a) of Sub-section (3) of Section 13 of the Act.

4. The Act was enacted in the year 1973 after repealing of the East Punjab Urban Rent Restriction Act, 1949 (as applicable to Haryana). Sub-section (2) of Section 13 of the Act, provides for the grounds of eviction, which are applicable to all classes of tenanted land and buildings. Whereas, the Section 13(3)(a) of the Act provides for additional grounds of eviction in respect of residential building; sub-clause (b) provides for additional grounds of eviction in the case of rented land and (c) provides additional grounds of eviction in the case of any building or rented land.

5. Subsequently, Section 13-A was inserted by Haryana Act No. 11 of 1986 granting summary right of eviction to a landlord, who is and was a member of armed forces of the Union of India within one year prior to or after the date of his retirement or discharge or within one year from the date of commencement of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1986. Sub Section (1-A) was inserted by Haryana Act No. 10 of 1990, whereby a landlord who is and was an employee of Government of India or Government of Haryana or of any State owned Board or Corporation of Haryana within one year, were given summary right of eviction. However, the summary right of eviction was available under sub clause (1) Or sub clause (1-A) of Section 13-A of the Act, on the grounds mentioned in sub clause (i) of clause (a) of Sub section (3) of Section 13 of the Act. At this stage, the relevant extracts of the statutory provisions are required to be reproduced:-

13. Eviction of tenants.- (1) A tenant in possession of building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied.-

x x x x

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(a) in the case of a residential building, if,-

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;

X X X X

(3-A) In the case of a non-residential building, a landlord who stands retired or discharged from the armed forces of the Union of India or who was a minor son at the time of death of the deceased landlord, and requires it for his personal use, may within a period of three years from the date of retirement or discharge or attaining the age of eighteen years, as the case may be, apply to the Controller for an order directing the tenant to put the landlord in possession. Provided that where the landlord has obtained possession of a non-residential building under this sub-section, he shall not be entitled to apply again for the possession of any other nonresidential building of the same class.

X X X X

13-A Special Procedure for disposal of application in certain cases.-(l) Where the application is made by a landlord who is or was a member of the Armed Forces of the Union of India within one year prior to or after the date of his retirement or discharge or within one year from the date of commencement of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1986, whichever is later, on the ground mentioned in subclause (i) of clause (a) of sub-section (3) of section 13, the same shall be dealt with in accordance with the procedure specified in this section,

X X X X

(1-A) Where an application is made by a landlord who is or was an employee of Government of India or of Government of Haryana or of any State owned Board or Corporation of Haryana within one year prior to or after the date of his retirement or within one year from the date of commencement of Haryana Urban (Control of Rent and Eviction) Amendment Act, 1990, whichever is later, on the ground mentioned in sub-clause (i) of clause (a) of sub-section (3) of section 13, the same shall be dealt with in accordance with the procedure specified in this section.

6. After the right of summary eviction was granted to certain categories of landlords as mentioned above, the Hon"ble Supreme Court in Harbilas Rai Bansal's case (supra) has found that restricting right of eviction from a non-residential building for bona-fide perusal use, is arbitrary and discriminatory and thus struck down the amendment carried out in the East Punjab Urban Rent Restriction Act, 1949, vide Act No. 29 of 1956.

7. Following the aforesaid judgment, the restriction of eviction in respect of a tenant from a residential building on a ground of personal requirement was struck down by the Division Bench of this Court in Ved Parkash Gupta's case (supra). The Hon"ble Supreme Court in [Mohinder Prasad Jain Vs. Manohar Lal Jain](#), approved the

judgment in Ved Parkash Gupta's case (supra). Recently, the Hon'ble Supreme Court in [Ashok Kumar Vs. Ved Prakash and Others,](#), has held to the following effect:-

14. Accordingly, in view of our discussions made hereinabove and in view of the observations made by this Court in the aforesaid two decisions, the only conclusion that can be drawn is that a landlord can seek eviction of his tenant on the ground of bona-fide requirement not only from residential premises, but also from a nonresidential premises under the East Punjab Rent Act. This view was also approved by a three-Judge Bench decision of this Court in Rakesh Vij v. Dr. Raminder Pal Singh Sethi, (2005) 8 SCC 504, in which it has been held that eviction of a tenant who is occupying a non-residential premises of a landlord, on the ground of bona-fide requirement under the East Punjab Rent Act, would be available in which the decision in Harbilas case was followed.

15. Following the decision of Harbilas case and the other decisions referred to hereinabove, this Court in a recent decision in [Mohinder Prasad Jain Vs. Manohar Lal Jain,](#), held that a landlord is entitled to seek eviction of a tenant under the Act from a non-residential building on the ground that the landlord bona-fide required the tenanted premises for his own use and occupation. In para 5 of the said decision in that case, this Court observed as under: (SCC p.726)

5. We may notice that this Court in Harbilas Rai Bansal v. State of Punjab, held such a provision to be unconstitutional, whereas in [Gian Devi Anand Vs. Jeevan Kumar and Others,](#) somewhat different note was struck. The question recently fell for consideration before a three-Judge Bench of this Court in Rakesh "Vij v. Dr. Raminder Pal Singh Sethi wherein this Court upheld the ratio laid down in Harbilas Rai Bansal, stating: (Rakesh Vij case, SCC p.515 page 14).

14....

18. We allow the appeal, set aside the impugned judgment of the High Court, declare the abovesaid provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act, which were operating before coming into force of the amendment. The net result is that a landlord-under the Act- can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use.

(Emphasis supplied).

In view of the aforesaid decision of this Court, which followed the earlier decisions although on different Rent Acts, we need not delve into this question any further but our judgment will not be completed if we do not consider the decisions cited by the learned counsel on behalf of the appellant.

8. In view of the aforesaid judgments, learned counsel for the petitioner argued that since the summary right of eviction u/s 13-A has been given by reference to the provisions of Section 13(3)(a)(i) and that the aforesaid provisions do not support any

distinction between the residential and non residential building in view of the Supreme Court judgments, therefore, the petitioner is entitled to seek eviction of a tenant from a non residential building as well.

9. On the other hand, learned counsel for the tenant has argued that the judgment in Harbilas Rai's case (supra), cannot be applied, as it is for the legislature to provide the grounds of eviction as it may decide and consider appropriate as per the requirements of the landlord or limited category of landlords prevailing in the state. It is contended that in Harbilas Rai Bansal's case (supra) the ground of eviction for personal requirement was available in respect of a nonresidential building, but the same was taken away by Act No. 29 of 1956. It is the said amendment which was found to be discriminatory, whereas while enacting the Haryana Act in the year 1973, the grounds of eviction in respect of well defined category of building were conferred. Therefore, the right of eviction conferred on certain categories of landlord cannot be said to be discriminatory. The legislative intent is clear and categorical as not to grant right of eviction of a tenant of a non residential building on the ground of bona-fide personal requirement when the state legislature enacted sub-section (3-A). The legislature manifested that only certain categories of landlords can seek eviction of a tenant from a nonresidential building on the ground of bona-fide personal requirement. By such insertion, all other categories of landlords have been excluded to seek eviction of a tenant of a non-residential building on the ground of bona-fide personal requirement. It is contended that while inserting sub clause (1-A) in Section 13-A of the Act, the statement of object and reasons was to provide summary right of eviction of a tenant from a residential building alone. The following object and reasons were relied upon:-

Government employees, on their transfer, have necessarily to let their buildings on rent. On retirement it could only be right that they have recourse to summary proceedings to be put in possession of their house back in quickest possible time. Therefore, on the analogy of armed forces employees, the provisions of the proposed amendment are being made applicable to the employees of State Owned Boards/Corporations of Haryana, Government employees of Haryana and the Central Government employees. Hence, the Bill.

10. It is contended that Constitutional Bench judgment in [Gian Devi Anand Vs. Jeevan Kumar and Others](#), has held that the state legislature is competent to provide different grounds of eviction in respect of the residential and non-residential buildings. It is also contended that in [Satyawati Sharma \(Dead\) by LRs. Vs. Union of India \(UOI\) and Another](#), the distinction between non-residential and residential building for the purpose of eviction on the ground of bona-fide personal requirement has been found to be discriminatory in a case arising out of Delhi Rent Control Act but the previous judgment reported as [Gauri Shanker and others Vs. Union of India and others](#), has not been noticed

11. It is also contended that the forms prescribing procedure for eviction u/s 13-A of the Act is in respect of the residential building alone. Therefore, the tenant of a non-residential building cannot be evicted in a summary manner u/s 13-A of the Act.

12. Before we consider the provisions of the Act, we may notice that the provisions of the parent Act i.e. East Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No. 2 of 1985 conferred summary right of eviction to a "specified landlord" only in respect of a residential building or a scheduled building. The provisions of Section 13-A of the Punjab Act is complete Code in itself i.e. the grounds of eviction and the procedure. While interpreting the provisions of the Punjab Act, this Court in numerous judgments have taken the view that the right of eviction is available only in respect of a residential building or a scheduled building, which is also a residential building. In the Haryana Act, the expression "specified landlord" is not used and that the Section 13-A of the Act provides for summary right of eviction but is not an independent right of eviction. Such right of eviction is by reference to the provisions of Section 13(3) (a)(i) of the Act. Therefore, the provisions of Section 13(3)(a)(i) of the Act, as interpreted by the Hon"ble Supreme Court have to be considered while considering the scope of summary right of eviction conferred u/s 13-A of the Act.

13. Though it is for the legislature to confer right of eviction and also to provide for procedure for eviction in respect of buildings or class of building and confer such right on a landlord or a specific category of landlords, but the distinction between the residential and non residential building has not found favour with the Hon"ble Supreme Court under the Punjab Act. Such provisions have been extended by the Division Bench of this Court to the Haryana Act. Such view has been approved by the Hon"ble Supreme Court in Mohinder Prasad Jain and Ashok Kumar's case (supra) as noticed above. The distinction between the residential and non-residential building for the purpose of restricting the right of eviction on the ground of personal requirement has not been upheld. Therefore, the argument that the summary right of eviction of the tenant on the ground of personal requirement from a non-residential building is not available to landlord of such building, is not correct. A landlord, who satisfies the parameters of sub-section (1) and sub-section (1-A) of Section 13-A of the Act, is entitled to seek eviction of a tenant from a residential or non-residential building on the ground of personal requirement. Since the distinction between the residential and nonresidential building for the purpose of eviction u/s 13(3)(a) (i) has not been upheld, therefore, the principles laid down by the Hon"ble Supreme Court in Gian Devi Anand's case are not applicable.

14. The argument that Section 13(3-A) of the Act, has conferred right of eviction only on a category of landlords to seek eviction from non-residential building for personal requirement and thus, all other categories stand excluded, is not tenable. After the said provision was enacted, the Hon"ble Supreme Court has found the distinction between residential and non-residential building for eviction on the

ground of bona-fide personal requirement as discriminatory not only under the Punjab Act or the Haryana Act, but the State Rent Legislations of other states including Delhi as well. Sub clause (1) of Section 13-A of the Act, inserted in the year 1986, granted summary right of eviction to the army personnel, whereas such right of summary right of eviction was extended to the Government servants in the amendment carried out in the year 1990 when sub-clause (1-A) was inserted. The judgments of the Supreme Court are subsequent to such amendments. Therefore, neither the object and reasons nor the forms attached to the Act or the grounds of eviction specified in clause 13(3)(a)(i) restricting the right of eviction on the ground of personal requirement from a residential building alone, can be said to be sustainable. No such argument is available to the tenants after the authoritative pronouncement of the Supreme Court on the subject.

15. Thus, it is held that a landlord is entitled to seek eviction of a tenant from residential and non residential building in summary manner in terms of Section 13-A(1) & (1-A) of the Act. Thus while answering reference in the above terms, it is held that the contrary judgments of this Court in Suresh Kumar v. Satish Kumar (CR 5520 of 2004 decided on 26.10.2009) and Lt. Col. Suraj Parkash (Retd.) v. Bhoop Singh Chaudhary, (2009 (2) RCR (Rent) 470, do not lay down a correct proposition of law and are overruled to the extent they run Counter to the view taken.

16. The matter be listed before the learned Single Judge, for decision, as per Roster.