

SUPREME COURT OF INDIA

Swami Nath

Vs.

Nirmal Singh

S.L.P.(C) No.8317 of 2006

(Altamas Kabir and A.K.Patnaik JJ.)

07.09.2010

JUDGEMENT

Altamas Kabir, J.

1. Special Leave Petition (Civil) No.8317 of 2006 was taken up for hearing along with Special Leave Petition (Civil) Nos.11719 of 2006 and 2 11720 of 2006 as the issues involved in all the three matters were the same. All the three matters relate to interpretation of the provisions of Section 13-B read with Section 18-A of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as "the 1949 Act".

2. The common case in all these three Special Leave Petitions is that the Respondents as Non- Resident Indians filed petitions before the concerned Rent Controller under Section 13-B of the 1949 Act for eviction of the Petitioners from their respective tenanted premises and that all the three petitions were allowed and eviction of the Petitioners was ordered. In Special Leave Petition (Civil) No.8317 of 2006, the Petitioner being aggrieved by the order of the Rent Controller, Phagwara, moved the High Court in Civil Revision No.1146 of 2006.

3. In Special Leave Petition (Civil) No.11719 of 2006, the Petitioner being aggrieved by the order of eviction passed by the Rent Controller, Phillaur, moved the High Court in Civil Revision No.5979 of 2004 against the said order of the Rent Controller. Similarly, the Petitioner in Special Leave Petition (Civil) No.11720 of 2006 moved the High Court in Civil Revision No.5978 of 2004, since both the two matters were disposed of by a common judgment and order dated 8th May, 2006.

4. The main challenge of the Petitioners in Civil Revision No.5978 of 2004 and 5979 of 2004 before the High Court was that the Respondent/landlord was not entitled to seek ejection of the tenants from the property in question as he already had a shop room in his possession measuring 12 feet x 12 feet and was not, therefore, in bona fide need of the said premises. The said stand of the Petitioners/tenants was rejected both by the Rent Controller as well as the High Court.

“Having regard to the provisions of Section 13-B read with Section 18-A of the 1949 Act, both the forums were of the view that as a Non- Resident Indian, the Respondent was entitled to the benefit of the said provisions for recovery of possession contained therein.”

5. Similar submissions were advanced by the Petitioner in Special Leave Petition (Civil) No.8317 of 2006 before the High Court. In addition, it was urged that under the provisions of Section 13-B, the landlord was entitled to exercise his right of option for immediate possession only once and that having obtained vacant possession of a shop room in the building in question, such right had been exhausted and the landlord was no longer entitled to immediate possession as contemplated in Section 13-B of the 1949 Act.

“It was sought to be urged that a shop room in a building would have to be treated as a separate unit or building for the purposes of Section 13-B of the above Act as otherwise the very object of Section 13-B would be frustrated as the landlord would have to approach the Court repeatedly for obtaining possession of different parts of the building, which was not contemplated in the said Section.”

6. The High Court negated both the submissions and while upholding the view taken by the Rent Controller with regard to the bona fide need of the landlord of the suit premises, the High Court also rejected the additional submissions regarding the interpretation of Section 13-B as sought to be urged on behalf of the Petitioners herein.

7. Learned senior counsel, Mr. Neeraj Jain, appearing for the Petitioners in Special Leave Petition (Civil) No.8317 of 2006, contended that the High Court had failed to appreciate the scheme and object of the 1949 Act which was meant to be a beneficial piece of legislation to protect the tenants from eviction from their tenanted premises from landlords whose needs were not as great as that of the tenants. It was urged that Section 13-B had been incorporated in the 1949 Act in 2001 as an exception to the provisions of the Act to accommodate Non-Resident Indians who after their return from abroad needed their own premises for the purposes of residence or even for starting a new business. Even then the right to immediate possession given to landlords under Section 13-B in the special circumstances was restricted and a choice of obtaining immediate possession of the premises was restricted to one choice only.

8. It was also urged that the provisions of Sub- section (1) of Section 13-B would have to be read in a manner so as not to defeat the main purpose and object of the Act. It was submitted that recourse could, therefore, be had to the provisions of Section 13-B only once which would support the theory that each shop room or other premises in the building would have to be treated as a separate unit and the landlord would be entitled to make a choice as to which of the units he wished to take possession of immediately. It was submitted that in these cases, since the landlord had already obtained possession of a portion of the building, it must be deemed that he had exhausted his option as given under Section 13- B and in order

to evict the other tenants from the premises in question, he would have to file regular eviction petitions before the Rent Controller concerned, who would have to deal with the same in the regular manner without resorting to the emergency provisions of Section 13-B of the 1949 Act.

9. Learned senior counsel for the petitioner also contended that having regard to the definition of "Non-resident Indian" in Section 2(dd) of the 1949 Act, such Non-resident Indian would mean a person of Indian origin, who is either permanently or temporarily settled outside India for taking up employment outside India or for carrying on a business or vocation outside India or for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

“It was urged that the emphasis was on the condition that the NRI would be staying outside India and in order to avail the benefits of Section 13-B, he would have to return to India permanently.”

10. Mr. Jain submitted that the Respondent had not been able to establish that he was an NRI within the meaning of Section 2(dd) of the 1949 Act and was not, therefore, entitled to the benefits of Section 13-B thereof. Mr. Jain reiterated his stand that having filed an Ejectment Petition in respect of one of the three shop rooms, the subsequent Ejectment Petitions were not maintainable and no order of ejectment could have been passed in respect thereof. Learned counsel submitted that the Rent Controller had exceeded his jurisdiction in passing the order of ejectment in respect of all the three matters despite the bar under the proviso to Section 13-B(1) of the aforesaid Act.

11. The submissions made on behalf of the Petitioners were strongly opposed on behalf of the Respondent/landlord. It was urged that the language of Section 13-B(1) of the 1949 Act was clear and unambiguous and the suggested interpretation of the proviso thereof would lead to an absurd situation if the building of the NRI was under the possession of various tenants and he was entitled to exercise his right of summary proceedings only in respect of one of the said units. It was submitted that such an interpretation would be absolutely contrary to the objects sought to be achieved by the introduction of Section 13-B in the 1949 Act by way of amendment in 2001.

12. Reliance was placed on the decision of this Court in *Baldev Singh Bajwa v. Monish Saini*¹ where the same question had come up for consideration and it was observed that on a plain reading of the provisions of Section 13-B, it would be obvious that once in a life-time possession is given to an NRI to get one building vacated in a summary manner.

“It was also submitted that the ownership of the Respondent/landlord in respect of only one building had not been disputed by the Petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the

second time to a particular building, which contention had been negated by the Courts below.”

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made 1 on behalf of the Petitioners. The interpretation sought to be given to the proviso to Section 13-B(1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly.

15. There will, however, be no order as to costs.

¹*JT 2005 (12) SC 442*