Before M.M. Kumar, J.

SOHAN LAL —*Petitioner*

versus

SWARAN KAUR—*Respondent*

C.R. No. 1193 OF 2003

29th May, 2003

East Punjab Urban Rent Restriction Act, 1949—Ss.2(dd), 13-B, 18-A and 19(2)(B)—A non-resident Indian seeking ejectment of demised shop for his own use and occupation— S. 13-B confers a right on an N.R.I. to recover immediate possession of residential or scheduled building and/or non-residential building rented out to a tenant— Expression " N.R.I."—Meaning thereof—A person of Indian Origin living abroad whether settled permanently or temporarily—Not confined to citizens of India—Expression "returns to India", means—Not necessary that an N.R.I. must come back to India permanently— Petition u/s 13-B presented through attorney also maintainable— There are inbuilt safeguards in S. 13-B which are capable of taking care of misuse by any landlord and S. 19(2-B) also imposes restrictions on the landlord—Tenant not entitled to leave to contest—Petitions dismissed.

Held, that the expression 'NRI' used in Section 2(dd) of the Act has been clearly defined and there is no ambiguity necessitating any external aid for interpreting the same. The ordinary meaning of the expression 'NRI' given in Section 2(dd) of the Act is that a person of Indian Origin living abroad whether settled permanently or temporarily. The purpose of his living abroad has been amplified either for taking up employment outside India or for carrying on business or vocation outside India or for any other purpose as would indicate his intention to stay outside India for uncertain period. Therefore, the definition of expression 'NRI' cannot be confined to only those who are holding Indian passport and continue to be the Indian citizens. The definition infact embraces all those categories of Indians living abroad whether citizens or non—citizens, whether born in India or abroad, whether carrying Indian or foreign passport.

(Para 19)

Further held, that there are inbuilt safeguards made in the provisions which are capable of taking care of misuse by any landlord covered by the definition of 'NRI'. Firstly, only those NRIs are entitled to apply under Section 13-B of the Act who are owners of the property for atleast 5 years. The benefit is sought to be given to an owner who is an NRI and who returns to India. The rented building is required for his or her own use or for the use of any one ordinarily living with him or her and dependent on him or her. This is one time-in-life concession and a choice has been given in respect of one building only. Further restrictions have been imposed by Section 19(2-B) of the Act requiring the landlord to occupy the building continuously for a period of three months from the date of eviction and also by restraining the landlord from letting out whole or any part of the building from which the tenant has been evicted to any one other than the tenant in contravention of sub-section (3) of S. 13-B of the Act. Still further sub-section (3) of Section 13-B places an embargo on the owner from alienating the property for a period of 5 years from the date of taking possession. In the event of any such lapse, the tenant has been armed with the power to apply for re-occupation of the building and penal provisions have also been made. Therefore, no leave to contest can be granted in respect of cases which are covered by various penal provisions.

(Para 20)

Further held, that ownership is a concept which consists of bundle or rights. Such as a right of possession, right of enjoying the usufruct of the land and so on. This concept has been incorporated in various provisions of the Transfer of Property Act, 1882. Therefore, it is only that NRI who is a person of Indian Origin and is owner of the property under the tenancy of a tenant who has been given the right to initiate ejectment proceedings under Section 13-B of the Act. The NRIs and the persons of Indian Origin who have acquired citizenship abroad would either continue to be the owner of the property or would acquire the property lateron by investing in India.

(Para 25)

Further held, that the expression 'returns to India' used in S. 13-B of the Act would not necessarily mean that he must return

permanently or he must file a petition after he has returned to India. It is a ground reality that the time consumed in the litigation is long and a NRI who is a person of Indian Origin and owner of the property is not expected to wait all the while for the result of the litigation because once a person comes back to India after burning all his boats and bridges abroad he would cease to be useful for himself or the society or the country he had left. Such NRI is likely to sit idle after returning to India. Therefore, it is not necessary that the NRI owner of the property must come back to India permanently and then say in this country waiting for the result of the litigation. It is sufficient that application for ejectment is filed by him or through a general power of attorney because there are sufficient safeguards provided under Section (2-B) of Section 19 of the Act.

(Para 26)

Further held, that in the case of NRI owner of the property, the presumption of *bona fide* requirement is bound to be raised because if he fails to occupy the building continuously for a period of three months from the date of eviction then he is liable to be dealt with for having committed a criminal offence. Therefore, there would be no necessity to grant leave to contest to the tenant because it would result into defeating the provisions of S. 13-B of the Act which provides for giving immediate possession of the rented premises. Such an interpretation is also necessary because otherwise the penal provisions made under Section 19(2-B) of the Act would be rendered illusory and may also become dead letters.

(Para 29)

M.S. Lobana, Advocate.
Sumeet Mahajan, Advocate.
Arun Palli, Advocate, for the petitioner.

Sudeep Mahajan, Advocate.
Naresh Prabhakar, Advocate.
T.S. Dhindsa, Advocate, for the respondent.

JUDGMENT

M.M. KUMAR, J.

(1) This order shall dispose of Civil Revision Nos. 1193 of 2003, 6202 and 5698 of 2002 because in all the three petitions, interpretation of S. 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for brevity the Act) as added by amendment dated 26th March, 2001 is involved. The newly inserted S. 13-B of the Act confers a right on a Non-Resident Indian (for brevity, NRI)—owner of the property to recover immediate possession of residential or scheduled building and/or non-residential building rented out to a tenant.

FACTS :

(2) To put the whole controversy in its proper perspective the facts are referred from Civil Revision No. 5698 of 2002. There the landlord-respondent invoked the provisions of S. 13-B of the Act and filed Petition No. 4 of 4th May, 2002 by making averments that the tenant-petitioner was bound to surrender immediate possession of the demised shop to him. The landlord-respondent was born in Delhi on 6th January, 1973. Later on he immigrated to United Kingdom for employment and is settled there. He holds a Canadian passport and working in England. It is claimed that under S. 13-B of the Act, he is an NRI. It is claimed that with a view to set up a business of transport and goods carrier he has returned to India and that he has acquired sufficient experience abroad in that area.

(3) The application was contested by the tenant-petitioner Shri Baldev Singh Bajwa and a detailed affidavit was filed with a prayer that leave to contest be granted. The tenant-petitioner asserted that the landlord-respondent is holding a Candian passport and is living abroad for the last over 20 years. It was further claimed that he is doing some job in England and had come to India on a tourist Visa for a short spell. According to the tenant-petitioner, he cannot be regarded as NRI and that the landlord-respondent did not require the shop as his family owns numerous other shops which are lying vacant around the shop in dispute. The tenant-petitioner also asserted that earlier also an ejectment petition was filed by the landlord-respondent on the ground of non payment of rent. Another ground alleged was that the tenant-petitioner had ceased to occupy the premises

continuously for a period of four months without any reasonable cause. But that petition was dismissed. Therefore, it is urged that the ejectment petition by invoking S. 13-B has fabricated false grounds merely to seek his ejectment.

(4) On 7th September, 2002 the tenant-petitioner filed application before the Rent Controller alleging that the landlord-respondent left India after filing ejectment application which, according to him, proved the fact that he has no plans to do business in the demised premises. It was requested that he may be called to appear in the Court to produce his passport and visa. However, averments made in the application were controverted by the landlord-respondent and he filed a reply stating that nature of his work required him to frequently visit United Kingdom. A photostat copy of the passport with visa was also produced. The landlord-respondent personally appeared before the Court and the application made by the tenant-petitioner was dismissed as having been rendered infructuous.

(5) The learned Rent Controller found as a fact that the landlord-respondent is an NRI. He is owner of the demised shop for the last more than 5 years and he needed the demised premises. It was further held that there was no requirement of law to ascertain the intention of the landlord-respondent whether he is to settle down in India or not because for any such lapse penal provisions have been made. It has also been held that in law the availability of other building or accommodation is no ground to deny an NRI possession of any building of his choice. The Rent Controller further found that the dismissal of earlier ejectment application on the ground of non payment of rent and on the ground that the tenant-petitioner has ceased to occupy the premises for four months would not be sufficient to non-suit the landlord-respondent.

ARGUMENTS RE. TENANT-PETITIONERS

(6) Mr. M.S. Lobana, learned counsel for the tenant-petitioner has argued that the landlady-respondent in Civil Revision No. 1193 of 2003 would not be covered by the definition of NRI as given in S. 2(dd) of the Act because she has acquired Canadian passport. According to the learned counsel requirements of various provisions of different statutes have to be fulfilled by a foreigner before he can institute any proceedings in this country. He has referred to Section 83 of the Code

of Civil Procedure, 1908 (for brevity, the Code) which permits the foreigners to sue. The learned counsel has submitted that in view of summary procedure provided by S. 18-A read with Ss. 13-A and 13-B of the Act the definition of expression 'NRI' has to be construed strictly and narrow construction should be preferred than the liberal construction because basic object of enforcing the Rent Act has been to give some protection to the tenants who ordinarily belong to lower strata of society. The special category of landlords created by the amendment of 2001 by inserting S. 13-B must be confined only to citizens alone. According to the learned counsel for all intents and purposes a person born in Nairobi and holding a Canadian passport is a foreigner and is covered by the provisions of Foreigners Act, 1946 (for brevity, 1946 Act) and in a given situation the provisions of 1946 Act can be used to refuse him visa. The learned counsel has further submitted that the Court must minutely examine the NRI status of the landlord and it must be ensured that the landlord must have returned to this country permanently. Adverting to the facts of his case in Civil Revision No. 1193 of 2003, the learned counsel has submitted that once the landlady had lost ejectment petition before the Rent Controller in the year 1994 and the Appellate Authority also dismissed her appeal in 1997, the ejectment petition filed under S. 13-B of the Act cannot be considered *bona fide*. The learned counsel also argued that the expression 'required' used in S. 13-B of the Act should be construed to involve some element of need as against mere wish of the landlord-respondent.

(7) Mr. Sumeet Mahajan, learned counsel representing the tenant-petitioner in Civil Revision No. 6202 of 2002 has adopted the line of argument of Mr. Lobana and has submitted that the expression Person of Indian Origin (for brevity 'PIO') as used in S. 2(dd) of the Act must be defined to mean that the landlord-respondent must have born in India and have gone from India to another country for the purposes of taking up employment or for carrying on business outside India or for any other purpose which would indicate his intention to stay out of India for uncertain period. The learned counsel pointed out that a person born out of India would not fall within the definition of 'NRI' because firstly they cannot be treated as 'PIO'. Moreover, it can also not be concluded that they would stay out-side India for uncertain period as they would be deemed to be permanently settled abroad. The learned counsel has also pointed out that the expression

'returns to India' used in S. 13-B of the Act would necessarily mean that he has gone from India. Therefore, it would not cover the cases of those like the landlord-respondent in Civil Revision No. 6202 of 2002 who is born in Nairobi and carrying a British passport. The learned counsel has also urged that there is a bar under S. 5 of the Citizenship Act, 1956 (for brevity, '1956 Act') for any one coming back permanently to this country unless he is citizen of this country. The argument appears to be that a person who is not a citizen of India cannot come back permanently to this country and the provisions of Ss. 2(dd) and 13-B of the Act have to be construed to mean that an NRI requires the rented premises for his own use if he returns to this country permanently. Accordingly, benefits of these provisions have to be accorded only to those who are citizens of this country because only a citizen could come back permanently. Referring to the facts of Civil Revision No. 6202 of 2002, the learned counsel has pointed out that the landlord-respondent was not even present at the time of filing the ejectment petition and the ejectment petition was filed through his power of attorney. The learned counsel maintained that such a petition would not be competent through the power of attorney and in such a situation, it must be held that the rented premises would not be required by the landlord-respondent for his use. According to the learned counsel this Court in the case of ***Prem Kumar Patel versus Inderjit Singh Grewal and others, (1)*** has laid down that an NRI must prove that he has returned to India in order to enable him to file an ejectment petition under S. 13-B of the Act. He has referred to paragraphs 12 and 13 of the judgment wherein the statement of the landlord-respondent has been recorded to show that he would not need the shop in question for his use or for the use of his family members. The learned counsel has supported the arguments of Mr. Lobana that narrow and strict construction should be given to Ss. 2(dd), 13-A and 13-B of the Act.

(8) Mr Arun Palli, Advocate has further substantiated the argument on behalf of the tenant-petitioner by arguing that the expression 'return to India' must be interpreted to mean 'permanently and for ever'. The requirement of the premises by the owner would be dependent on his return to India for which a summary procedure has been devised. According to the learned counsel, the intention of the

(1) 2002 (3) P.L.R. 829

legislature while granting relief to NRI under S. 13-B of the Act cannot go to the extent of putting a tenant on the road. A just balance between the rights of landlord and tenant is required to be struck to avoid any misuse of the provisions by unscrupulous landlord posing themselves as NRI. He has pointed out that the intention of the legislature is evident from the statement of reasons and objects which leads to an inference that some element of permanence has to be read. Once such an intention is discernible then it would lead to irresistible conclusion that the landlord must return to India having come back permanently. The right of a tenant cannot be put into a quandary by permitting even those the benefit of S. 13-B of the Act who have no intention to come back over and naturally would not need the rented premises. Once it is shown that the person is well established and well settled abroad and unlikely to come back, then leave to contest should be granted and the ejectment should be ordered only after recording detailed evidence and satisfaction that the landlord is likely to return. The expression requirement would mean a *bona fide* requirement not an illusory requirement. The learned counsel has placed reliance on the judgments of the Supreme Court in ***Liaq Ahmed and others versus Habeeb-Ur-Rehman, (2) M/s Rahabhar Productions Pvt. Ltd. versus Rajendra K. Tandon, (3) Inderjeet Kaur versus Nirpal Singh, (4) and Manoj Kumar versus Bihari Lal (dead) by LRs., (5).***

ARGUMENTS RE. LANDLORD-RESPONDENTS

(9) Mr. Sudeep Mahajan has argued that language of S. 2(dd) read with Ss. 13-A, 13-B and 18-A of the Act do not leave any room for ambiguity and for its interpretation no external aid would be required. The learned counsel has pointed out that the expression 'NRI' has been defined to mean a PIO who is either permanently or temporarily settled out side India for any of the specified purposes or for any other purpose even not specified. According to the learned counsel, the Ministry of Home Affairs has issued a notification dated 30th March, 1999 abolishing all classes of citizenship and it simply

(2) 2000 (1) R.C.R. 484
(3) 1998 (1) R.C.R. 482
(4) 2001 (1) R.C.R. 33
(5) 2001 (1) R.C.R. 567

refers to persons of Indian origin who are settled out side India. Therefore, no narrow construction on the provisions of various sections of the Act should be preferred once the statutory guidance is available. The learned counsel has placed reliance on ***State of Maharashtra versus Marwanjee F. Desai and others, (6) British Airways PLC versus Union of India and others, (7) and Union of India and another versus Hansoli Devi and others, (8).***

(10) The learned counsel substantiating his argument based on the notification dated 30th March, 1999 has submitted that the notification has been issued by the Ministry of Home Affairs titled as Scheme for issuance of 'PIO Card' (for brevity, the 'Card Scheme') to person of Indian origin. According to the learned counsel the definition of NRI given in S. 2(dd) of the Act states that an NRI is 'a person of Indian origin'. According to the learned counsel, the expression 'a person of Indian origin' must be given the meaning adopted in clause 2(b) of the Card Scheme. The aforementioned clause 2(b) defines 'a person of Indian origin', to include a person who is a foreign citizen if he/she at any time has held an Indian passport or he/she or either of his parents, grand parents or great grand parents were born and peramently resident of India as defined in Government of India Act, 1935 and other territories that became part of India thereafter. The learned counsel has further pointed out that once the statutory guidance is available defining the expression 'persons of Indian origin', then in the absence of anything to the contrary, the same should be adopted for interpreting S.13-B of the Act. Referring to the principle of *ejusdem generis*, the learned counsel has argued that a person even both in foreign country can return to India and the expression 'return' used in S.13-B of the Act would not necessarily mean that only they can return who had gone from this country. As long as a person of Indian origin falls within clause 2(b) (ii) of 'the Card Scheme', he should be considered as NRI. In other words, the learned counsel has urged that NRI would be a person of Indian origin who may be a foreign citizen as long as he/she or either of his/her parents or grand parents or great grand parents was born in or permanently residents of India as defined in Government of India Act, 1935 and other territories that became part of India thereafter. The learned counsel has further

(6) (2002) 2 S.C.C. 318
(7) (2002) 2 S.C.C. 95
(8) (2002) 7 S.C.C. 273

urged that S.19(2-B) of the Act makes it mandatory for the landlord to occupy the premises for a continuous period of three months from the date of eviction. In case of his failure to occupy the premises, panal provisions have been made and that should be considered sufficient safeguard ensuring that the building is required by the landlord. The intention of the legislature, according to the learned counsel has also been reflected in S.18-A of the Act because it provides for summary procedure of day to day hearing in order to achieve the object of the amendment of handing over vacant possession of the demised building within the statutory period, even in cases where the leave is granted as provided by sub-section (6) of S.18-A of the Act. The learned counsel has further urged that there are sufficient safeguards created by the amendment made for the N.R.Is. ensuring that it is only *bona fide* N.R.I. who could succeed in taking the benefit of that provision. He has also placed reliance on the judgment of this Court in Prem Kumar Patel's case *(supra)* to argue that there is no requirement that an N.R.I. is required to return to India permanently or with an intention to settle in this country. The only requirement is that he must occupy the premises for a continuous period of three months from the date of eviction and is debarred from selling the same for a period of 5 years. The learned counsel has further pointed out that stringent provisions have been made in case of any violation of those sections. The learned counsel then placed reliance on a recent judgment of the Supreme Court in **Atma S. Berar** *versus* **Mukhtiar Singh,** (9) to argue that under the ordinary provisions of S.13(3) of the Act, even a Canadian citizen who was landlord of the building was held entitled for eviction of his tenant and the Supreme Court has held that in cases of personal necessity, there is no need for the Courts to lean heavily towards the tenants.

(11) Mr. T. S. Dhindsa, learned counsel appearing for another landlord-respondent has argued that external aid of interpretation should be resorted to if there is any ambiguity in the language of the statute as has been laid down by the Supreme Court in the case of **Rabindra Kumar Nayak** *versus* **Collector, Mayurbhanj, Orissa and others,** (10). He has referred to the observations of the Supreme Court in paragraph 7 and argued that the expression 'returns to India'

(9) (2003) 2 S.C.C. 3
(10) (1999) 2 S.C.C. 627

is absolutely clear because no limitation or further conditions have been imposed on such an N.R.I. According to the learned counsel, three conditions required to be fulfilled are that he must be an N.R.I., owner of the building and he must have required the building for himself or his family members or any one ordinarily living with or dependent on him. Beyond these three requirements, there is no obligation imposed on the Court to examine whether the requirement is *bona fide* or he has returned to India permanently or he is born in India or is likely to stay permanently in this country. According to the learned counsel if such an enquiry is permitted to be initiated, then the very purpose of these provisions would stand obliterated and the intention of the legislature by restoring immediate possession of such building to the landlord would be defeated. Elaborating his arguments further, the learned counsel has submitted that there are inbuilt restrictions imposed in Ss.2(dd), 13-B, 18-A and 19(2-B) of the Act which ensure that the provision is not misued. Those restrictions are as under :—

(a) An application can be filed under S.13-B of the Act only by such an N.R.I. or his dependent who are owners of the demised premises, for more than 5 years as is provided by provisions of sub-section (1) of S. 13-B of the Act.

(b) Under S.19(2-B) of the Act from the date of eviction, the landlord must occupy the premises for a continuous period of three months failing which penal action is contemplated which may extend to imprisonment of an N.R.I. for a period of six months or fine of Rs. 1,000 or both.

(c) There is a further bar on the right of the landlord to alienate the property for five years as provided by sub-section (3) of S.13-B of the Act :

(d) The benefit of S.13-B of the Act can be availed only in respect of one building, that too once during the life time of such a landlord as provided by proviso to sub-section (1) of S. 13-B and sub-section (3) of S. 13-B of the Act :

(12) The learned counsel has referred to all the aforementioned provisions to submit that once an area is already occupied by the statute to ensure that there is no misuse of those provisions, then it cannot be subject matter of triable issue because if such issues are made as triable issues, then the penal provisions would never come in operation and such provisions would become dead letters which cannot be proper tool of construction and no such intention could be imputed to the legislature.

(13) Mr. Naresh Prabhakar, learned counsel for another landlord-respondent has submitted that according to Corpus Juris Secundum, the expression 'origin' has been defined to mean 'the first existence or beginning : the birth : hence parentage, ancestry : that from which anything primarily proceeds : the fountain : spring : cause : occasion'.

(14) The learned counsel has also relied upon the definition of word 'origin' as given in Webster's Third New International Dictionary which reads as under :—

> "Ancestry, Parentage, rise, beginning or derivation from a source ..... when a tramp printer established it as a weekly—Amer, Guide Series : B. Primary source or cause : FOUNTAIN SPRING."

(15) Mr. Prabhakar then relied on the definition of word 'Origin' as given in Webster's New Twentieth Century Dictionary, which reads as under :—

> "Origin.
>
> 1. a coming into existence or use : beginning.
>
> 2. parentage : birth : lineage.
>
> 3. that in which something has its beginning : source, root : cause.
>
> 4. In anatomy, the less movable of the two points of attachment of a muscle, usually the end attached to the more rigid part of the skeleton: opposed to insertion.
>
> Syn.- source, beginning, cause, rise."

(16) On the basis of aforementioned definitions, the learned counsel has argued that the expression 'person of Indian origin' must be given its natural meaning without confining it to the lineage of great grand parents as provided by 'the Card Scheme'. As long as a person is able to trace his origin in India, he should be considered a person of Indian origin. In support of his submission, the learned counsel has placed reliance on **Bengal Immunity Co. Ltd.** *versus* **State of Bihar and others,** (11) **Commissioner of Income-tax, Delhi** *versus* **S. Teja Singh,** (12) **and Tinsukhia Electric Supply Co. Ltd. versus State of Assam and others,** (13). He has then referred to the definition of expression 'NRI' used in Section 2(dd) of the Act to mean that even if a person of Indian origin is permanently settled out side India for any purpose whatsoever, he has to be considered an N.R.I. and has to be held entitled to the benefits of S.13-B of the Act. For the aforementioned proposition, the learned counsel has placed reliance on a judgment of Delhi High Court in **Saroj Khemka** *versus* **Indu Sharma, (14)** and a judgment of this Court in the case of **Kewal Krishan** *versus* **Amrik Singh,** (15). He has also placed reliance on a judgment of the Supreme Court in the case of **G. C. Kapoor** *versus* **Nand Kumar Bhasin and others,** (16). Referring to the facts of his case in Civil Revision No. 6202 of 2002, the learned counsel has argued that the general power of attorney was executed at Jalandhar and the landlord-respondent has retired from his job in England. He has further pointed out that his wife is an Indian citizen atleast for her he can seek ejectment of the tenant-petitioner.

(17) After hearing learned counsel for the parties, perusing the record and the impugned orders, it would be necessary to have a brief survey of the provisions of Ss.2(dd), 13-B, 18-A and S.19(2)(B) of the Act as incorporated by the Amendment Act No. 9 of 2001 :

STATUTORY PROVISIONS

East Punjab Urban Rent Restriction Act, 1949

(11) AIR 1955 S.C. 661
(12) AIR 1959 S.C. 352
(13) AIR 1990 S.C. 123
(14) 2000(2) R.C.J. 363
(15) 2001 (2) R.C.J. 153
(16) 2002 (2) P.L.R. 251

"Section 2(dd) "Non-resident Indian" mean a person of Indian origin, who is either permanently or temporarily settled outside India in either case—

(a) for or on taking up employment outside India; or

(b) for carriying on a business or vocation outside India; or

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period:"

.....

"13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian. - (1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with the dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be :

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly".

18-A. Special procedure for disposal of applications under Section 13-A or Section 13-B.—(1) Every application under [Section 13-A or Section 13-B] shall be dealt with in accordance with the procedure specified in this section.

(2) After an application under [Section 13-A or Section 13-B] is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.

(3) (a) the summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule to the Code of Civil Procedure, 1908. The Contorller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of building in respect whereof the application under (Section 13-A or Section 13-B) has been made.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been

affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

(4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the (residential building or scheduled building and/or non-residential building), as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grand child or the widowed daughter-in-law of such specified landlord (or the owner who is a Non-resident Indian) in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law of such specified landlord [or the owner who is a Non-resident Indian] from obtaining an order for the recovery of possession of the (residential building or scheduled building and/or non-residential building). as the case may be, under (Section 13-A or Section13-B).

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date no later than one month from the date on which the leave granted to the tenant to contest and shall hear the application from day-to-day till the hearing is concluded and application decided.

(7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building and/or non-residential building as the case may be made by the Controller in accordance with the procedure specified in this Section :

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under (Section 13-A or Section 13-B) shall be the same as the procedure for the disposal of applications by the Controller."

"S. 19(2-B). The owner, who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under section 13-B, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of section 13-B, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both]"

(18) It would also be necessary to make a reference to the Card Scheme 1999, Foreigners Act, 1946 and Citizenship Act, 1955.

Scheme for Issuance of Person of Indian Origin Card, 1999 dated 30th March, 1999

"1. Short title and commencement :

(i) This scheme may be called the Scheme for Issuance of Person of Indian Origin Card (PIO Card).

(ii) It shall come into force with effect from 31st March, 1999.

2. **Definition.**—In this scheme, unless the context otherwise requires.—

(a) "Indian Mission" means the Embassy of India/High Commission of India/Indian Consulate in a foreign country.

(b) "Person of Indian origin" means a foreign citizen (nor being a citizen of Pakistan, Bangladesh and other countries as may be specified by the Central Government from time to time) or,

(i) he/she at any time held an Indian Passport ; or

(ii) he/she or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the aforesaid countries (as referred to in 2(b) above) ; or

(iii) he/she is a spouse of a citizen of India or a person of Indian origin covered under (i) or (ii) above."

"6. Validity of PIO Card :

A PIO Card shall be valid for a period of twenty years subject to the validity of the passport of the applicant.

8. Facilities to be extended to a PIO Card holder :—

(i) A PIO Card holder shall not require a Visa to visit India.

(ii) A PIO Card holder will be exempted from the requirement of registration if his stay in India does not exceed 180 days.

(iii) In the event of continuous stay in India of the PIO Card holder exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned Foreigners Registration Officer at District Headquarter.

(iv) A PIO Card holder shall enjoy parity with NRIs in respect of all facilities available to the latter in the economic, financial and educational fields except in matters relating to the acquisition of agricultural/plantation properties. No parity shall be allowed in the sphere of political rights."

FOREIGNERS ACT, 1946

"**2. Definitions.**—In this Act.....

(a) "foreigner" means a person who is not a citizen of India :

S. 3A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases.—(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to—

(a) the citizens of any such Commonwealth country as may be so specified ; or

(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this Section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.

"S.8. **Determination of nationality.**—(1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected :

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, he deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question of any Court :

Provided that the Central Government, either on its own motion or on an application by the foreigner concerned, may revise any such decision."

Citizenship Act, 1955

"Sec. 3. **Citizenship by birth** :—(1) Except as provided in sub-section (2), every person born in India :—

(a) on or after the 26th day of January, 1950 but before the commencement of the Citizenship (Amendment) Act, 1986 :

(b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth.

shall be a citizen of India by birth.

(2) A person shall not be such a citizen by virtue of this section if at the time of his birth :—

(a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India ; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

"Sec. 4. **Citizenship by descent.**—(1) A person born outside India on or after the 26th January, 1950 shall be a citizen of India by descent, if his father is a citizen of India at the time of his birth :

Provided that if the father of such a person was a citizen of india by descent only, that person shall not be a citizen of India by virtue of this section unless :—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or with the permission of the Central Government, after the expiry of the said period ; or

(b) his father is at the time of his birth, in service under a Government in India.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any male person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only."

"Sec. 5. **Citizenship by registration.**—(1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories :—

(a) persons of Indian origin who are ordinarily resident in India and have been so resident for immediately before making an application for registration ;

(b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India ;

(c) persons who are or have been, married to citizens of India and are oridinarily resident in India and have been so resident for five years immediately before making an application for registration ;

(d) minor children of persons who are citizens of India ; and

(e) persons of full age and capacity who are citizens of a country specified in the First Schedule :

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.

Explanation.—For the purposes of this sub-section a person shall be deemed to be of Indian origin if he or either of his parents was born in undivided India."

Sec. 6 **Citizenship by naturalisation.— xx xx"**

(19) The expression 'NRI' used in Section 2(dd) of the Act has been clearly defined and there is no ambiguity necessitating any external aid for interpreting the same. The ordinary meaning of the

expression 'NRI' given in Section 2(dd) of the Act is that a person of Indian origin living abroad whether settled permanently or temporarily. The purpose of his living abroad has been amplified either for taking up employment outside India or for carrying on business or vocation outside India or for any other purpose as would indicate his intention to stay outside India for uncertain period. Therefore, the definition of expression 'NRI' cannot be confined to only those who are holding Indian passport and continue to be the Indian citizens. The definition in fact embraces all those categories of Indians living abroad whether citizens or non-citizens, whether born in India or abroad, whether carrying Indian or foreign passport. It appears that as long as he is owner of a property in the State of Punjab legislature has intentionally used a wider expression to include large number of categories of NRIs.

(20) There are inbuilt safeguards made in the provisions which are capable of taking care of misuse by any landlord covered by the definition of 'NRI'. Firstly, only those NRIs are entitled to apply under Section 13-B of the Act who are owners of the property for atleast 5 years. The benefit is sought to be given to an owner who is an NRI and who returns to India. The rented building is required for his or her own use or for the use of anyone ordinarily living with him or her and dependent on him or her. This is one time-in-life concession and a choice has been given in respect of one building only. Further restrictions have been imposed by Section 19(2-B) of the Act requiring the landlord to occupy the building continuously for a period of three months from the date of eviction and also by restraining the landlord from letting out whole or any part of the building from which the tenant has been evicted to anyone other than the tenant in contravention of sub-section (3) of Section 13-B of the Act. Still further sub-section (3) of Section 13-B places an embargo on the owner from alienating the property for a period of 5 years from the date of taking possession. In the event of any such lapse, the tenant has been armed with the power to apply for re-occupation of the building and penal provisions have also been made. Therefore, no leave to contest can be granted in respect of cases which are covered by various penal provisions. Any other approach would render those provisions as a dead letter. For example the question 'need' does not require to be gone into in view of corresponding provisions to the effect that the NRI

owner must occupy the building after eviction for a continuous period of three months and must not let out the whole or part of it (except to the evicted tenant) to anyone for a period of five years as provided by sub-section (3) of Section 13-B of the Act. In the event of any violation criminal proceedings and sentences have been provided for under Section 19(2-B). Moreover, the very object of amendment providing for efficacious remedy to the NRI owner of property would be defeated. Other and similar type of cases have also been covered by the provisions of the Act.

(21) It is no doubt true that the object of all the rent laws is to provide maximum accommodation to the tenants and prevent exorbitant increase of rent. However, with the experience of tenants as a class, the legislature has introduced many categories of specified landlords who are entitled to the recovery of possession because the building is required for their own use and occupation. Section 13B of the Act has carved out another category of landlord/owner who would be entitled to evict his tenant on the ground that such NRIs require the building for their own use and occupation. The objects of 1949 Amendment Act as given in the Statement of objects and reasons read as under :

Act No. 3 of 1949

"Under Article 6 of the India (Provisional Constitution) Order, 1947 any law made by the Governor of the Punjab by virtue of Section 93 of the Government of India Act, 1935, which was in force immediately before the 15th August, 1947, is to remain in force for two years from the date on which the proclamation ceased to have effect viz. the 14th August, 1949. It is desired that the Punjab Urban Rent Restriction Act, 1947 (Punjab Act No. VI of 1947), being a Governor's Act, be re-enacted as a permanent measure, as the need for restricting the increase of rents of certain premises situated within the limits of Urban areas and the protection of tenants against *mala fide* attempts by their landlords to procure their eviction would be there even after the 14th August, 1949.

In order to achieve the above object, a new Act incorporating the provisions of the Punjab Urban Rent Restriction Act, 1947 with necessary modification is being enacted."

Act No. 13 of 1949

"By Ordinance No. 1 of 1949, sub-section (2) of Section 4 of the Punjab Urban Rent Restriction Act, 1947 was amended by the addition of a proviso indicating that notwithstanding anything contained in Sub-Sections (3)(4) and (5), the fair rent of any building in the urban area of Simla shall not exceed the basic rent. These provisions are important and have not been included in the East Punjab Urban Rent Restriction Act, 1949 which has since been passed in the East Punjab Legislative Assembly. In order to do so now, the amending Bill is being enacted."

(22) The object of the amendment made in 2001 by incorporating sub-section 2(dd), Section 13B and Section 19(2B) has also been stated in the statement of objects and reasons which read as under :

Act No. 9 of 2001.

"The State Government had been receiving representations from various N.R.Is individual and through their associations highlighting the plight of Indian residents returning to India after long years abroad. It was represented that the N.R.Is having spent long years of their life abroad did not find conditions congenial in their own country on their return either to settle down or to take up any business. On account of rigid legal provisions of existing Rent laws, the N.R.Is. were unable to recover possession of their own residential building from the tenants Government having considered the situation had decided that the existing Rent Legislation viz. East Punjab Urban Rent Restriction Act, 1949 should be amended to provide relief to N.R.Is. to enable them to recover possession of a residential or scheduled building and/or one non residential building for their

own use. As the matter required immediate action, it was decided that an Ordinance to give effect to this amendment be issued.

In accordance with the above decision, East Punjab Urban Rent Restriction (Amendment) Ordinance, 2000 (Ordinance No. 10 of 2000) was promulgated and published in the Punjab Government Gazette (Extraordinary),—*vide* Notification No. 33/Leg/2000 dated the 27th December, 2000.

Under Article 213(2) of the Constitution of India, the said Ordinance shall cease to operate at the expiration of 6 weeks from the reassembly of the Punjab Vidhan Sabha. In view of the said constitutinal provision, the said Ordinance is to be replaced with an amending legislation to amend the East Punjab Urban Rent Restriction Act, 1949.

The Session of the Punjab Vidhan Sabha is in progress and it is necessary to convert the said Ordinance into a legislation by the State Legislature."

If the intention of the legislature has to be ascertained from the statements of objects and reasons then it becomes evident that the benefit of legislation like the Rent Acts has to be given to the category of landlord or tenant for whom the amendment has been incorporated. It is obvious that the amendment is for the benefit of the owner/landlord and it cannot be construed to mean that it should be interpreted in favour of the tenant merely because in the original Act such an object has been mentioned. The special provisions made by amendment of 2001 has to prevail over the general provisions and the object of 2001 Amendments has to be kept in view.

It would be appropriate to analyse the provisions of S. 2(dd) read with Section 13B of the Act. The requirement of S. 13-B of the Act is that the petitioner seeking ejectment of his tenant must be :

(a) owner ;

(b) Non resident Indian ;

(c) He must return to India ;

(d) the building is required for his or her own use or for the use of any one ordinarily living with and dependent upon him or her ;

(e) he must be owner of the building for more than five years ;

(f) right is availed only once during the lifetime ;

(g) the owner is given a choice to choose any building ;

(h) After recovering possession under Section 13B of the Act the owner is debarred from transferring the same through sale or any other means or rent out for a period of five years from the date of taking possession ;

(i) the owner must remain in continuous possession of three months ;

(23) The expression NRI has been defined by S.2(dd) of the Act to mean a person of Indian origin who has either permanently or temporarily settled outside India for or on taking up employment or for carrying on business or vocation or for any other purpose as would indicate his intention to stay outside India for an uncertain period. Two other statutes have referred to the expression Person of Indian Origin, namely, 'the Card Scheme' clause (a) of sub-section 1 and explanation to sub-section 1 of Section 5 of the Citizenship Act, 1955.

(24) A perusal of clause (a) of sub-section 1 of S.5 of the 1955 Act shows that any person could be registered as citizen of India by the prescribed authority provided that he is not already such citizen by virtue of the provision of the Constitution or any other provision of the 1955 Act. If such a person is of Indian origin and is ordinarily resident of India and have been so resident for five years before making an application for registration he could also be registered as a citizen. The explanation further provides that an applicant would be considered a person of Indian origin if he or either of his parents was born in undivided India. It thus becomes evident that Person of Indian origin is a class apart from the citizens. By no stretch of imagination it could be held that the citizens alone could be the person of Indian origin and could be considered as NRIs within the meaning

of S.2(dd) of the Act. The concept of 'citizenship' is different than the broader concept of person of Indian origin who are to include NRIs. The definition of 'Indian Origin' as given in the 'Card Scheme' is even more broader. It has included in the definition of PIO in clause 2(ii) all those persons as the persons of Indian Origin if he or she or either of his parents of grand parents or great grand parents was born in and permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the countries like Pakistan, Bangladesh and other countries as may be specified by the Central Government from time to time.

(25) The question as to whether an NRI would include all classes of persons of Indian origin or only specified categories can more appropriately be answered once it is remembered that such a person has to be the owner of the property in order to become eligible to maintain a petition for ejectment of a tenant. Ownership is a concept which consists of bundle of rights. Such as a right of possession ; right of enjoying the usufruct of the land and so on. This concept has been incorporated in various provisions of the Transfer of Property Act, 1882. Therefore, it is only that NRI who is a person of Indian origin and is owner of the property under the tenancy of a tenant who has been given the right to initiate ejectment proceedings under S. 13-B of the Act. The NRIs and the persons of Indian origin who have acquired citizenship abroad would either continue to be the owner of the property or would acquire the property lateron by investing in India. Certain provisions were made in the Foreign Exchange Regulation Act, 1973 (for brevity, the FERA) regulating the acquisition of property by NRIs or by the persons of Indian origin who have acquired citizenship of foreign Nations. Even FERA has now been repealed and replaced by the Foreign Exchange Management Act, 1999 liberalising many stringent provisions. Therefore, the NRIs or the persons of Indian origin who acquired citizenship abroad are not debarred to be the owner of the property in India or Punjab. Once an NRI or a person of Indian origin who have acquired citizenship abroad is owner for over five years of the property rented out to a tenant, he would be covered by the definition of NRI given in S.2(dd) of the Act. Therefore, the definition of NRI being a person of Indian origin does not need to be limited either by referring to the Foreigners Act, 1946 or the Citizenship Act, 1955 or by reference to the Card

Scheme. It appears that all the aforementioned statutes have different area of operation than the provisions of Section 13(B) and other cognate provisions incorporated by amendment of 2001. It is well settled that once language of the statute is plain and unambiguous, then no external aid should be employed to interpret the provisions of such a statute. In this regard, reliance could be placed on the judgment of the Supreme Court in **Ravindra Kumar's case (supra).**

(26) The expression 'returns to India' used in S.13-B of the Act would not necessarily means that he must return permanently or he must file a petition after he has returned to India. It is a ground reality that the time consumed in the litigation is long and an NRI who is a person of Indian origin and owner of the property is not expected to wait all the while for the result of the litigation because once a person comes back to India after burning all his boats and bridges abroad he would cease to be useful for himself or the society or the country he had left. Such an NRI is likely to sit idle after returning to India. A provision has been made in sub-section (2-B) of S.19 of the Act that an NRI who is owner and who have succeeded in evicting a tenant from a residential building or scheduled building or non residential building in pursuance to an order made under S.13-B of the Act, if he fails to occupy such building for a continuous period of three months from the date of such eviction or lets out the whole or any part of such building from which the tenant has been evicted to any person other than the evicted tenant then criminal proceedings in accordance with sub-section (3) of S. 13-B of the Act can be initiated as he is deemed to have committed an offence which is punishable with imprisonment that may extend to six months or a fine which may extend to Rs. 1,000 or both. The expression returns to india has to be construed harmoniously in the light of the provisions made in sub-section (3) of S. 13-B and sub-section (2-B) of S. 19 of the Act. Therefore, it is not necessary that the NRI owner of the property must come back to India permanently and then stay in this country waiting for the result of the litigation. It is sufficient that application for ejectment is filed by him or through a general power of attorney because there are sufficient safe-guards provided under S.(2-B) of Section 19 of the Act laying down that the vacated premises must be occupied by the NRI owner continously for a period of three months and if he fails to do so, then penal action is contemplated. He can also not let out any part or whole building to any person other than the tenant for a period of 5 years nor he can alienate the same.

(27) The expression 'required' used in S. 13-B of the Act would not present any difficulty of interpretation because under S.13(3)(a) of the Act. Similar expression has been used and interpreted in a catena of judgments. In **Ram Dass** *versus* **Ishwar Chander (17),** referring to the ground of *bona fide* requirement, their Lordships of the Supreme Court have observed as under :—

> "11. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the *bona fide* requirement of the landlord, variously described in the statutes as '*bona fide* requirement'. 'reasonable requirement', *bona fide* and reasonable requirement or, as in the case of the present statute, merely referred to as 'landlord requires for his own use'. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith ; and that further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a 'requirement' in law must have the objective element of a 'need'. It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

Similarly in **Gulabbai** *versus* **Nalin Narsi Vohra and others (18),** it has been held that the word 'reasonable requirement' would undoubtedly postulate that there must be an element of need as opposed to mere desire or a wish. The distinction between desire and need has to be kept in mind but a genuine need cannot become a desire. In the case of **Shiv Sarup Gupta** *versus* **Dr. Mahesh Chand Gupta (19),** the Supreme Court has laid down

(17) (1988)2 S.C.C. 131
(18) (1991)3 S.C.C. 483
(19) (1999)6 S.C.C. 222

the test for ascertaining as to whether the requirement of the landlord in his sense of a felt need is an outcome of a sincere and honest desire in contradiction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. It has been observed by their Lordships that the only way of peeping into the mind of the landlord is through an exercise to be undertaken by the Judge of facts by placing himself in the armed chair of the landlord and then posing a question to himself whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

(28) Similarly in the case of an NRI who had invoked the jurisdiction of the Rent Controller under S.13(3)(a) of the Act by setting up the plea that he required the building for his own occupation, the Supreme Court has taken the view that as long as there is an element of need as opposed to a mere wish, the ground that the building is required should be considered as sufficient. In **Atma S. Berar's case *(supra)*** a person of Indian origin who has acquired the Canadian citizenship had returned to India accompanied by his old aged wife and was shuttling between India and Canada in search of a shelter and settlement in the evening of his life so as to peacefully pass the balance of his life and breath his last in his own house which was the only property that he had built of his own by investing his earnings. In these circumstances, the Supreme Court found the requirement of the landlord to be *bona fide* under S. 13(3)(a) of the Act. Therefore, the aforementioned survey of judgments of the Supreme Court would establish that as long as there is element of need and the requirement is *bona fide,* then the ejectment of the tenant on that ground should ordinarily be ordered. In ***Sarla Ahuja*** versus ***United India Insurance Co. Ltd. (20)*** it has been held by the Supreme Court that the Rent Controller should not proceed on the assumption that the requirement of the landlord is not *bona fide.* According to the view taken in the aforementioned judgment, once the landlord shows a prima *facie case,* a presumption of *bona fide* requirment can be raised in his favour. It is not for the tenant to dictate terms to the landlord as to how the landlord could adjust himslef without giving possession of the rented premises.

(20) (1998) 8 S.C.C. 119

(29) When the principles laid down by the Supreme Court while interpreting S.13(3)(a) of the Act are applied to the newly added Ss. 13-B and 19(2-B) of the Act, then it becomes pronounced all the more that in the case of NRI owner of the property, the presumption of *bona fide* requirement is bound to be raised because if he fails to occupy the building dcontinuously for a period of three months from the date of eviction then he is liable to be dealt with for having committed a criminal offence. Therefore, there would be no necessity to grant leave to contest to the tenant because it would result into defating the provisions of s.13-B of the Act which provides for giving immediate possession of the rented premises. Such an interpretation is also necessary because otherwise the penal provisions made under s.19(2-B) of the Act would be rendered illusory and may also become dead letters. This is the basic difference between Ss. 13(3)(a) and 13-B of the Act.

(30) A choice has also been given to the owner under S.13-B of the Act to choose a building if he has more than one under the occupation of tenants from which he seeks his eviction. The only condition is that he must be owner for more than 5 years and the right of s.13-B of the Act is available only once during the lifetime of such an owner. Therefore, I am of the firm view that the expression NRI would include any person of Indian origin who is owner of the property under th tenancy of another person. The right conferred by S.13-B of the Act cannot be confined only to citizens.

(31) The argument of the learned counsel for the tenant-petitioner that the provision should be confined only to citizens or its mis-use should be excluded by making sure that no unscrupulous owner/landlord should resort to unnecessary eviction does not deserve to be accepted because there are sufficent inbuilt safeguards which are capable of taking care of any misuse by the owner/landlord covered by the definition of NRIs. Apart from various limitations imposed upon such an owner it would be appropriate to mention that rigourous provision has been made imposing an obligation upon the landlord to occupy the building continuously for a period of three months from the date of eviction. He cannot let out whole or any part of the building nor he can sell or alienate for a period of five years

from the date of taking of possession. Therefore, the argument that leave to contest should be granted in cases where there is a serious dispute with regard to the requirment, the status of NRIs who might be a person of Indian origin cannot be accepted because granting leave of such like matters which have already been taken care by the inbuilt sufeguard would mean that the legislative intention should be defeated by adopting the procedure of ignoring the inbuilt safeguards aimed at exclusively of mis-use of S.13-B of the Act.

(32) For the reasons recorded above, these petitions fail and the same are dismissed.

R.N.R.

4126/HC—Govt. Press, U.T., Chd.