

## **Baldev Singh Bajwa vs Monish Saini on 5 October, 2005**

**Equivalent citations: AIR 2006 SUPREME COURT 59, 2005 (12) SCC 778, 2005 AIR SCW 5465, 2005 (10) SRJ 89, 2005 (8) SLT 112, 2005 (8) SCALE 338, (2005) 4 RECCIVR 492, (2005) 4 ICC 570, (2005) 8 SCALE 338, (2006) 1 WLC(SC)CVL 55, (2005) 3 LANDLR 629, (2005) 2 RENCJ 110, (2005) 2 RENCRC 470, (2005) 2 RENTLR 488, (2005) 7 SCJ 650, (2005) 8 SUPREME 240, (2005) 4 CURCC 240, (2006) 1 CURLJ(CCR) 165**

**Author: P.P. Naolekar**

**Bench: K.G. Balakrishnan, P.P. Naolekar**

CASE NO.:

Appeal (civil) 6131 of 2005

PETITIONER:

Baldev Singh Bajwa

RESPONDENT:

Monish Saini

DATE OF JUDGMENT: 05/10/2005

BENCH:

K.G. Balakrishnan & P.P. Naolekar

JUDGMENT:

JUDGMENT P.P. NAOLEKAR. J.

Leave granted in all the Special Leave Petitions.

In all the above appeals, a common question of law arises for determination and therefore they are heard together and are decided by the common judgment.

All these appeals have been preferred by the tenants against whom a decree for eviction from their tenanted premises were passed by the Controller and confirmed by the Punjab and Haryana High Court. In three appeals, namely, S.L.P. c No. 17622/2003-Mohinder Singh v. Git Singh, SLP c 19540/2003-Laxmi Kant v. Surjit Singh Channa and SLP c 4566/2004 Shangara Singh v. Malkiat Singh leave to contest were granted by the Controllers and after trial, decrees for ejectment were passed against the tenants. In other appeals, leave to contest the landlords' applications' for ejectment were rejected at the initial stage by the Controllers.

Certain provisions of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred to as 'The Act of 1949') which have been inserted by Punjab Act No.9 of 2001 dated 31.5.2001 have been elaborately discussed by the High Court in the matter of Baldev Singh Bajwa v. Monish Saini, and therefore we will refer to the facts of that case for consideration and interpretation of the Sections inserted in the Act of 1949 by Act No. 9 of 2001 and shall elaborate and discuss and factual aspects necessary, in regard to the other appeals in the latter part of the Judgment.

The facts, in brief, in the matter of SLP c 17864/2003-Baldev Singh Bajwa v. Monish Saini are:

Appellant in this case is a tenant of a disputed shop which was leased out to him vide Rent Note dated 14.03.1985 by Monish Saini, landlord with the consent of other landlords. The landlord was born in Delhi and later migrated to United Kingdom for employment and settled there. He holds a Canadian Passport and is doing service in U.K. The landlord filed an ejectment petition invoking Section 13-B of the Act of 1949 by making averments that the tenant-appellant was bound to surrender immediate possession of the disputed shop to him. He had claimed the status of Non Resident Indian (hereinafter to be referred to as 'NRI') as per definition under Section 2 (dd) of the Act. Ejectment was sought on the allegation that he wanted to start business of Transport and Goods Carrier in which he had acquired sufficient experience. On notice of application for eviction, the appellant-tenant filed an affidavit seeking leave to contest, as required under Section 18-A (5) of the Act of 1949. The tenant pointed out that the landlord holds a Canadian Passport and he was living in U.K. and came to India on Tourist Visa and, therefore, has not returned to India permanently. It was also pleaded that respondent did not require the shop as he and his family own various shops around the shop in dispute and had been letting out the same from time to time. The affidavit also mentioned that one very big shop of the respondent-landlord and his family remained vacant and possessed by them. Previously also the ejectment of the premises on other grounds was dismissed. That the respondent could not be regarded as a NRI as there is no likelihood of his return to India for the purpose of doing business. That the ejectment petition by invoking Section 13-B of the Act of 1949 was merely to seek ejectment from the shop in dispute without there being bona fide need. The Controller declined the prayer of the tenant to contest and allowed the petition filed by the respondent under Section 13-B of the Act of 1949 and directed tenant to handover possession of the shop in dispute to the landlord. The Controller held the landlord to be a special category of landlord, i.e., NRI. Controller held that there was no need to ascertain the intention of the landlord regarding his settlement in India as specific penal provision has been incorporated in the Act to counter that. He further held that the availability of other buildings or accommodation could not be a ground to deny a NRI the possession of any building of his choice. The Controller further observed that the tenant in his affidavit had not cared to specify the properties by giving number, location or area of the properties owned by the landlord in the same locality. The Controller also held that dismissal of the previous proceedings for ejectment would not be sufficient to non-suit the landlord.

The tenant preferred revision petition to the High Court of Punjab and Haryana. The learned Single Judge vide Judgment and Order dated 29.5.2003 dismissed the revision petition. It was held that the expression 'NRI' under Section 2(dd) of the Act of 1949 had to be given its ordinary meaning and a person of Indian origin living abroad, whether settled permanently or temporarily, would be a NRI within the meaning of Section 2(dd) of the Act of 1949. The learned Single Judge also pointed out that the expression 'returns to India' used in Section 13-B of the Act of 1949 would not necessarily mean that he must return permanently or he must file a petition after he had returned to India. The learned Single Judge held that in the context of the provisions of the Act of 1949 applicable to NRI landlord, no leave to contest can be granted on the ground that the landlord did not require the suit accommodation. The question of bona fide need not be gone into in these proceedings. To be in the words of the High Court:

``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 any one for a period of five years as provided by sub-section (3) of Section 13-B of the Act". The High Court confirmed the order passed by the Controller, Hoshiarpur.

In S.L.P. (Civil) 17622 of 2003-Mohinder Singh v. Git Singh, the High Court relied upon the decision of Punjab and Haryana High Court in Civil Revision No. 5586 of 2001-Prem Kumar Patel v. Inder Singh Grewal and Ors. in which it was held that:

- (i) that the landlord is a Non-resident Indian;
- (ii) that the landlord has returned to India; and
- (iii) that the landlord should be the owner of the property for the last five years.

Once these three ingredients are proved, a mere prayer of the landlord that the tenanted premises is required for his or her own use, or for the use of any one ordinarily living with the dependent on him or her, entitles him/her to get the immediate possession of the property.

Learned senior counsel for the appellant have vehemently urged that the order for eviction of the tenant cannot be passed by the Rent Controller under Section 13-B of the Act of 1949 unless it is found, as a fact, that the landlord requires the suit accommodation for his or her use or for the use of any one ordinarily living and dependent on him or her. The Rent Controlling Authority could not have rejected the application for leave to contest the ejectment proceedings without going into the merits of the case in regard to the requirement of the landlord of the suit accommodation and considering it on the touchstone of bona fide requirement or genuine requirement of the landlord. It

is urged that the law does not allow the Rent Controller or the High Court to act mechanically on the application being moved by the landlord and grant him relief merely because an averment is made in the petition of his requirement of the suit accommodation. On the other hand, it is urged by the learned counsel for the respondent- landlord that the very purpose of providing expeditious relief to the NRI landlord or ejection of tenant from their suit accommodation with the conditions imposed by the provisions of the Act itself, would be defeated if the question of requirement of the landlord would be called upon to be considered as bona fide requirement, particularly so when the expression ``bona fide requirement" do not occur in Section 13-B of the Act. It is contended that the absence of these words in Section 13-B and the other restrictions imposed on the NRI landlord is obviously to obviate the difficulty of the landlord by enabling him to get immediate possession of his premises which is in occupation of the tenant.

East Punjab Urban Rent Restricting (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 27th December 2000. Later on the Ordinance was made Act No. 9 of 2001. The relevant provisions with which we are concerned in the present appeals, on the submissions made by the learned counsel appearing for respective parties are Section 13-B, and 19(2-B) which are re-produced below along with the Statement of Object and Reasons of introductions of new provisions:-

"The State Government had been receiving representations from various N.R.I.s individuals and through their associations highlighting the plight of Indian residents returning to India after long years abroad. It was represented that the NRIs 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 NRIs 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 NRIs to enable them to recover possession of a residential or scheduled building and/or one non residential building for their own use." Section 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." Section 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.

The amendment introduced in the Act created a special class of NRI landlords and repose special right to them to recover immediate possession from the tenants occupying their premises provided, such premises were required by them. Section 13-B intends to provide immediate possession of the accommodation to the NRI landlord which is in possession of the tenant if the landlord requires the same for his or her use or for the use of any one ordinarily living with him/her and is dependent on him or her. Sub-section (1) of Section 13-B postulates that the NRI-landlord should be owner of the building from which he has asked ejectment of the tenant. He should require the same for his or her use or for the use of anyone ordinarily living with him/her and is dependent on him or her. He should be the owner of that building for five years before he applied to the Controller for possession of such building. The right under Section 13-B of immediate possession could be availed of only once during the life time of such an owner/NRI landlord. Sub-section (2) of Section 13-B gives a choice to the NRI-landlord to select one among several others residential building or schedule building and/or non-residential building for the purpose of eviction of the tenant from that premises. Residential building is defined in Section 2(g) to mean a building which is not a non-residential building. Scheduled building is defined in Section 2(h) of the Act which means a residential building being used by a person engaged in one or more of the professions, namely, lawyers, architects, dentists, engineers, veterinary surgeons, medical practitioners including practitioners of indigenous systems of medicine and who occupies the same partly for his business and partly for his residence. Sub-section (3) of Section 13-B puts a restriction on the landlord to deal with building of which he has taken possession by virtue of the order passed under Section 13-B of the Act of 1949. Under this Section the owner who recovers the possession of the building by virtue of the order passed under Section 13-B shall neither transfer it either by sale or by any other mode nor he shall let it out for the period of five years from the date he took possession of the building. In case there is a breach on the

part of the owner who took possession of the building, of any of the conditions, the tenant who had been evicted would be entitled to apply to the Controller for an order directing that the tenant be restored back possession of that building and on such a petition being moved, the Controller would pass an appropriate order. Apart from the restriction which is imposed by sub-section (3) of Section 13-B on the landlord's right to deal with the building of which he took possession under the provisions of Section 13-B, a further restriction has been imposed on the landlord under Section 19 (2-B) of the Act of 1949. Section 19(2-B) contemplates that when the order for possession is being passed in favour of the owner-landlord under Section 13-B, he is required to occupy the premises continuously for the period of three months from the date of eviction of the tenant. He is prohibited from letting out the whole or any part of that building from which the tenant was evicted to any other person except the tenant who had been evicted by virtue of the order passed under Section 13-B. In contravention of these restrictions, landlord is liable for a penal action and can be imposed punishment of imprisonment for a term which may extend to six months or with fine which may extend to rupees one thousand or with both.

The application of the NRI-landlord for eviction of a tenant on the ground of his requirement under Section 13-B is to be disposed of in the manner indicated in Section 18-A of the Act. The procedure and provisions show that when an application is made to the Rent Controller and the summons issued on the tenant, the tenant cannot contest that application of the landlord for his eviction unless he obtains leave to contest the application under sub-section (5) of Section 18-A of the Act of 1949. Sub- s. (4), (5), (6) and (8) of Section 18-A are re-produced below:

Sub-s(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.

Sub-s(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 Section 13-B).

Sub-s (6): Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the

date of which leave granted to the tenant to contest and shall hear the application from day-to-day till the hearing is concluded and application decided.

Sub-s (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 accordance to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

These provisions indicate that in order to obtain leave to contest the application of the landlord, the tenant has to file an affidavit taking the grounds on which he wants to contest that application. If the affidavit filed by the tenant discloses such facts as would disentitle the NRI- landlord from obtaining an order for the recovery of immediate possession, the Controller would grant leave to the tenant to contest landlord's application for eviction. Once the leave is granted, the application is required to be disposed of as per the procedure applicable to the Court of Small Causes. The Controller is required to commence the hearing within one month from the date on which the leave is granted to the tenant to contest. The application shall be heard day-to-day till hearing is concluded and application decided. The order to direct recovery of possession of the suit accommodation made by the Controller is not subject to appeal or the second appeal. However, the High Court may call for the record of the case to satisfy itself that the order passed by the Controller is in accordance with law and may pass such order as it thinks fit.

The above provisions makes it explicitly clear that right to eject the tenant, under Section 13-B, is available to that landlord only who has a particular legal status or character namely, that he is non-resident Indian landlord, he is owner of the suit building for five years before he availed of that right. The landlord has also to prove his requirement in respect of that building.

We may now take up the contentious issue relating to the standard of proof required by the NRI landlord to prove his requirement of the accommodation from which the ejectment is asked for in the light of the relevant provisions imposing conditions on his enjoyment of the premises, possession of which, to be obtained under Section 13-B of the Act of 1949.

The phrase ``bona fide requirement" or ``bona fide need" or ``required reasonably in good faith" or ``required", occur in almost all Rent Control Acts with the underline legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In *Ram Dass v. Ishwar Chander*, [1988] 3 SCC 131, it is said

that the bonafide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably, a subjective element in it, and that desire, to become a 'requirement' in law must have the objective element of a 'need' which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

In *Bega Begum and Ors. v. Abdul Ahad Khan (dead) by LRs. And Ors.*, [1979] 1 SCC 273 it was held by this Court that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so to make even the genuine need as nothing but a desire.

In *Surjit Singh Kalra v. Union of India and Anr.*, [1991] 2 SCC 87, a Three Judge Bench of this Court has held as under:

"The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the words 'bona fide' requirement in Section 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states "special procedure for the disposal of applications for eviction on the ground of bona fide requirement" In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*, [1999] 6 SCC 222, this Court while dealing with the aspect of bona fide requirement has said that in the sense of bona fide need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair 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, honest.

From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as genuine need and not a pretext to get the accommodation vacated. The provisions of Sections 18-A(4) and (5) concede to the tenant's right to defend the proceedings initiated under Section 13-B showing that the requirement of the landlord is not genuine or bona fide. The legislative intent for setting up of a special procedure for NRI landlords is obvious from the legislative intent which has been deliberately designed making distinction between the ordinary landlords and special category of landlords. The Controller's power to give leave to contest the application filed under Section 13-B is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. It is needless to say that in the



summary proceedings the tenant's right to contest the application would be restricted to the parameters of Section 13-B of the Act. He cannot widen the scope of his defence by relying on any other fact which do not fall within the parameters of Section 13-B. The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under Section 13-B the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependant, ordinarily lives with him or her. The requirement would necessarily to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor it can be said that in no circumstances the tenant will not be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the claim of the landlord under Section 13-B for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide.

The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under Section 18-A of the Act of 1949 which requires the Controller to take up the matter on day-to-day basis till the conclusion of the hearing of an application. The Legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction, it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of ejectment to special category of landlord who is NRI (Non Resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-s. (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended upto six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. Landlord, after the decree for possession, is bound to possess the accommodation. Landlord is prohibited from transferring it or letting it out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it improbable for any NRI landlord to approach the Court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this Section, would approach the Court for ejectment of the tenant

considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenant's right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13-B by the NRI landlords for the ejection of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. 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, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine.

We cannot subscribe to the submission of the learned counsel appearing for the respondents/landlords, that if the inquiry in the allegation of landlord's need regarding the bona fide and genuineness is permitted, the legislative intent of immediate delivery of possession of the accommodation owned by them would be defeated. Time and again this Court has laid down that legislative intent has to be ascertained according to plain language used in the enactment and basic rule of statutory construction should be preferred which advances the purpose and object of a legislation and not which leads to anomalies, injustice or absurdities. To refer some, they are *K.P. Verghese v. Income Tax Officer, Ernakulam and Anr.*, [1981] 4 SCC 173; *Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik and Ors.*, [1984] 2 SCC 50 and *Ravulu Subba Rao and Ors. v. Commnr. of Income- Tax, Madras*, AIR (1956) SC 604.

The golden rule of construction is that when the words of legislation are plain and unambiguous, effect must be given to them. The basic principle on which this rule is based since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the legislature intended what the words plainly say. The legislative intent of the enactment may be gathered from several sources which is, from the statute itself, from the preamble to the statute, from the statement of objects and reasons, from the legislative debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Record may be had from legislative history and latest legislation also. But the primary rule of construction would be to ascertain the

plain language used in the enactment which advances the purpose and object of the legislation. No doubt the legislative intent in enacting Section 13-B, is to provide for immediate possession of the accommodation owned by the NRI but it cannot be assumed that the legislature wants the NRI landlord/ owner, to get the possession of the accommodation from the tenant even if he does not require it and the need pleaded is proved to be a mere pretext to get the accommodation vacated. Had that not been the intention of the legislatures, the phrase 'required' by the NRI landlord would not have been used in Section 13-B. The classified landlords are given the benefit of summary trial under Section 18-A of the Act. The summary trial is in two parts. Sub-s. 4 provides that after the service of summons the tenant has no right to contest the prayer for eviction from the residential building, or schedule 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 provided in Sub-s. 5 of Section 13-B to contest the matter. If the tenant defaults to appear in pursuance of summons or when he does not get leave to contest, the controller shall presume the statements made by the NRI in his petition have been admitted by the tenant and pass an order of eviction. This eventuality is contemplated when a tenant does not appear in pursuance of the summon issued and served or where the leave to contest has not been granted by the Controller. The second facet of the Section comes into operation when the leave to contest is granted by the Controller. Sub-s. (6) of Section 18-A provides that the controller has to commence the hearing of the petition not later than one month from the date on which the leave was granted to the tenant to contest and he has to hear the application from day-to-day till the hearing is concluded and the application is decided. It is further provided that the procedure which shall be followed in deciding the application would be as is being practiced by Court of Small Causes. No appeal or second appeal is provided.

From the aforesaid, it is absolutely apparent that even when leave would be given to the tenant to contest, legislatures have taken care of expeditious disposal of the petition for ejection filed by the NRI landlord. Trial of the issue of bona fide requirement of the landlord in the procedure prescribed would not take much time and thus we cannot accept the argument that the phrase 'required' used by the legislature in Section 13-B would not mean bona fide or genuine requirement and the Section has to be construed as and when the allegation is made by the landlord of his need, it is to be taken as gospel truth and the tenant's right to defend on that count is completely extinguished and given a go-by. We do not think High Court is right in holding that mere prayer of the NRI landlord that tenanted premises is required by him or his dependent living with him entails decree of eviction on the mere allegation of requirement and no leave to contest can be given in respect of cases which are covered by various provisions restricting the right of the landlord to deal with the premises taken possession of by him in pursuance of the decree for eviction passed by the Controller under Section 13-B of the Act of 1949. We hold that allegations made by the NRI landlord of his requirement shall be presumed to be genuine and bona fide unless rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the stage of 'leave to contest' before the Controller. We feel any other interpretation would completely whittled down and deny the tenant's right to

show and prove that landlord does not in fact, or in law require suit premises.

It is further contended that for according relief under Section 13-B of the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to permanently return to India. The intention to permanently settle down in India should be read into words ``return" used in Section 13-B. The specific category of NRI landlord has been created by the Legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of the NRI in Section 2(dd) of the Act, it is not necessary for the NRI-landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.

Definition of ``Non-resident Indian" (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase ``Indian Origin" has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase ``origin" refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase ``return to India" along with the definition of the ``NRI" under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business

which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words ``return to India" under Section 13-B of the Act denotes return to India permanently.

On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that:- (i) he is a NRI; (ii) that he has return to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlord's application should confine to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B circumscribe to the grounds and inquiry to the aspects specified in the Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller.

In the light of interpretation given by us to relevant provisions of the Act of 1949 applicable to NRI landlord we shall consider individual cases of the appellants/tenants. We are confining our decision to the relevant grounds raised by the tenants in their affidavit filed seeking leave to defend and allegations made therein and the points urged before the High Court.

Baldev Singh v. Monish Saini In the facts and circumstances of the case, the High Court was right in holding that the landlord is not required to prove that he would permanently return to India. From the available material on record it is apparent that the tenant had not placed before the Controller the cogent material in his affidavit or along with the affidavit to prove that the landlord is in possession of reasonable suitable accommodation as owner, in his possession, to indicate that landlord's need was not genuine and bona fide. In this circumstance, we do not find any infirmity in the order passed neither by the Controller refusing to grant leave to contest nor by the High Court dismissing the revision petition of the appellant.

SLP c No. 19540 of 2003, Laxmi Kant v. Surjit Singh Channa, In this matter the tenant has raised two contentions :- (1) that the landlord is not the owner of the suit accommodation ; (2) that he is not a NRI within the meaning of the Act and has no intention to return to India, reside and work here. Leave has been granted by the Controller and after consideration of the evidence placed on record, a finding is arrived at that the landlord is a NRI, he has returned to India and that he is the owner of the premises for the last five years, and these findings were confirmed by the High Court. We are not persuaded to take a different view in the matter.

SLP c 3989 of 2004 Inder Bhushan Khanna v. Virendra Kumar Bhalla.

In this matter, the landlord invoked Section 13-B of the Act of 1949 and filed a petition claiming ejectment of the tenant on the allegations that he is a NRI as per the definition under Section 2(dd) of the Act. It is alleged by the landlord that he was operated for triple by-pass surgery and the cold climate of USA aggravated his health problems and he wants to settle in India along with his wife and for the said purpose he wants the suit accommodation, the portion of the premises being let out to the tenant which contains the amenities of toilet, bathroom etc., which were common, which would hamper peaceful stay leading to lack of privacy. The tenant entered appearance and filed an affidavit as required under Section 18-A(5) of the Act of 1949 contending therein that since the landlord was a citizen of USA and not returned to India, hence, not covered under the definition of NRI within Section 2(dd) of the Act. The landlord had sought the possession only for the winter months and such requirement cannot be called shifting permanently to India as the part of the building in possession of the landlord has a separate municipal number and, therefore, it would be an independent building, different than the portion given to the tenant. Besides this, he possessed three big rooms, kitchen and verandah therein in a building and the landlord does not require the portion of the building which was let out to the tenant. The Controller on the basis of the passport found the landlord to be a NRI. The Controller held the need of the landlord to be genuine. Aggrieved by the decision of the Controller the appellant/tenant filed a civil revision petition in the High Court of Punjab and Haryana. The High Court dismissed the civil revision petition holding that the site plan produced by the landlord clearly showed the tenanted premises and premises in possession of the landlord as one building and the need of the landlord is genuine as he would require the entire premises for his own use; that the landlord is a NRI within the meaning of Section 2(dd) of the Act. It is nowhere stipulated in the Act that the NRI landlord must occupy the premises for all the 12 months of the year or he must go back to India permanently.

On these findings arrived at by the two courts below, we hardly find any scope to interfere with in an appeal.

Shangara Singh v. Malkiat Singh Upon notice to the application for eviction the tenant/appellant has filed an affidavit seeking leave to contest as required under Section 18A(5) of the Act. The affidavit of the appellant has raised the following objections :- (1) that the respondent has been a citizen of England and hence could not invoke section 13-B of the Act without prior permission of the Central Government; (2) that respondent has not returned to India permanently as he has come to India after getting visa from the United Kingdom and could not live in India after the expiry of visa; (3) that respondent does not require the shop in dispute for his personal use and he already owns six other shops. Moreover, the landlord has not disclosed other commercial plots and property, which he owns. The Controller has, on facts found that the landlord is a NRI and has returned to India. The Controller held that the fact of bona fide requirement is not required to be proved by the landlord. The revision preferred by the tenant challenging the order of the Controller has been dismissed by the High Court in limine and it was held that although the landlord does not give the specific nature of business intended by him to set up in India after the settlement that would not be fatal to his claim. The learned judge has explained the ambit and the expanse of the requirement of the proof of bona fide need for the purposes of Section 13-B of the Act of 1949 and

pointed out that the bona fide requirement of the premises would be proved once the statutory conditions were fulfilled, unless and until, the tenant brought on record such facts which might show that ejectment petition lack bonafide. It has also been held that in-built safeguards provided under the Act are sufficient enough to check the bonafide requirement. We do not find any infirmity in the reasoning adopted by the learned Judge of the High Court nor perversity on facts to interfere with the order of the High Court.

Ashok Kapoor v. Smt. Harbans Kaur and Anr.

The landlady (Smt. Harbans Kaur) along with her son (Satbir Singh) have presented the ejectment petition before the Controller, Ludhiana by making averments that the tenant is bound to surrender the immediate possession of the suit property to them. The landlords have claimed the status of the NRI as per definition under Section 2(dd) of the Act. The ejectment has been sought for on the grounds:- (1) that they want to settle in India; (2) that the son is dependent on the land lady and wants to establish his business at Ludhiana; (3) that the land lady has no residential house at Ludhiana except some portion of the property No. 3-H, Sarabha Nagar, Ludhiana which is not sufficient for the accommodation of the land lady. The tenant, after notice has entered appearance and also has filed an affidavit seeking leave to contest the petition alleging therein that the respondents are neither permanently nor temporarily settled outside India; that the landlords have not specified as to how much premises would be required for residential purposes and for non-residential purposes; that the landlords are in possession of more than 2500 Sq.Yds. of property bearing No. 4-H situated at Sarabha Nagar, Ludhiana; that another son of the land lady and the brother of Satbir Singh, viz., Harbhajan Singh has already got a decision in his favour by the Court of Rent Controller in which the ejectment order has been passed against another tenant-Malkiat Singh, in relation to property No.4-H and, therefore, need is not genuine and the landlords are misusing the provisions of the Act. The Controller has declined the prayer to contest the petition on the findings of fact that the documents on record clearly show that the landlords are the NRIs; that she is the owner of the property for more than last five years and since the possession of premises No. 4-H has not been delivered, the respondents could file a petition for ejectment of the appellant/tenant under Section 13-B of the Act. The High Court has found that decree in regard to House No.4-H has been passed in favour of Harbhajan Singh, the other son of the land lady and, therefore, it cannot be said that the suit premises (No.3-H) is not required by landlords and the same could be got vacated for the bona fide use and occupation of the brother, i.e., Satbir Singh. We find that in another suit since the decree is passed in favour of Harbhajan Singh, the other son of the landlady on his bona fide need, there is no impediment in passing decree for possession of House No.3-H for the bona fide need of Satbir Singh and the land lady.

Malkiat Singh v. Harbhajan Singh and Anr.

In this appeal the appellant is a tenant in the small portion measuring 25'X140' in the property bearing No. 4-H situated at Sarabha Nagar, Ludhiana and Harbhajan Singh along with his brother Satveer Singh are the owner-landlords of the suit property. Harbhajan Singh along with his mother (proforma plaintiff) have invoked Section 13-B of the Act and presented the ejectment petition before the Controller, Ludhiana for ejectment of the tenant alleging that he is the owner of the

property which was let out by his mother on behalf of him to the tenant; that he is a Non Resident Indian under the Act. He requires the accommodation for the residential purpose and also to start his business. After service of notice the tenant appellant filed an affidavit seeking leave to contest as required under section 18-A(5) of the Act on the ground that he is residing in the small portion of the suit property and the major portion of the property measuring 2500 sq. yds. is in absolute possession of the respondent- landlord and therefore respondent is having the possession of the accommodation, which is sufficient to satisfy his need and that the need claimed is neither genuine nor bona fide; that he is not the N.R.I. The Controller has declined the prayer of the tenant-appellant and directed him to hand-over the possession of the property in question. The need of the landlord has been found to be genuine and bona fide as landlord is in possession of only portion of House No. 4-H and he wants to settle near his mother in that house. On consideration of the document the Controller has found the landlord to be a N.R.I. landlord. The High Court has accepted the findings arrived at by the Controller and dismissed the suit.

The landlord's genuine need of the suit accommodation is found correct by the two Courts and nothing has been brought to our notice to take a different view in the matter. In the affidavit seeking leave to defend, except a bare allegation that the landlord's need is not genuine, no other material has been placed to rebut the presumption which arises in favour of the landlord of his genuine and bona fide requirement of the accommodation.

**Mohinder Singh v. Git Singh** The tenancy in this appeal is of a garage which was rented out to the appellant. The respondent-landlord is a pensioner in Britain. He has filed a petition for ejectment invoking the provisions of Section 13-B of the Act, alleging that he is a N.R.I.; that he requires the property for his own use and for the use of his family members. He has alleged that he and his family members came to India permanently and wanted to settle here; that he has not invoked Section 13-B for eviction of any other building and that he shall follow every requirement as contemplated to be followed by the NRI-landlord. The tenant-appellant has entered appearance and filed his affidavit seeking leave to contest on the ground that the landlord is not the owner of the disputed premises; that the landlord is not NRI; that the premises is a non-residential premises and could not be vacated for residential purpose; that the suit accommodation is not required genuinely and that the landlord has moved the petition for eviction with ulterior motive to sell the property only.

Vide order dated 8.2.2002, Controller has granted leave to contest. After trial the Controller has found that the tenant himself admitted the ownership of the disputed premises of the landlord; that the Landlord is a NRI within the meaning of Section 2(dd) of the Act of 1949. The need of the landlord of the suit accommodation for personal use is held to be genuine as there is no suitable accommodation available for the landlord's use in the same locality. The High Court has dismissed the revision summarily at the motion stage. The High Court has held that it is immaterial as to which category of building and for what purpose that building is sought to be evicted as the Act stipulate that a NRI landlord can file application for ejectment of any type of building, whether residential or non-residential for any of the purpose i.e., for residential use or for non-residential use. The High Court has held that there is a presumption of bona fide requirement exist as in favour of the landlord. The High Court further held that the bona fides of his claim are not open to



challenge as there are in- built safeguards provided in the Act itself.

After going through the record we do not find that the tenant has produced any material along with his affidavit whereby he could said to have rebutted the presumption in favour of the landlord of his bona fide requirement and thus the two courts have rightly rejected his assertion that the need of the landlord is not genuine or bona fide. Section 13-B permits ejectment of a tenant from the residential or non residential premises or from the schedule building if the NRI requires it for his or for the use of his dependent. Section 13-B does not postulate that the NRI- landlord cannot seek ejectment of a non-residential building if the requirement of the landlord is for residential purpose. Having considered all the facts of the case, this Court does not feel it necessary to interfere with the order passed by the High Court.

SLP c NO. 17039 of 2004 Joginder Singh v. Tarsem Lal The tenanted premises in this appeal consist of one shop on the ground floor and a residential flat on the first floor. The landlord has invoked Section 13-B of the Act and presented the ejectment petition before the Controller on the allegations that the tenant is bound to surrender immediate possession of the disputed premises as he wants to settle in India and hence requires the premises for his use as well as for the use of his wife who is residing with him and is dependent upon him. The commercial premises will be utilized by him for starting his business jointly with his wife. He has claimed the status of the NRI as per definition of Section 2(dd) of the Act of 1949. The tenant has entered appearance and filed an affidavit. He has denied the ownership of the landlord regarding the disputed premises; that a single petition for ejectment of the non- residential premises and residential premises is not maintainable; that the landlord-respondent is not a NRI; that the need of the respondent is not bona fide as he is the owner and is in possession of a shop situated on northern side of the building in dispute wherefrom he is running the business of a dry-cleaner in the name and style of ``New Bharat Dry Cleaners''. The Controller has held that the landlord is the owner of the suit premises and that he is a NRI under Section 2(dd) of the Act. The Controller has also recorded the finding that the entire suit premises was under one tenancy as it was let out on the rent of Rs. 60 per month. On the basis of the Sale Deed dated 19.1.1987 Controller has held that the landlord owns suit premises more than five years from the date of presentation of the petition. Considering these aspects, the Controller refused to give permission to contest the petition filed by the landlord.

In the High Court it has been urged that the rent of the demise premises has been taken on two separate rent notes and therefore the common petition for ejectment of two tenanted premises was not maintainable. It is also urged that the landlord is not a Non-resident Indian and therefore can not take advantage of Section 13-B of the Act of 1949. It is also contended that the landlord is not the owner of the premises. The High Court has recorded its finding that the two premises were taken on a rent for Rs. 60 per month in the year 1960 and thus the tenant cannot raise the question that the landlord cannot file the ejectment proceeding of the entire premises as a single unit. The High Court relied on the Sale Deed of the suit premises for finding that the landlord is the owner of the premises for more than five years. The contention that the appellant-landlord is not a NRI has been rejected on the basis of the passport issued by the United States of America which reveals that the birth place of the landlord is India and he is shown to be a citizen of USA. No other question was urged before the High Court. The High Court has upheld the decision of the Controller whereby the leave to

defend was rejected. The findings recorded by the Controller and that of the High Court are based on the material placed on record and no case is made out before us to interfere.

SLP c No. 4204-05 of 2004.

Kasturi Lal v. Avtar Singh The landlord-respondent, in this appeal, is a British citizen. He has filed a petition invoking the provisions of Section 13-B of the Act of 1949, by making averments that the suit accommodation is required by him to run the business of electric goods; that due to advance age and cold climate in England, he is not keeping good health; and that doctors have advised him to live in India. He has also stated that later on he intends to demolish the entire building and wants to re-construct it according to his needs. Upon notice, the tenant-appellant has filed an affidavit contending therein that the landlord must furnish a prima facie proof that he wants to shift to India permanently by surrendering the citizenship of U.K. as well as the Insurance Card, medical facilities and other amenities which have been provided to him in Britain; that the landlord has not come to India with his complete bag and baggage; that the respondent-landlord has suppressed the fact about his other properties in the city; that the landlord has previously filed a suit for ejectment invoking general provisions of the Act which has been dismissed. The Controller has declined to grant leave to contest the petition. The Controller had found as a fact that respondent was non resident Indian and also the owner of the property in suit for more than five years. The Controller has recorded the finding of his intention to return back to India and consequent thereof leave to contest the application filed by the appellant was rejected. Aggrieved thereof, the tenant preferred a revision petition before the High Court. He has contended before the High Court that there is no evidence on record that the appellant shall shift to India or has intention to return to India as the landlord is a British citizen and has taken no steps to settle permanently in India. It is also urged before the High Court that as the landlord has expressed his wish to re-construct the building after demolition according to his needs, no order for ejectment could be passed as that is not the ground available to the landlord under Section 13-B of the Act. The High Court has held that the assertion of the landlord that he wish to reside permanently in India on the basis of the allegations made in the petition for ejectment are reliable. It is further held by the High Court that there is no bar under the Act so as to deny the landlord the right of re-constructing the building according to his needs. We do not find any infirmity in the reasoning of the High Court. As per provisions of Section 13-B, what is required to be proved by the landlord is his requirement of the building. There is no prohibition for the landlord from reconstructing the building according to his needs so long as he does not breach any of the conditions required to be fulfilled under the law. The requirement of the landlord can be to get the accommodation vacated and make it according to his needs. We do not find any substance in the appeal. It is accordingly dismissed.

SLP c 10865 of 2004 Gurbachan Singh Badhan v. Gurcharan Singh.

The tenant has filed an affidavit seeking leave to contest on the grounds:

- (1) that the application filed by the landlord under Section 13-B of the Act is not maintainable under Section 10 of the CPC;
- (2) non-joinder of the necessary parties as respondent has not been the sole owner of the property;
- (3) that application has been

filed through an attorney; (4) that the owner/landlord has sufficient accommodation in his possession and he has a property in Village Damonda. In the affidavit filed by the tenant the particulars have not been specified. The other proceedings which have been taken up by the landlord for ejectment under the general provisions of the Act, would not bar the proceedings taken up under the special provision connected with the welfare of the NRI. The ownership of the said premises has been established by the landlord on the basis of the documents produced and even assuring that the landlord was the sole owner of the property in dispute, there is no bar for him to take up the proceedings under Section 13(B) of Act. The High Court has upheld the order passed by the controller and held that the landlord/ respondent is the owner of the property for more than the five years and that it is not necessary for an NRI to personally come and file the petition; and that if the petition is filed through an attorney and the NRI comes later, requirement of Section 13-B is satisfied. There are no particulars given about the other properties held by the landlord and in the absence of cogent material placed before the Controller as to the other properties alleged to have been held by the landlord, the burden placed on the tenant to rebut the presumption that the need of the landlord is genuine and bonafide, would not stand discharged and thus there is no ground to interfere with the decision of the High Court.

In view of the discussion held above, we find no merit in the above appeals preferred by the tenants and they are accordingly dismissed. However, in the circumstances of the case, parties shall bear their own costs.