

CWP-13560-1989

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision:26.08.2015

Amin Chand (since deceased) through his LRs

... Petitioner(s)

Versus

The Financial Commissioner (Revenue), Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. S.K.Aneja, Advocate,
for the petitioner.
Mr. S.S.Chandumajra, DAG, Punjab.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Siddhant Kant, Advocate for
respondent No.2.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the order dated 25.03.1985 (Annexure P-1) passed by the Assistant Collector-Ist Grade, Fazilka, order dated 17.09.1985 (Annexure p-2) passed by the Collector, Ferozepur, order dated 06.04.1987 (Annexure P-3) passed by the Commissioner, Ferozepur Division, Ferozepur and order dated 19.10.1987 (Annexure P-4) passed by respondent No.1-Financial

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Commissioner, Revenue.

Brief facts of the case are to the effect that respondent No.2- Shanti Devi (since deceased) filed application in form 'L' before the Assistant Collector Ist Grade, Fazilka for ejectment of petitioner-Amin Chand (tenant) from the land measuring 6 kanals 16 marlas comprised in rect. No.91 killa no.25 situate in village Karnikhera, Tehsil Fazilka, District Ferozepur on the ground that he had failed to pay the share of produce for the crops Rabi 1983 to kharif 1983 without any sufficient cause. The share of produce for the crop rabi 1980 to kharif 1982 had been obtained by filing an application in form 'M'. The Assistant Collector Ist Grade, Fazilka ordered ejectment of the petitioner from the land in dispute vide impugned order dated 25.03.1985 (Annexure P-1). Feeling aggrieved, the petitioner filed an appeal before the Collector, Ferozepur on the ground that nothing was due against him. The said appeal was dismissed vide impugned order dated 17.09.1985 (Annexure P-2). Against that, the petitioner filed revision before the Commissioner, Ferozepur Division, Ferozepur which was also dismissed vide impugned order dated 06.04.1987. The petitioner also filed revision before the Financial Commissioner, Punjab which was also dismissed vide impugned order dated 19.10.1987. Hence, this writ petition.

In pursuance of notice of motion, respondent No.2 filed reply with the averments that the petitioner had failed to pay the share of produce to respondent no.2 from kharif 1982 to kharif 1983. It is also averred that the petitioner had failed to cultivate the land w.e.f kharif

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1982 to kharif 1983 and thus had left the land vacant without any sufficient cause. The petitioner had also failed to produce any evidence whatsoever to show that he had given batai for the period kharif 1982 to kharif 1983.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that impugned orders passed by the revenue authorities are not sustainable in the eyes of law. There is sufficient evidence on record to show that share of the produce for the disputed period had already been given. Nothing was due against the petitioner at the time of filing of application by respondent No.2. In fact, there is no custom in the village for issuing receipts. No evidence was produced on record to show that the said land was kept vacant. The revenue authorities have misconstrued the evidence produced before them.

Per contra, learned State counsel and learned senior counsel for respondent No.2 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned orders. The revenue authorities have conclusively held that the petitioner had not paid the rent.

I have considered the rival contentions of learned counsel for the parties.

All the revenue authorities have recorded a concurrent finding of fact that the petitioner had failed to produce any evidence on

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the file to prove that share of produce for the crops rabi 1983 to date had already been paid by him. It has also been concurrently held that land in dispute was left vacant during the crops kharif 1982 to rabi 1983 without any cogent reason. Nothing has been pointed out to show that these findings are against the evidence on record. It is also pertinent to mention here that earlier the share of produce for the crops rabi 1980 to kharif 1982 was obtained from the petitioner by filing application on form 'M' and matter came to this Court in CWP-9590 of 1987, decided on 12.05.2014. This is the second default on the part of the petitioner. In *Amar Nath vs. Financial Commissioner, Haryana* 1994(2) R.R.R. 490, it has been held as under:

“6. What is the position in the present case? The sequence of events as noticed above clearly shows that the tenant had paid the rent from Rabi 1969 to Rabi 1970 on January 14, 1978 and for the period from Kharif 1970 and to Rabi 1977 on January 1, 1978. In fact, the Collector vide his order dated December 14, 1978, a copy of which is on record as Annexure P-4 clearly notices this factual position. It is thus clear that the tenant had not committed merely one or two defaults. He had failed to pay rent continuously for a number of years. Still further, it also deserves notice that the landowner had alleged default from Kharif 1965 to Rabi 1971. It is true that the application for the ejectment of the respondent-tenant on account of his failure to pay rent from Kharif 1965 to Kharif 1968 had been dismissed as the landowner had not led evidence. Yet nothing has been produced by the

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respondent to show that the rent had been actually paid. In fact, the deposit of rent in January, 1978, by the tenant is a clear acknowledgment of the fact that it had not been paid at least from Rabi 1969 to Rabi 1977. In fact, even the different authorities have noticed the default of the respondent. The Collector in his order dated June 13, 1977, (Annexure P-2) has categorically observed that "this fact can also not be left unnoticed that arrears of produce/rent (Batai) are due against the tenant for a very long time and that he has not taken any proceedings for the payment of Batai for some crops. Similarly, regarding the latter crops, he filed an application on 3.3.77 after so many years. Thereafter, the Commissioner in his order dated November 24, 1977 (Annexure P-3) has categorically observed that "there is no dispute on this point that the respondent has not paid the Batai of the crops mentioned in the application of the landowner". These proceedings clearly establish that the respondent had not paid rent regularly. Still further, there is nothing on record to show that he had any cause much less a sufficient cause for the series of defaults committed by him. And yet, in spite of the finding recorded by the Revenue authorities the petitioner's claim was rejected by the Collector. When he filed an appeal before the Commissioner, the claim was rejected on the ground that "the landowner has never taken any action for the recovery of Batai---". This was clearly wrong. The tenant is under a duty to pay the rent regularly. His failure to do so entitled the landowner to seek his eviction. He can avoid this penalty only when he shows sufficient cause. It has not been shown that he had any cause.

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8. Another fact which deserves notice is that the Commissioner while rejecting the petitioner's claim has observed that "the landowner has never taken any action for recovery of Batai". This is clearly erroneous view. It is for the tenant to pay. Once a default occurs, the landowner has an option. He can sue for recovery of rent or claim the eviction of the tenant. His claim for eviction cannot be defeated on the ground that he did sue for recovery. The Act requires the tenant to pay regularly. His failure to do so attracts the consequence of eviction. The option exercisable by the landowner does not give any right to the tenant."

Otherwise also, it is only a writ petition under Articles 226 and 227 of the Constitution of India. Reappraisal of evidence is normally not the function of the writ court. This court is satisfied that no injustice has been caused to the petitioner which may call for any intervention.

In view of above, instant writ petition is dismissed.

No order as to costs.

26.08.2015
parveen kumar

(Paramjeet Singh)
Judge