

CWP No. 22403 of 2013  
Date of decision: 6.10.2015

Union of India and others

.....Petitioners

versus

Municipal Council Fazilka and others

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Amit Sheoran, Advocate  
for the petitioners.Mr. Salil Sablok, Advocate  
for respondent No. 1.

Mr. Yatinder Sharma, Addl.AG, Punjab

**Rakesh Kumar Jain, J.(Oral)**

The petitioners have challenged the order dated 25.06.2013 passed by the SDM-cum-Collector and order dated 27.08.2013 passed by the District Collector, Fazilka, on an application filed by respondent No. 1, under Sections 4, 5 and 7 of the Punjab Public Premises and Land(Eviction of Rent Recovery) Act, 1973 (in short, 'the Act'). The petitioners were in occupation of the land of respondent No. 1 measuring 35 kanals and 6 marlas as leasee since the year 1952. Lease amount kept on changing. When the petition was filed it was ₹7,000/- pm. The application of respondent No. 1 was allowed by the Collector vide his order dated 25.06.2013 evicting the petitioners from the land in question and directing them to pay ₹50,000/- per month as rent and ₹5,000/- as penalty, in total ₹55,000/- pm on account of being in unauthorised possession w.e.f. 01.08.2007 till the date they would vacate the possession. The petitioners were also directed to deliver

possession of the said land within 15 days from the date of order.

Aggrieved against the said order, the petitioners filed statutory appeal under Section 9 of the Act which has also been dismissed by the District Collector, Fazilka on 27.08.2013.

Aggrieved against both the orders, the present petition has been filed in which besides challenging the proceedings initiated on the ground that notice under Section 4 has not been issued, it is argued by counsel for the petitioners that the Collector has failed to give the detail on the basis of which he has assessed the rent @ ₹50,000/- pm besides imposing @ ₹5,000/- pm as cost. In this regard, he has referred to Section 7 of the Act which is reproduced as under:-

***“7. Power to recover damages in respect of public premises as arrears of land revenue:----(1)***

*Where any person is in arrears of rent payable in respect of any public premises, the Collector may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.*

***(2)*** *Where any person is, or has at any time been in unauthorised occupation of any public premises, the Collector may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.*

***(3)*** *No order under sub-section(1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling*

*upon him to show cause within such time as may be specified in the notice, may such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Collector.”*

On the other hand, counsel for the respondents has submitted that the petitioners have already restored the possession to respondent No. 1 on 28.07.2014 but the amount of rent and penalty has not been paid from 1.08.2007 till 28.07.2014. It is also submitted that the proceedings under Section 4 of the Act are only to intimate the petitioners that they are in arrears of rent and could be evicted from the land in question but the actual proceedings have been carried out under Section 5 of the Act.

In regard to the argument raised by counsel for the petitioners that the Collector had not devised any mechanism for assessing the rent @ ₹50,000/- pm. It is submitted that on account of this the matter can be remanded back to the Collector to pass a fresh order in terms of Section 7 of the Act.

After hearing learned counsel for the parties and keeping in view the facts and circumstances mentioned herein above, the present petition is allowed. The order passed by the courts below are set aside only to the extent whereby the amount of ₹50,000/- p.m has been assessed as rent with ₹5000/- as penalty. The Collector shall now re-decide the question of rent payable by the petitioners w.e.f. 1.08.2007 till 28.07.2014 in terms of the provision of Section 7 of the Act.

Parties are directed to appear before the Collector on 2.11.2015.

In the mean time, the petitioners shall pay the admitted rent of

@ ₹ 7,000/- p.m from 1.08.2007 to 28.07.2014 to respondent No. 1 who  
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authenticity of this document  
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would accept the same subject to the out come of the decision in the petition  
which shall be decided by the Collector.

**6<sup>th</sup> October, 2015**

**Shivani Kaushik**

**[Rakesh Kumar Jain]**  
**Judge**