

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

CWP No.18200 of 2011 (O&M)

Date of Order: 01.12.2015

Bhajan Singh

....Petitioner

Versus

Financial Commissioner (Co-operation) and Ors

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Harsh Bunger, Advocate for the petitioner.
Mr. Yatinder Sharma, Addl.A.G, Punjab.
Mr. Sandeep K. Sharma, Advocate for respondent No.5.

RAKESH KUMAR JAIN, J (ORAL)

Petitioner is aggrieved against the order dated 12.03.2010 (Annexure P.9) passed by the Financial Commissioner (Co-operation), Punjab whereby the order dated 12.07.2004 passed by the Assistant Collector, Ist Grade, order dated 03.4.2006 passed by the Collector, Jalandhar and the order dated 04.05.2007 passed by the Commissioner, Jalandhar Division, Jalandhar were set aside and the matter has been remanded back with a direction to the Assistant Collector, Ist Grade, Jalandhar to inquire into the amount claimed by the petitioner, the fact as to whether the claim has been made within limitation and to pass necessary orders.

In short, respondent No.5 filed a suit for recovery of an amount

of Rs.5250/- of the crop Hari 1999 to Hari 2002 of land measuring 1 kanal-8 marla belonging to him out of total land measuring 4 kanal 1 marla comprised in Khewat No.77, Khatauni No.106, Khasra Numbers 47//6/3 (0-8), 15/2 (0-4), 48//10/2 (2-16M), 11 (0-13M), situated in village Dugri, Tehsil and District Jalandhar Hadbast No.337 as per Jamabandi for the year 1997-98 and prayed for passing of a decree of ejectment against the petitioner for the land in question. It is averred in the petition that respondent No.5 has alleged in the said suit that the petitioner, who was arrayed as defendant, has no right to remain in possession of the land in question as he has trespassed the same without any right or consent. According to respondent No.5, the petitioner did not file any written statement to his suit. The suit was dismissed by the Assistant Collector, Ist Grade, Jalandhar-II and the appeal and revision were also dismissed by the Collector and the Commissioner respectively. However, second revision filed before the Financial Commissioner has been allowed.

Learned counsel for the petitioner has argued that the suit under Section 14 of the Punjab Tenancy Act, 1887 (for short "1887 Act") was not maintainable as it could have been filed only by the landlord against a tenant. In this regard, he has referred to Sections 14 and 77 (3)(n) of the Act. He has also relied upon the judgments reported as **Shri Raja Durga Singh of Solan Vs. Tholu and others 1962 PLR 837** and **Anguri Devi Vs. Jasmer Singh, 2006 (4) RCR (Civil) 707 (P&H)**.

On the other hand, learned counsel for respondent No.5 has submitted that Section 14 of the Act deals with special circumstance wherein the owner of the land can ask for mesne profits from a person, who is in unauthorized possession over his land and for that, he has right to file a

suit in terms of Section 77 (3)(n) of the Act. He has also relied upon a Division Bench judgment of this Court reported as **Pritam Singh Vs. Mehal Singh, 1986 RRR 574** and also a single Bench judgment of this court reported as **Sarwan Singh Vs. Ajmer Singh, 1992 PLJ 422**.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that there is no error in the order passed by the Financial Commissioner, which is under challenge in this writ petition. In order to appreciate the argument raised by counsel for the parties, it would be relevant to reproduce Sections 14 and 77 (3)(n) of the Act along with definition of the landlord as provided in Section 4 (6) of the Act, which read as under:

“14.- Payments for land occupied without consent of landlord- Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use of occupation of that land at the rate of rent payable in the preceding agricultural year, or if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable.

77. Revenue courts and suit cognizable by them.- (1)
xxxxxx

(2) xxx xxx xxxx

(3) (a) to (m) xxx xxxx

(n) suits by a landlord for arrears of rent or the money-equivalent of rent or for sums recoverable under Section 14 [or suits for the recovery of such arrears or sums by any other person to whom a right to recover the same has been sold or otherwise transferred]

4. Definitions.- (1) to (5) xx xxx

(6) “landlord” means a person under whom a tenant holds land and to whom the tenant is, or but for a special contract would be liable to pay rent for that land.”

Learned counsel for respondent No.5 has not denied that respondent No.5 had filed the suit for recovery of mesne profits alleging that the petitioner is in unauthorized possession over his land, therefore, he has invoked Section 14 of the Act, which specifically provides a situation where the owner of the land can ask for recovery of the amount from an unauthorized occupant for use and occupation of his land. Section 77 (3)(n) also deals with three situations, namely, suits by a landlord for arrears of rent **OR** the money-equivalent of rent **OR** for sums recoverable under Section 14 of the Act.

In this case, respondent No.5 has invoked the provisions of Section 77 (3)(n) of the Act by filing a suit, which is apparently not barred because he can resort to Section 14 of the Act for claiming mesne profits qua the land in unauthorized use and occupation by the petitioner, who has not even contested the suit to plead and prove that he is in permissible possession.

It is however vehemently argued by learned counsel for respondent No.5 that no eviction order could be passed in terms of Section 14 of the Act and only recovery of mesne profits could be ordered to be effected.

Keeping in view the aforesaid discussion, I am of the considered opinion that the order passed by the Financial Commissioner, under challenge, is perfectly in order and the present writ petition, therefore, is dismissed. The Assistant Collector, Ist Grade, Jalandhar is directed to expedite the proceedings and decide the same as early as possible, preferably within a period of six months, from the date of receipt of certified copy of this order. Since there was stay order operating in this case at the

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time of issuing notice of motion, therefore the parties are directed to appear before the Assistant Collector, Ist Grade, Jalandhar on 21.12.2015.

December 01, 2015
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(RAKESH KUMAR JAIN)
JUDGE