

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.5976 of 2014

PADAM NABH & SONS

... Appellant (s)

Versus

YASH PAL

... Respondent (s)

J U D G M E N T

V. Ramasubramanian, J.

1. This appeal arising out of an order of eviction passed by the Rent Controller, Shaheed Bhagat Singh Nagar, Nawanshahr, under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 and confirmed on revision by the High Court of Punjab and Haryana, raises an interesting question as to whether a Non-Resident Indian who purchases a building to which the Act applies, subsequent to the

induction of the tenant, will be entitled to invoke the summary jurisdiction under Sub-section (1) of Section 13-B or not.

2. We have heard Mr. Nidhesh Gupta, learned senior counsel appearing for the appellant and Mr. Pardeep Gupta, learned counsel appearing for the respondent.

3. Admittedly one Shri Padam Nabh, who was the father of the proprietor/partner of the appellant-concern, was inducted as a tenant in respect of a non residential building measuring about 12' x 12', situate at the Old Grain Market Nawanshahar. The induction of Shri Padam Nabh as a tenant, was by one Sat Prakash.

4. Claiming **(i)** that the original owner Sat Prakash sold the premises in question to his father Brij Lal under a sale deed dated 6.2.1989; **(ii)** that the property devolved upon him and his brother after the demise of his father in the year 1991 through testamentary succession; **(iii)** that he went to Australia in March-1996 and returned to India on 4.02.2004; and **(iv)** that he required the tenanted premises for establishing a departmental store, the respondent filed a petition for eviction under Section 13-B of the Act. The petition was allowed by the Rent Controller

by an Order dated 19.01.2010.

5. Challenging the order of the eviction passed by the learned Rent Controller, the appellant filed a revision before the High Court of Punjab and Haryana at Chandigarh. The revision having been dismissed by the High Court, the tenant is on appeal before us.

6. The main contention of Shri Nidhesh Gupta, learned senior counsel for the appellant is that the issue raised by the appellant is no longer *res integra*, but covered by the judgment of the Constitution Bench of this Court in ***Nathi Devi vs. Radha Devi Gupta***¹. However, the High Court, in the impugned order, chose to follow the decision of the Division Bench of the High Court in ***Smt. Bachan Kaur vs. Kabal Singh***², which distinguished the Constitution Bench Judgment in ***Nathi Devi*** (supra). Therefore, it is contended by Shri Nidhesh Gupta, learned senior counsel that the impugned order of the High Court requires to be interfered with, by this Court, in the light of the law declared by the Constitution Bench while interpreting an identical provision in the Delhi Rent Control Act, 1958 (for short "*Delhi Act*").

1 (2005) 2 SCC 271

2 2011(1) RCR (Rent) 368

7. Since **Nathi Devi** (supra) was concerned with the interpretation of Section 14-B of the Delhi Rent Control Act, 1958 and since we are concerned in this case with the interpretation of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, we think it would be appropriate to extract the relevant provisions of both the enactments in a tabular column for better appreciation.

Delhi Rent Control Act, 1958	East Punjab Urban Rent Restriction Act, 1949
<p>14-B. Right to recover immediate possession of premises to accrue to members of the armed forces, etc.</p> <p>(1) Where the landlord -</p> <p>(a) is a released or retired person from any armed forces and the premises let out by him are required for his own residence; or</p> <p>(b) is a dependent of a member of any armed forces who had been killed in action and the premises let out by such member are required for the residence of the family of such member, such person or, as the case may be, the dependent may, within one year from the date of his release or retirement from such armed forces or, as the</p>	<p>13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons. Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller alongwith a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his</p>

case may be, the date of death of such member, or within a period of one year from the date of commencement of the Delhi Rent Control (Amendment) Act, 1988, whichever is later, apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord is a member of any of the armed forces and has a period of less than one year preceding the date of his retirement and the premises let out by him are required for his own residence after his retirement, he may, at any time, within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises.

(3) Where the landlord referred to in sub-section (1) or sub-section (2) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of only one of the premises chosen by him.

Explanation - For the purposes of this section, "armed forces" means an armed force of the Union constituted under an Act of Parliament and includes a member of the police force constituted under Section 3 of

residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grandchild or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this section to the Controller-

- (a) In the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such commencement;
- (b) In the case of death of such specified landlord after such commencement, but before the date of his retirement, within one

the Delhi Police Act, 1978 (34 of 1978).

14-C. Right to recover immediate possession of premises to accrue to Central Government and Delhi Administration employees- (1) Where the landlord is a retired employee of the Central Government or of the Delhi Administration, and the premises let out by him are required for his own residence, such employee may, within one year from the date of his retirement or within a period of one year from the date of commencement of the Delhi Rent Control (Amendment) Act, 1988, whichever is later, apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord is an employee of the Central Government or of the Delhi Administration and has a period of less than one year preceding the date of his retirement and the premises let out by him are required by him for his own residence after his retirement, he may, at any time, within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises.

(3) Where the landlord referred to

year of the date of his death;
(c) In the case of death of such specified landlord after such commencement and the date of his retirement within one year of the date of such retirement:

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant:

Provided further 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 any parts thereof if it is let out in part or parts:

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation- For the purpose

in sub-section (1) or sub-section (2) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of only one of the premises chosen by him.

14-D. Right to recover immediate possession of premises to accrue to a widow. - (1) Where the landlord is a widow and the premises let out by her, or by her husband are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to her to make an application under that sub-section in respect of any one of the premises chosen by her.

14 (6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition."

of this section, the expression "retirement" means termination of service of a specified landlord otherwise than by resignation.

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 anyone ordinarily living with or 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 lifetime 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.”

8. In ***Nathi Devi***, eviction was sought under Section 14-D of the Delhi Act by a widow landlady. The Rent Controller allowed the eviction summarily and High Court confirmed the same. In the special leave

petition filed by the tenant, the decision of this Court in **S. Surjit Singh Kalra vs Union of India & Anr.**³ was relied upon in support of the contention that a landlady who acquired the tenanted premises by way of transfer, could not avail the remedy under Section 14-D for the eviction of a pre-existing tenant. However, the Bench of two Hon'ble Judges of this Court before whom **Nathi Devi** (supra) first came up, doubted the correctness of the decision in **S. Surjit Singh Kalra** (supra) and, hence, directed the special leave petition to be placed before a three Member Bench. The three Member Bench noticed the conflict between the **S. Surjit Singh Kalra** and **Kanta Goel vs. B.P. Pathak**⁴. The conflict was with respect to the interpretation of the words "let out" appearing in the relevant provision. Due to this conflict, **Nathi Devi** was referred to the Constitution Bench by an order reported in **Nathi Devi vs. Radha Devi Gupta**⁵. The short order of reference reads as follows:

"Specifically the issue is in relation to the meaning of the words" let out". Do they mean the creation of a fresh tenancy or do they refer to an existing tenancy? If the former, the section can be resorted to only by the creator of the tenancy (widow or her late husband). If it is the latter, even a

3 (1991) 2 SCC 87

4 (1977) 2 SCC 814

5 (2000) 9 SCC 249

transferee (widow) is entitled to invoke it. We find that there is some conflict in the views taken by two Benches of three learned Judges each. An observation in the judgment in Surjit Singh Kalra v. Union of India suggests that the words "let out" refer only to the creation of a tenancy. On the other hand, the judgment in Kanta Goel v. B. P. Pathak interprets the words "let out" in the context of Section 14-D of the Act to mean that even a transferee landlord can invoke the provision. It is, in these circumstances, necessary that this appeal should be heard by a Bench of five learned Judges. It shall be so placed after obtaining the directions of the Hon'ble the Chief Justice of India in this regard."

9. The Constitution Bench, after referring to the provisions of Sections 14B to 14D as well as Section 14(6) of the Delhi Act held **(i)** that these provisions carve out an exception to the normal procedure for eviction; **(ii)** that being in the nature of exception, they must be construed strictly and **(iii)** that the words "let out by him" or "let out by her" clearly signify that the premises let out by any other person will stand excluded from the operation of the summary procedure. Paragraphs 28 and 32 of the Constitution Bench Judgment in **Nathi Devi** (supra) are extracted as follows, as the entire argument of the petitioners, revolves around the same:

"28. The observations in the aforesaid judgments no doubt support the case of the appellant. This Court did clearly lay down that the expression, "the premises let out by him" in Section

14-B of the Act did mean that it is he who has let out alone could evict, and in case the landlord had been killed in action his dependent could seek immediate eviction of the premises let out by such person. It is noticeable that the expression, "premises let out by him" is used in Sections 14-B and 14-C, but the expression, in Section 14-D is "premises let out by her, or by her husband." Section 14-B contemplates two situations, firstly, where the landlord is a released or retired person from any armed forces and secondly, where he was killed in action. In case the landlord was killed in action a right has been given to his dependant within one year of the death of the landlord, to apply to the Controller for recovering the immediate possession of the premises. Section 14C confers a right on a retired employee of the Central Government or of the Delhi Administration who requires the premises let out by him for his own residence. Section 14-D confers a right on a widow of the landlord to seek immediate possession of the premises let out "by her, or by her husband". The scheme of these Sections appears to be that where the landlord is alive and the premises have been let out by him, only he can make an application for immediate possession of the premises for his own use. Only in the case of his death his dependant under Section 14-A, and his widow under Section 14-D can seek immediate possession of the premises. The use of the expression, "let out by him" in Sections 14-B and 14-C and the expression, "let out by her, or by her husband" in Section 14-D have significance. If it was unnecessary in the scheme of these Sections as to who had actually let out the premises, the legislature would not have used the term "let out by him" or "let out by her, or by her husband". In interpreting a provision one cannot assume that the words employed by the legislature are redundant. Section 14-D gives a right to file an application under that provision only to a widow who had let out the premises or whose husband had let out the premises. Consequently, if the premises had been let out by

someone else, Section 14-D will not apply. As pointed out in *Surjit Singh Kalra (supra)* the expression used in Section 14-B is "the premises let out by him", unlike the expression used in Section 14 (1)(e) where the legislature employed the expression "the premises let out for residential purposes". Thus in the case of a landlord belonging to the general category it was immaterial whether the premises was let out by him or by someone else, as long as he was the landlord of the premises at the time of making an application seeking eviction of the tenant. But the expression, "let out by her, or by her husband" conveys a different meaning altogether. The widow's right to recover immediate possession of the premises arises only if the premises were let out by her or by her husband, and not by anyone else. It appears to us that the legislature has purposely employed a different expression in Section 14-D as also in Section 14-B and 14-C. We are here concerned with an application filed under Section 14-D which specifies in clear terms that a widow can invoke the provisions only if she has let out the premises, or if her husband had let out the premises. If, as observed in *Kanta Goel (supra)*, the expression, "the premises let out by him" has been used only to convey the idea that the premises must be owned by him directly and the lease must be under him directly, and not that he had himself let out the premises, the legislature would not have then used the expression "let out by her, or by her husband." The very fact that the Section specifies that the premises must be one which was let out by the widow or by her husband implies that the provision would not apply to a premises let out by any other person. If the intention of the legislature was to confer an unlimited right on a widow landlord, the use of the words "the premises let out by her, or by her husband" would have been unnecessary and the Section would have simply read as follows:-

"Where the landlord is a widow and the premises are required by her for her own residence, she

may apply to the Controller for recovering the immediate possession of such premises."

By expressly providing that the premises must be one let out by her or by her husband, the legislature has clearly excluded from the purview of the said provision "premises let out by any other person" even if in course of time the widow may have become its landlord. We are obliged to read the provision as it is, and cannot give it a meaning by deleting an expression expressly employed by the legislature. The expression, "let out by her, or by her husband" is not an expression which permits of any ambiguity. We must, therefore, give it its normal meaning. So understood the conclusion is inescapable that the legislature intent was only to confer a special right on a limited class of widows viz. the widow who let the premises or whose husband had let the premises before his death, and which premises the widow requires for her own use.

"32. There is another aspect of the matter. Section 14-D uses the expression, "premises let out by her, or by her husband" which are required by the widow for her own residence. She may apply to the Rent Controller for recovering the immediate possession of "such premises". "Such premises" obviously is relatable to the premises let out her or by her husband. It cannot take within its ambit any other premises which may have been let out by any other person. We, therefore, find substance in the submission urged on behalf of the appellant that Section 14-D benefits only a class of widows viz. a widow who or whose husband had let out the premises. If the intention was to benefit all widows, the section would have provided that a widow is entitled to obtain immediate possession of the premises owned by her and the expressions, "let out by her or by her husband" and "such premises" in Section 14-D would be redundant. The High Court, therefore, fell in error in thinking that only two conditions were required to be fulfilled for the application of Section 14-D namely,

the landlady is a widow, and the premises are required by her for her residence. In addition to these two requirements, in our view, Section 14-D insists that the premises must be one let out by her or by her husband. A widow or her late husband who acquired a tenanted premises by sale or transfer cannot invoke the provisions of Section 14D to evict a preexisting tenant.”

10. But it is difficult to accept the contention that **Nathi Devi** which interpreted Section 14-D of the Delhi Act, would apply with equal force to the interpretation of Section 13-B of the East Punjab Urban Rent Restriction Act. There are several distinguishing features between the Delhi Act and the Punjab Act. Even before we take note of the distinguishing features, we must keep in mind the fact that the shortage of housing and the exploitation of tenants by landlords in the urban areas, in the aftermath of the world wars, led to the enactment of rent control legislations in the country. The problems created by the post war conditions differed from State to State and hence, the solution sought to be offered in the form of legislation also differed from State to State. As a matter of fact the East Punjab Urban Rent Restriction Act, 1949 is an offshoot of the Punjab Urban Rent Restriction Act, 1941 and the Punjab Urban Rent Restriction Act, 1947, both of which are pre-independent

and pre-partition legislation. On the contrary, the Delhi Act of 1958 is an offshoot of the Delhi and Ajmer Rent Control Act, 1952. The areas to which these acts applied had their own peculiar geographical features and socio-economic conditions. This is why the language employed in these rent control legislations differ, though they may have a common template.

11. Coming to the distinguishing features between the Delhi Act and the East Punjab Act, it may be seen immediately that the Delhi Act covers four categories of persons, *namely*, **(i)** a landlord in occupation of a residential premises allotted to him by the Central Government or any local authority and who is required to vacate such residential accommodation; **(ii)** a landlord, released or retired from armed forces or a dependent of a member of any armed forces who had been killed in action, including a member of the armed forces who is due to retire within one year; **(iii)** a landlord who is a retired employee of the Central Government or of the Delhi Administration; and **(iv)** a widow. But under the Punjab Act, the right to seek immediate possession is conferred in favour of only two categories of persons, *namely*, **(i)** a specified landlord,

meaning thereby a person entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in a connection with the affairs of the union or of a State; and **(ii)** an owner who is a non resident Indian and who returns to India.

12. While Section 13-A of the East Punjab Act was inserted by amending Act 2 of 1985, Section 13-B was inserted by Punjab Act 9 of 2001. Delhi Act does not contain any special provision for the benefit of NRI landlords. It is common knowledge that the major chunk of the NRI diaspora is from three states, *namely*, Punjab, Andhra Pradesh and Kerala. Therefore, the legislature thought fit to exempt buildings owned by NRIs from the rigors of the Rent Restriction Act. Hence, the normal rule of interpretation of a legislation for the welfare of the tenants, will give way while interpreting the provisions as applicable to the exempted categories.

13. It may be of interest to note that while carving out an exception in favour of four categories of persons, under Sections 14-A, 14-B, 14-C and 14-D, the Delhi Act used only the word "*landlord*". But the Punjab

Act uses the word “*specified landlord*” under Section 13-A and the word “*owner*” in Section 13-B. It is needless to mention that there is a world of difference between the expression “*landlord*” and the expression “*owner*”. While the owner of a premises may also be the landlord of the premises, a landlord, within the meaning of the expression under the Rent Control legislations, need not necessarily be the owner of the said premises. Therefore, while interpreting Section 13-B of the Punjab Act, the Court must keep in mind the distinction between those two expressions.

14. The proviso to Sub-section (1) of Section 13-B which curtails the right of the owner to invoke this provision for a period of five years from the date of becoming the owner, makes it clear that the words “*let out by him*” require a different interpretation .

15. If the interpretation suggested by Mr. Nidhesh Gupta on the basis of the decision in ***Nathi Devi*** (supra) is accepted, a NRI who is the owner of the building will be required to satisfy two conditions, *namely*, **(i)** that the premises was let out by him; and **(ii)** that a period of five years from

the date of becoming the owner has elapsed. The proviso to Sub-section (1) cannot be construed as imposing a condition additional to the one prescribed in Sub-Section (1). The correct method of interpreting Sub-section (1) of Section 13-B and the proviso thereunder is to hold that irrespective of the person by whom the tenant was inducted, a NRI owner will have to wait for a period of five years from the date of becoming the owner, to be entitled to invoke Section 13-B.

16. We must also keep in mind the distinction between **(i)** inception of tenancy or induction of a person as a tenant; and **(ii)** letting out a premises on lease. Section 13-B(1) does not use the expression “*inducted by him or her*”. If these words had been used, they would certainly refer to the inception of the tenancy. Section 13(B)(1) uses the expression “*let out*”.

17. Section 106(1) of the Transfer of Property Act, 1882 declares that a leasing of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year (in the absence of a contract or local law or usage to the contrary). It also says that a lease of immovable property for any other purpose shall be deemed to be

a lease from month to month. Therefore, if a NRI becomes the owner of the building to which the Act applies and the tenancy of a person in occupation is attorned in his favour, the premises would become a premises let out by him, as otherwise the jural relationship of landlord and tenant will not come into existence. Once a NRI acquires a premises which is in the occupation of a tenant inducted by his predecessor in title, he becomes the owner. The moment the tenancy is attorned in his favour, then the jural relationship of tenant landlord is created and the premises become one let out by him. It is perhaps with a view to highlight this aspect that the legislature has carefully used the expression “*owner*” in Section 13-B, even while using the expression “*landlord*” in other places.

18. Therefore, the decision of the Constitution Bench in ***Nathi Devi*** (supra) as applicable to the relevant provisions of the Delhi Rent Act cannot be pressed into service for interpreting Section 13-B of the East Punjab Urban Rent Restriction Act. Hence, we find that the order of the High Court impugned in the present appeal is perfectly valid and does not call for any interference. Therefore the appeal is dismissed.

19. However the tenant is granted six months' time to vacate the premises, provided the usual undertaking is furnished within a period of two weeks. There will be no order as to costs.

.....**J.**
(Hemant Gupta)

.....**J**
(V. Ramasubramanian)

NOVEMBER 17, 2021
NEW DELHI.