

Before Satish Kumar Mittal, J

M/S BHANDARI GENERAL STORE AND ANOTHER — *Petitioners*

versus

MAKHAN SINGH GREWAL — *Respondents*

C. R. No. 5159 of 2005

22nd February, 2006

East Punjab Urban Rent Restriction Act, 1949—Ss. 13A and 13-B— Ejectment u/s 13-B of two different tenants from shops forming part of single building—One shop from another tenant also got vacated u/s 13-B by landlord from part of the same demised building—Under S. 13-B(2) if an NRI has let out more than one residential building or scheduled building and/or non-residential building, he/she shall be entitled to get vacated only one residential building or scheduled building or non-residential building as chosen by him/her—U/s 13-B an NRI can get the ejectment only from one building—Whether landlord is entitled to recover the immediate possession of all the parts of one building let out to different tenants—Held, yes—To determine whether the different parts let out to different tenants are part of one building or separate buildings is a question of fact—Before getting ejectment of different tenants from different parts, it has to be established that all the parts let out to different tenants are part of one building—Rent Controller on the basis of evidence finding that all the 13 shops let out to different tenants by the landlord are part and parcel of one building— Ejectment orders passed against the petitioners regarding two different shops which form part of one building held to be legal—Petitioners failing to place on record any strong and cogent material rebutting the presumption in favour of the landlord that his requirement of the demised premises is bona fide—Merely because the landlord is owning some other property is no ground to hold that his need is not genuine—U/s 13-B it is the choice of landlord to get one building vacated out of two or more buildings—Petitions liable to be dismissed.

Held, that one building was let out in different parts and in that situation, landlord is entitled to recover the immediate possession of all the parts by filing different petitions. The question whether the

different parts let out to different tenants are part of one building or separate building is a question of fact which is to be determined on the facts and circumstances of each. Before getting ejection of different tenants from different parts, it has to be established that all the parts let out to different tenants are part of one building. The Rent Controller, on the basis of evidence available on record, has recorded a finding of fact that all the 13 shops are part and parcel of one building. In this regard, the Rent Controller has relied upon various photographs, site plan and the report of the Architect, which clearly establish that all the shops constitute one building and the suit building as a single unit was constructed at one time. I do not find any illegality or perversity in the said finding of fact. Thus, the ejection orders passed against the petitioners regarding two different shops which form part of one building, cannot be said to be illegal on the ground that under section 13B of the Act, the landlord has already got vacated one shop, which was also part of the said building.

(Para 8)

Further held, that the petitioners-tenants have failed to rebut the presumption in favour of the respondent-landlord that his requirement of the demised premises is *bona fide*. The tenants have not placed on record any strong and cogent material rebutting the strong presumption in favour of the landlord. Undisputedly, the respondent is an NRI. He has returned to India. He requires the building in question for his personal use as he wants to open a show room of old and new cars. His case is covered by the requirement of Section 13-B of the Act. According to him, the total area of the entire building is required by him for the aforesaid purpose. Merely because, the landlord is owning some other property in the Focal Point is no ground to hold that his need is not genuine. It is the choice of the landlord to get one building vacated under section 13-B, of the Act out of two or more buildings.

(Para 11)

K.S. Dadwal, Advocate, for the petitioners (in C.R. No. 5159 of 2005).

Amit Rawat, Advocate, for the petitioners (in C.R. No. 5350 of 2005).

M.L. Sarin, Senior Advocate, with Alka Sarin and Salil Sharma, Advocates, for the respondent.

JUDGMENT

SATISH KUMAR MITTAL, J.

This order shall dispose of Civil Revisions No. 5159 and 5350 of 2005, filed by two different tenants against the orders of their ejectment passed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) on two separate ejectment applications filed by the same Non Resident Indian Landlord. Since in both these cases, identical questions of fact and law are involved, therefore, the same are being disposed of by this common order.

(2) The respondent-landlord sought ejectment of the petitioners-tenants from shops No. 11 and 6 forming part of the same building i.e. property No. B-XX-732, situated at Gurdev Nagar, Ludhiana, under Section 13-B of the Act, on the ground that he requires the building including the shops in question for opening a show room of old and new cars. In the ejectment petitions, it has been pleaded by the respondent that he is a Non resident Indian and he has returned to India and requires the demised premises, which are part of one building, for his own use to open the show room. For that purpose, the entire building bearing property No. B-XX-732 is required. He has also pleaded that he is owner of the demised premises for the last more than five years.

(3) The tenants filed the application under Section 18 A of the Act for leave to contest the ejectment application which was granted and petitioners contested the same on the grounds that the landlord is not a non Resident Indian ; he has no intention to come back to India; he has already got vacated another shop from a tenant under Section 13-B of the Act, hence subsequent ejectment petitions under Section 13-B of the Act are not maintainable, and the requirement of landlord is not *bona fide*. The Rent Controller, after taking into consideration the evidence led by both the parties, ordered ejectment of the petitioners. It has been held that the requirement of the NRI landlord is *bona fide*. He required the entire building for his own use. Both the shops are part of single building, hence the respondent-landlord can get the ejectment of demised shops under Section 13-B of the Act. Hence, this revision petition.

(4) Counsel for the petitioners have made only two submissions. Firstly, that the respondent-landlord has already got evicted one tenant from part of the demised building under Section 13-B of the Act, therefore, he cannot get ejectment of all the other tenants, including the petitioners, from the other shops. Secondly, that the requirement of the respondent-landlord is not *bona fide*, and the finding recorded by the Rent Controller in this regard is against the evidence and based on surmises and conjectures.

(5) Regarding the first contention, learned counsel for the petitioners have submitted that the respondent-landlord is owner of 13 shops, out of which 8 shops were on rent with different tenants. All the 8 shops have different shutters and opening in verandah in front of the shops. Every shop is having independent access, therefore, all the shops are separate buildings and the same cannot be treated as part of one building. They further submit that out of these 8 shops two shops have been got vacated by the respondent-landlord under Section 13-B of the Act, therefore, the non Resident Indian-landlord cannot seek ejectment of the other tenants, because as per the provisions of Section 13-B, he can avail this right of ejectment only once during his life time. Counsel for the petitioners further submit that as per sub-section (2) of Section 13-B of the Act, if the Non Resident Indian landlord has let out more than one residential building or scheduled building or non-residential building, it shall be open for him or her to make an application under sub-section (1) in respect of only one residential or scheduled or non-residential building, as chosen by him or her. Counsel for the petitioners submit that each shop let out by the respondent-landlord should be treated as separate building. Therefore, the respondent-landlord cannot seek ejectment of the petitioners on the ground of his personal requirement under Section 13-B of the Act.

(6) On the other hand, counsel for the respondent-landlord submits that in the facts and circumstances of the present case, each shop cannot be treated as separate building. Actually, all the shops are part of one building. These were converted into different shops by constructing walls under the single roof. He submits that the respondent-landlord has proved on record that all the shops are part and parcel of one building bearing property No. B-XX-732. He further submits that the expert evidence led by the petitioners and the other material on record i.e. site plan and the various photograph clearly indicate that all the 13 shops constitute one building, which is a single

unit. He submits that a finding of fact has been recorded by the Rent Controller in this regard. In view of this finding of fact, counsel for the respondent-landlord submits that a Non Resident Indian landlord can get ejection of different tenants under Section 13 B of the Act, who are in occupation of different parts of one building. In this regard, counsel for the respondent-landlord relies upon the decision of the Supreme Court in **Zenobia Bhanot versus P.K. Vasudeva and another (1)**, wherein while interpreting the provision of Section 13A of the Act, it was held that if different portions or parts of residential or scheduled building were let out to different tenants in part, the landlord has right to recover immediate possession of such residential or scheduled building or any part of such building, even if the same was let out in part or parts. The specified landlord has the option to recover immediate possession of the whole building or any part or parts thereof, in case the building is let out in part or parts. It has been held that there are no words in Section 13A of the Act to import the idea that if a residential building is let out in parts, each part will become a separate residential building thereby fettering the specified landlord to avail the concession only from a part. Section 13A, which gives a special right to the landlord, is to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. It has also been held by the Supreme Court that the question as to whether the accommodation with the landlord after taking possession from one of the tenants is sufficient for his personal requirement or not, is not to be gone into in proceedings under Section 13A of the Act. Counsel for the respondent-landlord further submits that the provisions of Section 13A and 13B of the Act are similar in nature. Under Section 13B of the Act, the Non Resident Indian landlord has been given the right to recover immediate possession of one residential or scheduled or non-residential building on fulfillment of certain conditions. Under this Section, there is no provision like second proviso under Section 13A of the Act, which provides that nothing in this section shall be so construed as conferring a right on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts. However, sub-section (2) of Section 13B of the Act clearly provides that a Non Resident Indian landlord can recover the immediate possession of residential building or scheduled building and/or non-residential building, if he requires the same for his or her

own use, but he can avail such right only once during his life time. If he has let out two or more buildings, he has right to choose one for getting immediate possession under Section 13B of the Act. Therefore, counsel for the respondent submits that merely because different shops which are constituting part of one building were let out to different tenants at different times does not debar the respondent-landlord from getting them ejected under Section 13B of the Act on the ground that one shop constitutes one building being part of the main building and after getting vacated one shop under Section 13B of the Act, other cannot be got vacated. Counsel further submits that the Rent Controller has rightly allowed the ejectment petition against the petitioner while holding that the respondent-landlord is entitled to recover immediate possession of all the shops, though under the tenancy of different tenants.

(7) After hearing the arguments of learned counsel for the parties, I do not find any force in the submission made by learned counsel for the petitioners-tenants. The provisions under Sections 13A and 13B of the Act are almost similar. Under Section 13A of the Act, the right to recover immediate possession of the residential or scheduled building or any part of such building, if it is let out in part or parts, has been given to the specified landlord within one year prior to or within one year after the date of his retirement. Second proviso to this section provides that nothing in this section shall be construed as conferring a right on any person to recover possession of more than one residential or scheduled building. Under section 13B of the Act, a right has been given to the Non Resident Indian landlord to recover immediate possession of the residential building, scheduled building and/or non-residential building on fulfillment of certain conditions. It has been specifically provided that the Non Resident Indian landlord shall avail this right only once during his life time. It has been further provided under-section (2) that if the said Non Resident Indian has let out more than one residential building or scheduled building and/or non-residential building, he or she shall be entitled to get vacated only one residential building or scheduled building or non-residential building, as chosen by him or her. Therefore, the specified landlord under Section 13A or Non Resident Indian landlord under Section 13 B has been given the right to recover immediate possession of one building. In both these cases, it has been made clear that such landlord can get the ejectment only from one building. In case of Non

Resident Indian, out of two buildings, option has been given to the landlord to choose one for getting immediate possession of the same. In **Zenobia Bhanot's case** (*supra*), the Supreme Court has held that if a residential building or scheduled building is let out in parts to different tenants, it is open for the specified landlord to get ejection of all those tenants by filing different petitions. In the said decision, a residential building was let out by the specified landlord to different tenants in four parts. Four different ejection petitions were filed by his wife under Section 13 A of the Act. Those four petitions were tried before different Rent Controllers. The learned Single Judge of this Court took the view that under the second proviso of Section 13A of the Act, the specified landlord is entitled to recover possession of only one residential building i.e. one part of the building and he cannot seek ejection of all the four tenants. He has to make a choice in this regard. The said interpretation of the learned Single Judge was approved by the Division Bench of this Court. Against the judgment of the Division Bench, the landlord Zenobia Bhanot filed a appeal before the Supreme Court, wherein it was held as under :—

- “10. The title to Section 13A states that the right is given to a specified landlord to recover immediate possession of residential or scheduled building. The Statement of Objects and Reasons also states that the summary procedure for eviction of tenants from the residential and scheduled buildings is provided in Section 13A. The crucial words in Section 13A, clearly point out that, where a specified landlord, at any time within one year applies to the Rent Controller to recover possession of this residential building for his own occupation there shall accrue, on and from the date of such application to such specified landlord, a right to recover immediately the possession of such residential building or any part or parts of such building, if it is let out in part or parts. The provisions of the Statute are clear. The right is given to a specified landlord to recover immediate possession of the residential building. He should have retired from the service and should file an affidavit that he does not own and possess *any other suitable accommodation* to reside. In such a case, he can required possession of his residential scheduled building for his own occupation. The right is given to the

landlord notwithstanding any other provision in the Act or any other law or any contract to the contrary, to recover immediately the possession of such residential building. If such residential building is let out in parts, the landlord is given the option to recover immediately the possession of such residential building itself or any part or parts of such building, in cases where it is let out in part or parts. In cases where the building is let out in parts, the parts so let out, will form part of the building itself. All that the second proviso provides is that the said right shall not enable the landlord to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof, if the building is let out in part or parts. There are no words in Section 13A of the Act to import the idea that if a residential building is let out the parts, each part will become a residential building thereby fettering the specified landlord to avail the concession only from a part. Section 13A, which gives a special right to the landlord, is to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. In interpreting the Section, it is a far-cry to state, that the question as to whether the accommodation with the landlord after taking possession from one of the tenants is sufficient for his personal requirement or not, is not to be gone into in such proceedings. The right is given to the landlord, in case where he does not own or possess any other suitable accommodation to recover possession of his residential building. If the building is let out in parts, any or all such parts can also be recovered, since the part or parts let out, form part of the building, Section 13A clearly points out that the landlord has an option to get the recovery (the immediate possession) of the said residential building or any part or parts of such building, in a case where the building is let out in parts. The option so given to the landlord by the concluding words in the opening clause of Section 13A, in cases where the building is let out in part or parts, either to recover the whole building or to recover in part or parts thereof is reinforced by the second proviso. By no

stretch of reasoning, the second proviso to Section 13A can be construed as nullifying the main provision of Section 13A and, in particular, the concluding words in the opening clause of Section 13A where by the option is given to the landlord to recover the possession of residential building itself or any part or parts. We hold that the reasoning and conclusion to the contrary in the two reported judgments of the Punjab and Haryana High Court and also in the judgment under appeal dated 20th July, 1992 are clearly erroneous and unjustified. On the other hand, the reasoning contained in the order of reference dated 26th November, 1990, appeals to us, as reasonable and fair and the same is in accord with the legislative intent and the language of Section 13A of the Act. We set aside the judgment of the Division Bench of the Punjab and Haryana High Court dated 20th July, 1992 appealed against herein and allow the appeals." (emphasis added).

(8) In my opinion, the aforesaid judgment of the Supreme Court squarely covers the case of the respondent-landlord. In this case also, one building was let out in different parts and in that situation, he is entitled to recover the immediate possession of all the parts by filing different petitions. The question whether the different parts let out to different tenants are part of one building or separate buildings is a question of fact which is to be determined on the facts and circumstances of each case. Before getting ejection of different tenants from different parts, it has to be established that all the parts let out to different tenants are part of one building. In the instant case, the Rent Controller, on the basis of evidence available on record, has recorded a finding of fact that all the 13 shops are part and parcel of one building. In this regard, the Rent Controller has relied upon various photographs, site plan and the report of the Architect, which clearly establish that all the shops constitute one building and the suit building as a single unit was constructed at one time. I do not find any illegality or perversity in the said finding of fact. Thus, in my opinion, the ejection orders passed against the petitioners regarding two different shops which form part of one building, cannot be said to be illegal on the ground that under section 13B of the Act, the landlord has already got vacated one shop, which was also part of the said building.

(9) Regarding the second contention that the requirement of the landlord is not *bona fide*, counsel for the petitioners have submitted that the respondent-landlord is already having possession of 5 shops in the said building. He is also owning plot measuring 500 square yards i.e. plot No. E-202 in Focal Point. They further submit that the landlord is a citizen of U.K. and has not returned to India nor he has any intention to return and all of his family members are well settled in U.K. In fact, he does not require the shops in question, which were let out to the petitioners. Actually, he wants to sell the shops at a higher price. In this regard, he has also given an advertisement in the news paper. They have further submitted that no show room of old and new cars is feasible in the demised premises and actually, the alleged need of the respondent-landlord is not bonafide.

(10) On the other hand, counsel for the respondent-landlord has submitted that the respondent has already come to India and he is very much interested to open the show room of old and new cars. For this purpose, he requires the entire building. In the 5 vacant shops, he has already opened his office. He has also placed on record the authorization letter dated 22nd October, 2002, Ex.A 13. Mr. and Mrs. Clayton have sold their business of sale and purchase of old and vintage cars to the respondent-landlord. Counsel for the respondent further submits that for the *bona fide* requirement of an NRI landlord, there is a strong presumption in his favour, which can only be rebutted by the tenant by leading strong and cogent evidence. He submits that mere assertion on the part of the tenant that the requirement of an NRI landlord is not *bonafide* would not be sufficient to rebut the strong presumption in favour of the landlord. In this regard, he made reference to the decision of the Supreme Court in **Baldev Singh Bajwa versus Monish Saini**. (2)

(11) I also do not find any force in the second contention raised by counsel for the petitioners. The Supreme Court in **Baldev Singh Bajwa's case** (*supra*) has held that under the Act, a special procedure for NRI landlords for getting immediate possession of a residential building, scheduled building and/or non-residential building for their personal use has been made to achieve a legislative object, which has been explained in the Statement of Object and Reasons appended with the East Punjab Urban Rent Restriction (Amendment) Ordinance 2000. By the said amendment, a special class has been created giving special right to them to recover immediate possession from the tenants

occupying their premises by providing special procedure, provided such premises were required by them for their use or for the use by their dependents. If an ejection application is filed by an NRI landlord under Section 13 B of the Act, the Rent Controller has been given power to grant leave to contest such application, which is restricted by the condition that the affidavit filed by the tenant discloses such fact as would dis-entitle the landlord from obtaining an order of recovery of possession. The tenant can contest the ejection application on the ground that need of the landlord is not *bona fide*. In the proceedings taken up by an NRI landlord under Section 13 B of the Act for eviction of the tenant, the Court shall presume that the landlord's need pleaded in the petition is genuine and *bona fide*, but the said presumption is subject to the right of tenant to rebut it with strong and cogent evidence. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in favour of the landlord. In this case, in my opinion, the petitioners-tenants have failed to rebut the presumption in favour of the respondent-landlord that his requirement of the demised premises is *bona fide*. In my opinion, the tenants have not placed on record any strong and cogent material rebutting the strong presumption in favour of the landlord. Undisputedly, the respondent is an NRI. He has returned to India. He requires the building in question for his personal use as he wants to open a show room of old and new cars. His case is covered by the requirement of Section 13 B of the Act. According to him, the total area of the entire building is required by him for the aforesaid purpose. Merely because, the landlord is owning some other property in the Focal Point is no ground to hold that his need is not genuine. It is the choice of the landlord to get one building vacated under Section 13 B of the Act out of two or more buildings. The landlord has already returned to India and opened his office in the 5 shops in his possession and he wants to construct the show room in the remaining portion of the building. Thus, in the facts and circumstances of this case, it cannot be said that the need of the respondent-landlord is not *bona fide*, as alleged by the petitioners.

(12) In view of the above, I do not find any merit in these revision petitions and the same are, therefore, dismissed.

R.N.R.