

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

CWP No.5148 of 2015

Date of Decision:-June 30th , 2015

Harvinder Singh & Anr.

.....Petitioners.

Versus

Union of India & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Gagan Deep Grewal, Advocate for the Petitioners.

Mr. Ashish Kapoor, Advocate for the Caveator(s).

JASWANT SINGH, J.

Challenge in the present writ petition is to the orders dated 11.07.2014 (**P-4**) passed by the learned Additional District Judge, Ludhiana and order dated 17.01.2012 passed by the Estate Officer, Indian Oil Corporation, Punjab Estate Office, Chandigarh (**P-3**) whereby after initiating the proceedings under the Public Premises (Vacation of Unauthorised Occupants) Act 1971 eviction orders have been passed and admittedly the possession has been taken over by the respondent-corporation on 13.03.2015.

In brief, the facts emanating from the record are that petitioners Harvinder Singh and Charanjit Singh were proceeded by the respondent-Indian Oil Corporation under the 1971 Act for eviction of an area measuring 1161.29 square metres which is an outlet of the corporation. As per the case

of the corporation, the petitioners along with one Sinderjit Kaur took the above mentioned land on lease for 30 years commencing from 30.05.2003 for a monthly lease amount of Rs.1250/- with a stipulation of increase of 10% after every five year. It was also averred that the corporation is a Government owned company and, therefore, it is competent to initiate proceedings under the Public Premises Act, coming within the purview of Section 2(e)(2)(1) of the 1971 Act. It was further stated by the respondent-corporation that IBP Limited which was the original owner of the premises in question stands vested in Indian Oil Corporation and, therefore, this private company has become a government undertaking. It was also mentioned that a notice was issued to the petitioners vide letter dated 19.12.2007 to hand over the vacant possession within 30 days and instead of complying with the notice, the writ petition no.824 of 2008 was filed, wherein an order of status quo was passed by this Court on 31.01.2008. However, subsequently a COCP No.223 of 2008 was also filed before this Court for initiating contempt proceedings against the respondent-Corporation but ultimately the main writ petition no.824 of 2008 itself was dismissed with costs and even the LPA No.730 of 2010 filed by the petitioners was adjourned sin-a-die without granting any stay on 09.08.2010. Thus, the application was filed under the Public Premises Act by respondent-corporation for vacating the land in question.

Upon notice, the petitioners along with associates Sinderjit Kaur opposed the application for ejectment by stating that the provisions of 1971 Act are not applicable to them because the lease was executed between a private company which was subsequently taken over by the government and, therefore, the provisions of Rent Act would be applicable and not of

Public Premises Act. On merits the averments were denied and prayer was made for dismissal of the application preferred by the Indian Oil Corporation before the Estate Office.

The Estate Office vide its order dated 17.01.2012 (P-3) allowed the application and aggrieved against the same the appeal was filed before the learned Additional District Judge, Ludhiana which was also dismissed vide judgment dated 11.07.2014 (P-4).

Learned Counsel for the petitioners has vehemently argued that the proceedings initiated by the respondent-corporation under the Public Premises Act are misconceived because originally the land in question was taken on lease from M/s IBP Limited which was a private company and subsequently taken over by the Indian Oil Corporation and, therefore, if any proceedings of eviction are to be initiated they have to be under the provisions of Rent Act and not under the 1971 Act. Thus, it was argued that the orders passed are beyond jurisdiction.

After hearing learned Counsel for the petitioners and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and same deserves to be dismissed.

A perusal of the record reveals that seeking the similar relief, the petitioner had filed a writ no.824 of 2008 which admittedly stands dismissed with costs and an LPA preferred against the said order vide LPA No.730 of 2010 has also been adjourned sin-a-die and the Hon'ble Division Bench, in its wisdom, has not granted any stay. The possession of the petitioners along with Sinderjit Kaur is not in dispute. The sole dispute raised by the petitioners is whether the impugned orders passed by the Authorities below are beyond jurisdiction as it is only the Rent Act which

would be applicable.

After perusing the entire record this Court is of the opinion that the provisions of Rent Act will not be applicable to the present case. Admittedly M/s IBP Ltd., which was a private company was taken over by the respondent-Corporation which is a government undertaking and once the company has been taken over by government, the provisions of Public Premises Act are squarely applicable. Furthermore, the M&H contract was cancelled by the respondent-Corporation and after cancellation of the said contract the petitioners along with Sinderjit Kaur were called upon to vacate the premises within a period of 30 days. The terms of the agreement are not in dispute and as per the lease agreement, if the M&H contract is cancelled, then the petitioners would have to vacate the premises. Learned Counsel for the petitioners has not disputed the fact that the possession has been taken over in pursuance of the orders passed under the Public Premises Act, 1971 on 13.03.2015 and a civil suit has already been filed for restoration of the possession. This Court, while sitting under the writ jurisdiction cannot go into any disputed question of fact and can only decide a question of law. Although learned Counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in **Dr. Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. & its Estate Officer** 2014(1) RCR (Civil) 1039 wherein the Hon'ble Supreme Court has held that if a company becomes a government company then Public Premises Act will not be applicable. However, perusal of the entire judgment would reveal that the said judgment was passed on the facts of its own case, which are entirely different from the present case. In fact the Hon'ble Supreme Court in 2014 (1) SCC 201 Mohd. Jamal Vs. Union of India has held that if a company

owned company operated outlet (COCO) has been cancelled and the company has introduced a new policy awaiting M&H contracts in respect of the COCO outlets, then a fresh lease agreement after the policy has to be executed between the parties and the party cannot claim any right on the basis of the earlier policy especially when the possession has already been taken over in pursuance to the eviction orders passed.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

June 30th , 2015
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