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Before M.M. S. BEDI, J.

RAVINDER PAUL MOHINDRA,—Petitioner

versus

GURBACHAN SINGH & OTHERS,—Respondents

Civil Revision No. 4508 of 2004

31st May, 2006

*East Punjab Urban Rent Restriction (Amendment) Act, 1949—  
S. 13-B, 18 & 19(2-B)—An NRI seeking ejectment of tenant under  
Section 13-B for his own use & occupation for commercial purpose—  
Rent Controller granting tenant leave to contest the ejectment petition—  
Right of tenant applying for leave to contest under Section 13-B—  
Scope of, stated.*

*Held*, that the mere denial on the part of the tenant that the NRI landlord is not the co-owner is not sufficient enough to grant the leave to contest under section 18 of the Act. When a landlord being a co-owner of the rented premises filed the ejectment petition on the ground of personal necessity, he certainly has *locus standi* to file a petition for eviction against a tenant for his own right or on behalf of all other co-owners as an agent. The consent of the other co-owners is presumed unless and until it is shown that the other co-owners were not agreeable to eject the tenants or that the ejectment application has been filed without their consent. In the present case, the petitioner has produced enough material on the record to indicate that he is a co-owner of the property pursuant to the decree of the civil Court dated 5th October, 1978. The name of the petitioner has already been included in the Municipal record as a co-owner. Thus, the observation of the learned Rent Controller that the dispute regarding relationship of landlord and tenant has to be decided by adducing evidence is contrary to the principle of law.

(Paras 11 and 13)

*Further held*, that the finding of the Rent Controller that *bona fide* requirement of the petitioner has to be determined by hearing the tenant after giving him an opportunity of hearing is not sustainable in the eyes of law. Even if the opportunity is given, the petitioner will not be able to go beyond the pleadings in the affidavit and the documents attached. The documents produced by the tenant, even if

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presumed to be correct, are not sufficient enough to rebut the legal presumption of the *bona fide* requirement of the landlord. The Rent Controller thus seems to have gone wrong on the point of *bona fide* requirement.

(Paras 17 and 18)

*Further held*, that it is not necessary that NRI should first come to India permanently with an intention to settle in India before filing a petition under Section 13-B of the Act. The observation of the Rent Controller while granting leave to contest is thus not sustainable in law.

(Paras 21 and 22)

*Further held*, that the term "let out by him" in Section 13-B of the Act would not mean that NRI filing a petition under Section 13-B of the Act will be deprived of the benefit to recover the immediate possession on the ground that the building had not been let out by him. A Non Resident Indian fulfilling all the other requirements of Section 13-B(1) of the Act will be entitled to seek eviction under the said provisions even if the property had been let out by his predecessor-in-interest or his co-owner.

(Para 25)

*Further held*, that the Rent Controller has formed an opinion that the verification of the contents of the affidavit will also be seen at the time of conclusion of the petition after giving an opportunity to tenant. In case the reasoning given by the Rent Controller while granting the leave to contest on the basis of wrong verification is accepted, it would tantamount to laying down the law that by merely filing an affidavit under Section 18(5) of the Act in contravention of the requirement of law, it would be a ground for granting the leave to contest to the tenant. It is the duty of the Rent Controller to ascertain that the affidavit filed by the tenant seeking leave to defend is in accordance with Order 19 Rule 3 of the Code of Civil Procedure which deals with mode of deposing affidavit regarding knowledge and belief.

(Para 26)

M.L. Sarin, Sr. Advocate with

Sahil Sharma, Advocate for the petitioner.

A.K. Chopra, Sr. Advocate with

Ms. Amarjit Khurana, Advocate for respondents.

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**JUDGMENT**

**M.M.S. BEDI, J.**

(1) This petition has been filed by a Non Resident Indian (for short 'the NRI') Landlord under Section 15(5) of the East Punjab Urban Rent Restriction (Amendment) Act, 1949 (for short 'the Act') challenging the validity of order dated 5th August, 2004 passed by the learned Rent Controller, Ludhiana allowing the application of tenant-respondent under Section 18(5) of the Act for leave to contest the ejection petition filed under Section 13-B of the Act filed by the petitioner-landlord.

(2) Records of the case have been called in order to determine whether the order of the learned Rent Controller, Ludhiana has been passed in accordance with law. *Vide* the impugned order the learned Rent Controller has allowed the application for grant of leave to contest on the grounds that (i) there is a dispute regarding relationship of landlord and tenant between the petitioner and the respondent, which question has to be decided by adducing the evidence as admittedly the ejection application has been filed by the petitioner alleging himself to be the owner and the landlord; (ii) in the application under Section 13-B of the Act filed by the petitioner as an N.R.I., it is nowhere stated that his intention is to permanently settle in India, the said point is also to be decided by the learned Rent Controller by giving opportunity to the tenant for contesting the petition; (iii) as the petitioner is alleged to have sufficient vacant land so the property given in the subject-matter cannot be termed as property which is required by the petitioner for his personal necessity, ground of *bona fide* requirement of the petitioner cannot be decided without hearing or giving an opportunity to lead evidence on the points raised by the respondent-applicant; and (iv) the verification of the contents of the affidavit of the tenant has to be seen at the time of the conclusion of the petition after giving an opportunity to the tenant but the learned Rent Controller had expressed the opinion that the case can be properly adjudicated after going through the cross-examination of the witnesses and the assertion of the petitioner is required to be decided after adducing of evidence by the tenant. As such, there are reasonable grounds available in defence to the respondent-tenant to contest the petition.

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(3) Shri M.L. Sarin, Senior Advocate, learned counsel for the petitioner has submitted that the entire approach of the learned Rent Controller in determining the question regarding the grant of leave to contest the application is contrary to the intention of the legislature while incorporating Sections 13-B, 19(2-B) in the Act. The amendment was introduced in the Act to create a special class of N.R.I. landlords and repose special right to them to recover immediate possession from the tenants occupying their premises, if the said premises, were required by them. It was argued that the scope of right of tenant to defend the claim under Section 13-B of the Act for ejection is very limited and the tenant gets a right to defend the claim of the landlord only if he is able to show that the landlord in the proceedings is not an N.R.I. 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 genuine. There is a legal presumption in proceedings under Section 13-B of the Act that the requirement of the landlord is genuine and *bona fide*. The mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine. The tenant will be required to show and *prima facie* prove that the landlord does not in fact or in law require the demised premises by some strong and cogent evidence and the inquiry would be confined to Section 13-B of the Act and other aspects shall be considered by the learned Rent Controller.

(4) Shri A.K. Chopra, Senior Advocate, learned counsel for the respondents has argued that one of the most important ingredient of Section 13-B required to be established by the landlord is that the premises should have been let out by the landlord himself besides that he is an N.R.I.; he returned to India permanently and that the landlord should be the owner of the property for the last five years. He has argued that the *bona fide* requirement of the landlord can be established only by permitting the landlord to produce evidence and with an opportunity to the tenant to rebut the evidence produced by the landlord by producing evidence on the record.

(5) I have heard learned counsel for the parties and gone through the impugned order as well as the entire record summoned from the Rent Controller in context to the relevant provisions of law applicable to the facts of the present case.

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(6) The petitioner has filed this petition under Section 15(5) of the Act for a direction to the tenant-respondents to vacate the demised premises, which is comprising of a shop forming part of property bearing Municipal No. B-II-1848 (old) and 1848 (new), situated at Mata Rani Road, Ludhiana depicted in red colour in site plan attached with the petition on the ground that he is a Non-Resident Indian. He is of Indian origin and belonging to Ludhiana. However, he has settled in U.K. for taking up and doing his employment and is likely to stay outside India for an uncertain period. He is co-owner/ landlord of the property in dispute, whereas respondents 2,3 and 4 are the other co-owners. The co-ownership of the petitioner has been sought to be established on the basis of a decree dated 5th October, 1978 passed by the Court of Shri M.S. Chawla, Sub-Judge Ist Class, Ludhiana, which also stands recorded in the Municipal records. Copies of the decree and the assessment register maintained by the Municipal Corporation, Ludhiana for the year 1999-2000 have been attached alongwith the passport of the petitioner, visa documents including the immigration stamps, driving licence documents, mortgage account number, National Insurance number card and bank account etc. It is averred in the petition that respondent No.1 was inducted as a tenant on 26th October, 1985 in the shop in dispute. The said premises originally comprised of two shops but later on the intervening wall was removed and it came to comprise of one whole shop and was rented out at a monthly rent of Rs. 1250 per month with an increase of Rs. 25 per month every year. The petitioner has returned to India on 21st March, 2004 and required the demised premises for his own *bona fide* use and occupation for his commercial purpose. Besides the demised premises, the petitioner has co-ownership to the extent of 1/4th share in property No. B-II-1846, Niggar Mandi, Mata Rani Road, Ludhiana, which is commercial in nature. However, the same is not suitable for the purpose of his own use and occupation and except the said property the petitioner has got no other similar commercial property owned or possessed by him. All the other co-owners of the property have got no objection in case the petitioner gets the tenanted premises vacated in exercise of right under Section 13-B of the Act. In the application filed under Section 18 of the Act seeking leave to contest the application for eviction, the tenant has submitted that (i) there exists no relationship of landlord and tenant between petitioner Ravinder Paul Mohindra and the tenant and that he was inducted

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as a tenant in the premises by Smt. Neeta Monindra wife of late Sh. Dharam Paul Monindra,— *vide* rent note dated 26th October, 1985. Later on Sh. Rajinder Paul Mohindra represented that the tenanted premises is his ownership and with the consent of Smt. Meeta Mohindra he started collecting the rent from the tenants and issued the receipts. Copies of the cheques have been placed on record to show that the rent was being paid to Rajinder Paul Mohindra (brother of the petitioner); (ii) it was claimed that Rajinder Paul Mohindra is the owner/landlord of the premises; (iii) in the affidavit it is averred that the petitioner is not an N.R.I. as per the provisions of Section 2 (dd) of the Act and that he has no intention to permanently reside in India and he does not *bona fide* require the shop in question. The other portion of the property bearing No. B-II-1848, Mata Rani Road, Ludhiana is 320 sq.yds is lying vacant and is in possession of Shri Rajinder Kumar Mohindra, who is owner of the property; (iv) a site plan of the property in possession of Rajinder Paul Mohindra and the portion in possession of the tenant has been shown as red; (v) the verification of the affidavit is to the effect that the contents are true and correct to the knowledge and belief of the tenant.

(7) The Rent Controller has granted the leave to contest the petition,—*vide* the impugned order for the reasons which have been enumerated herein above.”

(8) The scope of provisions of Sections 13-B, 18A(5) and 2(dd) of the Act came up for consideration before Hon'ble the Supreme Court of India while deciding a bunch of petitions filed by the aggrieved tenants against their eviction orders under Section 13-B of the Act in the case of **Baldev Singh Bajwa versus Monish Saini (1)**. The Hon'ble Supreme Court has, in reference to the relevant provisions of the Act has laid down as follows :—

“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 India landlord is required to prove that :— he is a NRI; (ii) that he has returned to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and;

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(iv) he is the owner of the property for the last five years before the institution of the proceedings for ejection 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 ejection 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."

(9) In the light of the above interpretation given by the Hon'ble Supreme Court, the reasoning given by the learned Rent Controller while granting leave to contest has been considered.

#### **Dispute regarding relationship of landlord and tenant**

(10) The learned Rent Controller has formed an opinion that the disputed question of relationship of landlord and tenant requires to be decided by the Court. The status of the petitioner as co-owner and landlord has to be established by giving an opportunity to the parties.

(11) I have carefully considered the said reasoning given by the learned Rent Controller. The mere denial on the part of the tenant that the N.R.I. landlord is not the co-owner is not sufficient enough to grant the leave to contest under Section 18 of the Act. When a landlord being a co-owner of the rented premises filed the ejection petition on the ground of personal necessity, he certainly has *locus standi* to file a petition for eviction against a tenant for his own right or on behalf of all other co-owners as an agent. The consent of the other co-owners is presumed unless and until it is shown that the other co-owners were not agreeable to eject the tenants or that the ejection application has been filed without their consent. The said question came up for consideration before the Hon'ble Supreme Court in **Mohinder Prasad Jain versus Manohar Lal Jain (2)**, wherein it was held as under :—

“A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating

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the eviction proceeding before the Rent Controller that he had taken option of consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondents herein.”

(12) A similar question had come up before Hon'ble Supreme Court in **India Umbrella Manufacturing Co. & ors. versus Bhagabandei Agarwalla (Dead) by L.Rs. Savitri Agarwall (Smt) & Ors. (3)** and the Hon'ble Supreme Court held as under :—

“Having heard the learned counsel for the parties, we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (see **Ram Pasricha versus Janannath (1977(1) SCR 395)** and **Dhannalal versus Kalawatibai (JT 2002(2) SC 53)**). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so to prejudice the other co-owners. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejection must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

(13) Following the ratio of **Mohinder Prasad Jain's case and India Umbrella Manufacturing Co.'s case (Supra)**, when a petition is filed by the landlord for eviction in the capacity as a co-



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owner, in agreement with the other co-owners, the same cannot be termed as not maintainable. In the present case the petitioner has produced enough material on the record to indicate that he is a co-owner of the property pursuant to the decree of the civil Court dated 5th October, 1978. The name of the petitioner has already been included in the Municipal record as a co-owner. Thus, the observation of the learned Rent Controller that the dispute regarding relationship of landlord and tenant has to be decided by adducing evidence is contrary to the principle of law. In view of the ratio of the ruling in **Mohinder Prasad Jain's case** (*supra*) a N.R.I., who is a co-owner of the tenanted premises is entitled to file a petition under Section 13-B of the Act.

**Bona fide requirement of landlord :**

(14) The learned Rent Controller while granting the leave to contest to the respondent-tenant had held that in view of the allegations of the availability of other property, the *bona fide* requirement of the petitioner cannot be decided without giving an opportunity to lead evidence on the point raised by the respondent-tenant. In this context it is relevant to refer to the judgment of the Hon'ble Supreme Court in **Baldev Singh Bajwa's case** (*Supra*) wherein one of the question, which cropped up before the Hon'ble Supreme Court was whether in the absence of specific words *bona fide* requirement in Section 13-B of the Act, it was necessary for the learned Rent Controller to adjudicate and decide the question of genuine or "*bona fide* requirement" of the landlord. The Hon'ble Supreme Court after consideration the provisions of Section 13-B and 19(2) observed as under :—

“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 tenants' right to rebut it but with strong and cogent evidence. In our view, the proceedings taken up under Section 13 by the NRI landlord 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 disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine.

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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 landlord's favour that his requirement of occupation of the premises is real and genuine.

(15) A perusal of the above said observation of the Hon'ble Supreme Court indicates that a tenant is required to give all the necessary facts and circumstances supported by documentary evidence, if available, so that the Rent Controller is in a position to adjudicate and decide the question of genuine or *bona fide* requirement of the landlord.

(16) I have carefully gone through the documents produced by the tenant, which include a site plan indicating the plan of property No. B-II-1848 purporting to be allegedly owned by landlord Ravinder Pal Mohindra. Most of portion on the ground floor, 1st floor and 2nd floor is shown to be owned and possessed by Ravinder Paul Mohindra (brother of the petitioner). The shop in dispute as shown in red colour on the ground floor and a portion on the 1st floor as shown in Yellow colour are in possession of another tenant, namely, United India Insurance Company. Few photographs of the entire building have been placed on record to support the site plan. The said documents, even if presumed to be correct, in no manner will prejudice the case of the petitioner and the said documents are not sufficient enough to arrive at a conclusion that the statutory presumption of *bona fide* requirement in the light of the inbuilt protection under the Act stands rebutted.

(17) Following the judgment in **Baldev Singh Bajwa's case** (*Supra*) it is held that a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in landlord's favour that his requirement of occupation of the premises is real and genuine. The finding of the Rent Controller that *bona fide* requirement of the petitioner has to be determined by hearing the tenant after giving him

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an opportunity of hearing is not sustainable in the eyes of law. Even if the opportunity is given, the petitioner will not be able to go beyond the pleadings in the affidavit and the documents attached. As observed herein above, the said documents, even if presumed to be correct, are not sufficient enough to rebut the legal presumption of the *bona fide* requirement of the landlord.

(18) The Rent Controller thus seems to have gone wrong on the point of *bona fide* requirement.

#### **Intention of the petitioner to permanently settle in India**

(19) The Rent Controller while allowing the application for leave to contest seems to be swayed by the fact that the petitioner has nowhere mentioned in the petition that his intention is to permanently settle in India and so this petition is also to be decided by giving an opportunity to the tenant for contesting the petition. The said observation of the Rent Controller seems to run contrary to the law laid in **Baldev Singh Bajwa's case (Supra)**.

(20) In para 21 of the judgment the observation of the Supreme Court is as follows :—

“Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2(dd) and 13B 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 (dd) and 13B 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” alongwith 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 ejectionment.”

(21) In view of the above observation, it is the settled principle of law that it is not necessary that NRI should first come to India permanently with an intention to settle in India before filing a petition under Section 13-B of the Act.

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(22) The observation of the Rent Controller while granting leave to contest is thus not sustainable in law.

**Whether a person, who has "let" out the premises in dispute is entitled to recover immediate possession :**

(23) Mr. Ashwani Chopra, learned counsel for the respondents has vehemently argued that it is not the case of the landlord in the present case that the property was let out by the petitioner to the tenant, which is *sine qua non*, to file a petition under Section 13-B of the Act.

(24) I have carefully considered the said contention of Mr. Chopra in context to the law laid down by the Hon'ble Supreme Court in **Baldev Singh Bajwa's case (supra)**. After referring to the provisions of Sections 13-B (1, 2 and 3) alongwith Section 19(2B) of the Act and procedure in Section 18-A (4, 5, 6 & 8) in context to the objective of the legislation, the Hon'ble Supreme Court laid down that the scope of inquiry while considering the application under Section 13-B of the Act, the Rent Controller is to be satisfied (i) that the landlord is NRI, (ii) he is returned to India permanently or for temporary period (iii) there is genuine requirement of the accommodation by him or his dependent and (iv) that he is owner of the property for the last five years before the institution of the proceedings for ejection.

(25) The first ingredient that he is the owner of the property for the last five years would imply that he can file an ejection application only if a period of five years has elapsed after acquiring the right of ownership or co-ownership of the building let out. In view of the settled principle of law that letting out by the co-owner would be letting out on behalf of other co-owners. In case the arguments of Mr. Chopra are presumed to be correct, then the natural consequence of the interpretation put forth by him would be that a person, who has become owner of the property beyond the period of five years by purchase, natural inheritance or otherwise would be disentitled to file a petition under Section 13-B of the Act. This does not ever seem to be the intention of the legislature. Hon'ble Supreme Court in **Baldev Singh's case** has not held that N.R.I. landlord is required to have himself let out the demised premises prior to five years of acquiring ownership. Keeping in view the interpretation of the provisions of

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Sections 13-B and 18 of the Act by the Hon'ble Supreme Court in Baldev Singh Bajwa's case (*supra*), the term "let out by him" in Section 13-B of the Act would not mean that NRI filing a petition under Section 13-B of the Act will be deprived of the benefit to recover the immediate possession on the ground that the building had not been let out by him. A Non Resident Indian fulfilling all the other requirements of Section 13-B(1) of the Act will be entitled to seek eviction under the said provisions even if the property had been let out by his predecessor-in-interest or his co-owner.

#### **Verification of affidavit**

(26) The Rent Controller has formed an opinion that the verification of the contents of the affidavit will also be seen at the time of conclusion of the petition after giving an opportunity to the tenant. In case the reasoning given by the Rent Controller while granting the leave to contest on the basis of wrong verification is accepted, it would tantamount to laying down the law that by merely filing an affidavit under Section 18(5) of the Act in contravention of the requirement of law, it would be a ground for granting the leave to contest to the tenant. It is the duty of the Rent Controller to ascertain that the affidavit filed by the tenant seeking leave to defend is in accordance with Order 19 Rule 3 of the Code of Civil Procedure which deals with mode of deposing affidavit regarding knowledge and belief.

(27) In view of the above discussion, each of the ground taken by the learned Rent Controller in the impugned order is not sustainable. As such, the revision petition is allowed, impugned order dated 5th August, 2004 is set aside and the application for leave to contest is, therefore, dismissed. Accordingly, the ejection application under Section 13-B of the Act filed by the petitioner is allowed. The respondent is granted two months' time to vacate the premises in dispute. However, it is ordered that the tenant will be entitled to restoration of possession of the premises in case the petitioner does not occupy it for a continuous period of three months from the date of such vacation or lets out the whole or part of such building regarding which the eviction order has been passed. In case of contravention of the provisions of Section 13(B) (3) of the Act, the petitioner will also be liable to punishment of imprisonment under Section 19(2B) of the Act.

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**R.N.R.**