

Date of Decision: -25.8.2015

VS.

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CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Mr. Pankaj Chug, Advocate for
respondents No. 3 to 5
(CWP Nos. 22404 of 2013 and 22319 of 2013)

This order shall dispose of three writ petitions bearing No.

CWP No. 16786 of 2013, Agroha Vikas Trust Agroha Dham vs. State of Haryana and others (first petition), **CWP No. 22404 of 2013, Agroha Vikas Trust Agroha Dham vs. State of Haryana and others** (second petition) and **CWP No. 22319 of 2013, Agroha Vikas Trust Agroha Dham vs. State of Haryana and others** (third petition). The second and third petitions were ordered to be heard with the first petition on 10.4.2015 because the question involved in all the cases is the same. However, the facts are being extracted from the first petition.

The petitioner filed an application before the Assistant Collector Ist Grade, Hisar on Form No. L, prescribed under the Punjab Securities of Land Tenure Act, 1953 (for short 'the Act'), on 27.11.2002 in order to seek eviction under Section 9 (1) (ii) of the Act, on account of non payment of the 1/3rd share of the crop of the total land measuring 40 kanal 6 marlas, w.e.f. Sawani 1992 to Haari 2002. It is alleged that petitioner became the owner of the land in question by virtue of a registered gift deed number 8332 dated 11.3.2002 on the basis of which mutation No. 5689 was sanctioned on 12.5.2002. It was mentioned in the gift deed that the petitioner would be entitled to recover rent from the tenant who had not paid it from the year 1992 onwards.

Respondent No.3 appeared on 16.1.2003 before the Assistant Collector Ist Grade and on that date, the following order was passed: -

“Missal is presented. Counsel for the applicant is present. From the side of respondent power of attorney is submitted. Out of the total share of 4,80,000/- from Haari 1992 to Rabi 2002, the answering respondents is ordered to make payment of 1/3rd share i.e. 160000/-+

**interest 8% and cost of the application before 30.1.2003
before this Court.**

A.C. Ist Grade

Hissar

16.1.2003.”

Thereafter, on the adjourned date, respondent No. 3 paid ₹ 5000/- along with interest but without the cost of the application alleging that the said amount is being paid under protest as he had already paid the entire rent to the previous owner. The order recorded on 30.1.2003 read as under: -

“Missal is presented. Counsel for the parties are present. The answering respondent has paid ₹ 5000/- along with interest and without cost of application.....case is adjourned for filing reply on 28.2.2003.

A.C. Ist Grade

Hissar

30.1.2003.”

The Assistant Collector Ist Grade, Hissar proceeded with the application for eviction in which both the parties led their respective evidence. The application was ultimately allowed on 1.8.2005 on account of non payment of 1/3rd share of the crop. The appeal filed by respondent No.3 was also dismissed on 25.10.2005. The revision filed by respondent No. 3 before the Divisional Commissioner was dismissed on 31.12.2008, however, the revision petition filed before the Financial Commissioner was allowed on 12.3.2013 who has remanded the case back to the Assistant Collector Ist Grade, Hissar, to give an opportunity to respondent No.3 to deposit the due rent as per law.

Learned counsel for the petitioner has submitted that Section 22

of the Act provides the procedure for ejectment which is reproduced as under

“22. Procedure for ejectment-- Any dispute relating to rent payable by a tenant or any objection relating to the permissible area not otherwise expressly provided for in this Act shall be determined in a summary manner as provided for in Section 14-A provided that the order of the Commissioner in appeal or revision in the ordinary course, shall be final.”

He further submits that it is the duty of the land owner to furnish the receipt of rent received from the tenant and has referred to Section 14 of the Act which is reproduced as under: -

“14. Duty of landowner to furnish receipt for rent received from tenant-- (1) Every landowner shall give or cause to be given a valid receipt to the tenant in the form prescribed for the rent received by him or on his behalf.
(2) Any landowner who fails to give or cause to be given such receipt, shall on conviction be punishable with a fine which may extend to one hundred rupees.”

He has further referred to Section 14-A of the Act which prescribes the procedure of ejectment and recovery of arrears of rent which is reproduced as under: -

“14-A. Procedure for ejectment and recovery of arrears of rent etc.--

Not with standing anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A.-

(i) a land owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector First Grade having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of sub-section 10 of this Act, and the provisions of sub-section (3) of

the said section shall also apply in relation to such application, provided that the tenants rights to compensation and acquisition of occupancy rights, if any under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected.

(ii) a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector Second Grade, having jurisdiction, who shall thereupon send a notice in the form prescribed to the tenant either to deposit the rent or value thereof , if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlords refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii) (a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector second Grade, having jurisdiction of the fact;

(b) on receiving such application, the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case may be, or both, within 60 days of the receipt of the notice”.

Learned counsel for the petitioner has argued that in view of the proviso to Section 14-A (i) of the Act, Assistant Collector Ist Grade, Hisar made an offer to respondent No. 3, vide his order dated 16.1.2003, to deposit 1/3rd of the share of the crop i.e. Rs. 1,60,000/- along with interest @ 8% with cost of application before the next date of hearing i.e. 30.1.2003 but on

the adjourned date i.e. 30.1.2003 respondent No.3 deposited only ₹ 5000/- with interest without the cost of the application alleging that he has already made the payment of rent 1/3rd share to the previous owner from whom the petitioner has obtained the property in question by way of registered gift. The Assistant Collector Ist Grade, Hisar, Collector and Divisional Commissioner consistently opined that respondent No. 3 has failed to lead any evidence to prove the payment of 1/3rd to the previous owner and has also failed to avail the benefit of the proviso to Section 14-A (i) of the Act.

Learned counsel for the petitioner has relied upon a Division Bench judgment of this Court in the case of **Maan and others vs. Financial Commissioner (R) Haryana and others, 2012 (3) LAR 133**, in which this Court while referring to proviso to Section 14-A(1) has observed that the proviso was inserted in the said Section in the year 1991 in order to protect the tenant who has failed to pay the rent due to inadvertence or due to some reason beyond his control and not for the purpose of denying the rent to the landlord and the tenant who has taken the stand in not depositing the rent in terms of the proviso to Section 14-A(i) of the Act then he cannot turn around and take the plea that he had sufficient cause for not depositing the amount before the first date of hearing.

Learned counsel for the respondents has argued that respondent No. 3 was not given property opportunity by the Assistant Collector Ist Grade, Hisar for depositing the due rent as per law giving notice before his eviction and therefore, the Financial Commissioner has rightly passed the order which does not call for any inference.

I have heard learned counsel for the parties and perused the

record.

There is no dispute that the petitioner became the owner of the property in question by virtue of the registered gift deed No. 8332 dated 11.3.2002 on the basis of which mutation No. 5689 was sanctioned on 12.5.2002. Petitioner has been given right to recover the rent in question and hence, the application was filed in Form L by the petitioner in terms of Section 9 (1) (ii) of the Act for recovery of rent to the tune of 1/3rd amounting to ₹ 1,60,000/- with interest @ 8% per annum and cost from respondent No. 3.

Learned Assistant Collector Ist Grade, Hisar after appearance of respondent No. 3 offered him to make payment of batai/tihai as ₹ 1,60,000/- along with interest @ 8% vide its order dated 16.1.2003 and adjourned the case to 30.1.2003 giving him 15 days time but on the said date, respondent No. 3 did not deposit the said amount as ordered by the Assistant Collector Ist Grade, Hisar and had only paid an amount of ₹ 5,000/- with interest but without the cost of the application on the premise that the entire rent had already been paid to the earlier owner. Respondent No.3 has miserably failed to prove the payment of rent paid to the earlier owner and as a result thereof, he has been evicted by the Assistant Collector Ist Grade, Hisar and the said order has been maintained by the Collector and Divisional Commissioner. The Financial Commissioner, however, has erred in remanding the case back only on the ground that the tenant requires one more opportunity to deposit the rent which is not permissible in law as per the proviso to Section 14-A (i) of the Act.

In view of the aforesaid discussions, the CWP No. 16786 of 2013 and CWP No. 22404 of 2013 are found to be meritorious and the same are allowed. The order of Financial Commissioner dated 12.3.2013 is hereby quashed.

CWP No. 22319 of 2013

In so far as the CWP No. 22319 of 2013 is concerned, learned counsel for the petitioner has fairly conceded that the Assistant Collector First Grade, Hisar did not afford any opportunity to the tenant to pay rent in terms of Section 14(A) (i) Act. Therefore, CWP No. 22319 of 2013 is hereby dismissed and the order of the Financial Commissioner dated 12.3.2013 is maintained.

A copy of the order be placed on the files of other connected matters.

(RAKESH KUMAR JAIN)
JUDGE

25.8.2015
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