

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.22793 of 2010 (O&M)
Date of decision: June 02, 2015

Panchayat Samiti, Batala

...Petitioner

Versus

Deputy Commissioner, Gurdaspur
& another

...Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. R.D. Bawa, Advocate for the petitioners.
Mr. V. Ramswaroop, Addl. A.G. Punjab.
Mr. Arun Jain, Senior Advocate with
Mr. Kushagra Mahajan, Advocate for respondent No.2.

Rajan Gupta, J.

Petitioner is aggrieved by order dated 20.8.2010 (Annexure P-10), passed by Deputy Commissioner, Gurdaspur, exercising the powers of Commissioner under the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (hereinafter referred to as “the Act”).

Learned counsel for the petitioners has argued that while passing the impugned order, the Deputy Commissioner has travelled beyond his jurisdiction while relegating the petitioner to the remedy of civil court against the order dated 28.10.1998, passed by Collector, Batala as jurisdiction of the civil court is specifically barred under Section 15 of

the Act. He further submits that the alleged compromise is the result of fraud and collusion and is against the public interest.

The plea has been opposed by learned State counsel as well as learned senior counsel appearing for respondent No.2. According to them, a written compromise dated 13.2.1997 had been executed between respondent No.2 and the petitioner Panchayat Samiti through its Executive Officer, who had all powers of the petitioner Panchayat Samiti. Compromise which was executed as per law was binding on the petitioner. Since both the parties at the relevant time, compromised the matter in writing, petitioner has no locus standi to question the same.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Brief facts are that petitioner Panchayat Samiti rented out the plot in question to respondent No.2 @ Rs.50/- per month on 16.4.1977. As respondent No.2 defaulted in payment from very next month i.e. 16.5.1977, he was declared an unauthorized occupant of the premises. As a result, application was filed under relevant provisions of the Act, seeking eviction from the premises and also damages. Vide order dated 4.2.1994, Collector accepted the plea of the Panchayat Samiti and directed eviction of the private respondent from the plot and imposed damages of Rs.1,80,000/-. It may be noticed that before impugned order was passed, private respondent filed reply but thereafter absented. Ex-parte proceedings were, thus, initiated. Consequently, order dated 4.2.1994 (Annexure P-3) was passed. Private respondent, moved application for setting-aside ex-parte proceedings. This application was,

however, dismissed in default as applicant failed to appear before the Collector. It is important to notice here that private respondent had also challenged main order of eviction dated 4.2.1994 before the Commissioner, Jalandhar Division by way of appeal. Vide order dated 12.4.1994, Commissioner issued notice in the appeal and stayed operation of eviction order. Private respondent also filed an application before the Collector for restoration of application for setting-aside ex-parte order dated 4.2.1994. This application was allowed by the Collector vide order dated 21.4.1994. Private respondent, thus, withdrew his appeal pending before the Commissioner. Same was dismissed as withdrawn vide order dated 26.7.1995. During the pendency of proceedings before the Collector, a compromise dated 13.2.1997 is stated to have been executed by the Executive Officer of the Panchayat Samiti. Another official of the Panchayat Samiti namely, Lakhwinder Singh appeared before the Collector and acknowledged that compromise dated 13.2.1997 was duly signed by Executive Officer Malkiat Singh. On the basis of above statement the case was dismissed as withdrawn vide order dated 28.10.1998. Said order reads as follows:-

“The appellants counsel produced an agreement (Ex.C-1) and requested for the withdrawal of the case. The representative of Panchayat Samiti supports the move. Hence, the case is dismissed as withdrawn.

Sd/- Collector Batala 28.10.98.”

On 9.11.1998, Panchayat Samiti filed an application for

setting aside the order dated 28.10.1998 in order to ensure that government property was not jeopardized. The Panchayat Samiti denied having executed any compromise in favour of respondent No.2 and submitted that the document was null and void, forged and fabricated. This application remained pending for considerable period. Ultimately, it was dismissed in default on 3.10.2003. Later, application dated 5.11.2003 was moved for restoration of aforesaid application. The application was ultimately restored on 29.10.2008. Thereafter, on one date, respondent No.2 appeared before the Collector but absented thereafter. Vide order dated 3.3.2010, the Collector allowed the application. He set-aside compromise entered into between Panchayat Samiti and private respondent and directed initiation of proceedings under the Public Premises Act. Private respondent challenged the impugned order by way of appeal before the appellate authority i.e. Deputy Commissioner, Gurdaspur. The appellate authority set-aside the order passed by the Collector relying upon compromise dated 13.2.1997 and observed that right course available to the Panchayat Samiti was to avail remedy before the civil court. Said order has been impugned before this court on the ground that the appellate authority had no jurisdiction to relegate the petitioner to civil court, as property in question is clearly government property and Public Premises Act is applicable. Besides, no appeal was maintainable against the order, Annexure P-9, passed by the Collector restoring the application under the Public Premises Act. The compromise in question is result of fraud, played by certain officials of the Panchayat Samiti and therefore, has no sanctity in the eyes of law.

Neither Panchayat Secretary Lakhwinder Singh nor the Executive Officer was authorised to enter into any compromise on behalf of the Panchayat Samiti. It had been done in collusion with the private respondents.

There can be no manner of doubt that officials of the Panchayat Samiti in fact, connived with the private respondent in defeating the effort to evict private respondent from property belonging to Panchayat Samiti. The premises was leased out way back in the year 1977 and proceedings remained pending for last almost 40 years. Meanwhile, the private respondents enjoyed the usufruct of the premises. A perusal of application/orders passed after eviction order dated 4.2.1994, only show that the authorities concerned acted either without jurisdiction or for some extraneous consideration. It is borne on record that after petition under the Act was moved by Panchayat Samiti on 24.3.1992, private respondent appeared and filed reply. On his failure to appear thereafter, ex-parte proceedings were initiated. Collector thereafter considered the plea of Panchayat Samiti on merits and directed eviction of the private respondent. Operative part of the order reads as follows:-

“4. No evidence has been put up on file to prove that rent at the rate of Rs.50/- per month was paid after 16.5.77. However, photocopies of receipts have been placed on file but their execution has not been proved. Since the respondent has not paid the rent after 16.5.77, he is, therefore, considered illegal and unauthorised occupant of plot given in the headnote of application. Further, the plot in dispute is owned by Panchayat Samiti and it is, therefore, public premises, as described in Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973. According to rule 6 of Punjab Panchayat Samiti and Zila

Parishads (Sale, lease and other alienation) property and Public Premises) Amendment Rules, 1983, the respondent is liable to 20 times the rent of the remaining period. Respondent, therefore, be evicted from the plot in dispute and is ordered to pay Rs.1,80,000/- to the applicant. Order is announced on 4.2.94. A copy of this order may be pasted at conspicuous place nearby the plot in dispute. The case may come up on 9.3.94 for report on the compliance of this order.”

Private respondent tried to play hide and seek with various authorities thereafter. He moved an application for restoration of the application for setting-aside ex-parte proceedings and also appeal impugning the main eviction order. On 21.4.1994, Collector accepted the application for setting-aside ex-parte proceedings. Private respondent thereafter, withdrew the appeal pending before the Commissioner, Jalandhar Division. During the pendency of the proceedings, alleged compromise dated 13.2.1997 (Annexure P-7) was produced. In view of compromise, Panchayat Samiti withdrew the petition for eviction of the private respondent and order dated 28.10.1998 was passed. Later, application was moved for recalling the order dated 28.10.1998. Even this application was dismissed in default on 3.10.2003. Ultimately, it was allowed only on 3.3.2010, whereby Collector held that proceedings under Public Premises Act were required to be initiated. Against this order, directing initiation of proceedings under the Act, Commissioner entertained appeal relying upon the compromise and directed that Panchayat Samiti may approach the civil court of competent jurisdiction. I am of the considered view that orders Annexures P-6, P-9 and P-10 and compromise Annexure P-7 are against law and deserve to be set-aside. In

fact, eviction proceedings had culminated on 04.02.1994 when Collector directed eviction of private respondent(s). It is inexplicable how subsequent applications were entertained by the authorities and various orders were passed. Such orders being quasi-judicial in nature, could not have been passed on whims and fancies of the officer exercising powers under the Act. The compromise entered into on behalf of the Panchayat Samiti by certain officials is non-est in the eyes of law. A government authority or its official(s) cannot enter into any compromise with a private respondent with regard to lease of a 'public premises'. Application for recalling orders dated 28.10.1998 passed on basis of alleged compromise was decided after more than a decade. It is manifest misuse of authority for benefit of individuals whether private or government officials. All parties ensured that government property is not vacated in a prompt manner. Various applications moved by Panchayat Samiti were dismissed either in default or delaying tactics. Even authorities exercising power under Public Premises Act played in hands of private parties. Orders passed subsequent to eviction order dated 04.02.1994 do not make any head or tail and are unsustainable in law. This court cannot turn a blind eye to flagrant violation of norms and procedures. This court, thus, needs to interfere and direct appropriate action. Under the circumstances, all orders passed subsequent to order of eviction dated 4.2.1994 are hereby set-aside. Order dated 4.2.1994 is sustainable as private respondent was proceeded ex-parte after following due procedure. Even otherwise, the order is informed by reasons. As the private respondent succeeded in delaying the proceedings for four decades and

enjoyed usufruct of the property, this writ petition is allowed with Rs.5.00 lacs as costs. Deputy Commissioner is directed to get the premises vacated forthwith and submit a report within one month. He shall also initiate disciplinary and criminal proceedings against the delinquent officials and individuals due to whose connivance, interests of the Panchayat Samiti suffered for a period of four decades.

June 02, 2015
'Rajpal/Ajay'

(RAJAN GUPTA)
JUDGE

Whether to be referred to reporter? Yes