

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

CWP No.7317 of 2015

Date of Decision:-30.07.2015

Rakesh Jain.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rakesh Gupta, Advocate for the Petitioner.

Ms. Monica Chibber Sharma, DAG Punjab
for respondent nos.1 to 3.

Mr. G.S. Attariwala, Advocate for respondent no.4.

JASWANT SINGH, J.(ORAL)

Prayer in the present petition is for quashing of the order dated 31.03.2015 (P-1) passed by the respondent no.2-Commissioner, SAS Nagar Mohali as well as the order dated 28.11.2014 (P-2) passed by Collector, Patiala whereby the order of ejectment has been passed against the petitioner under the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (for short, the 1973 Act).

In brief the facts are that Gram Panchayat Lalru had vide auction given the land in question to the petitioner at the rate of Rs.10,000/- per month and the terms and conditions of the auction were made clear to the auction bidders before the auction had started. Consequently, the petitioner was the

successful bidder who took it on rent for the purposes of operating a Marriage Palace. As per the terms and conditions of the bidding the land was to be leased out for a period of three years. However, in the rent note, the said period of three years was not mentioned and it was in fact mentioned in Clause No.4 that the tenant can keep the premises for any period on rent. During the integrum the demised premises came within the limits of Nagar Panchayat, Lalru and consequently the demised premises is now owned by Nagar Panchayat, Lalru-respondent no.4.

After the expiry of the lease period, the respondent no.4 gave a statutory notice and subsequently filed a petition for ejectment of unauthorised occupants under Sections 4,5 & 7 of the 1973 Act on 10.07.2014. Notice of the said petition was given to the petitioner who despite service did not appear and consequently an ex-parte order dated 28.11.2014 (**P-2**) was passed against the petitioner and the appeal was also dismissed by the Commissioner on 31.03.2015.

Learned Counsel for the petitioner has argued that in the present case, the petitioner cannot be termed as an unauthorised occupant because the petitioner continues to be a tenant in perpetuity because no time frame was fixed in the rent note dated 28.04.2009 (**P-3**) amongst the parties. Therefore, the petitioner continues to be a tenant till date.

Secondly, learned Counsel for the petitioner has argued that mode of service provided under Section 4 of 1973 Act of pasting at the public place was not complied with and therefore entire proceedings are vitiated.

Thirdly, learned Counsel for the petitioner has argued that the petitioner being a tenant was entitled to the protection under the East Punjab Urban Rent Restriction Act, 1949 and, therefore, proceedings under the Public

Premies Act could not be initiated.

Lastly it was argued on behalf of the petitioner that records relating to bid are forged since they were not signed by the petitioner.

On the other hand, learned Counsel for the respondent no.4 has argued that facts of the present case makes it abundantly clear that the intention of the parties was to lease out the properties only for three years because the terms and conditions of the bid makes it abundantly clear that the resolution was passed for letting out the property for the said period of three years. It has also been argued that the property in question does not come within the purview of the Rent Act because the Hon'ble Supreme Court in **Ashok Marketing Ltd. Vs. Punjab National Bank 1990 (2) RCR(Rent) 297** and **P.K. Bindra Vs. Panjab University, Chandigarh through its Registrar 2010 (3) RCR (Civil) 548** has consistently held that in respect of public premises, if an action is taken by a landlord the claim for protection under any State Rent Control Act will not apply. He has also refuted the other contentions raised by the learned Counsel for the petitioner and has submitted that the present petition is liable to be dismissed especially in view of the fact that possession of the premises has already been taken over by due course of law and now the demised premises is being used as a Community Hall.

After hearing learned Counsel for the parties 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.

As far as the first objection raised by learned Counsel for the petitioner is concerned, this Court is of the opinion that the learned Counsel for the respondent no.4 has rightly pointed out on the strength of facts as narrated above that the property in question was to be leased out for a period

of three years only especially in view of the terms and conditions of the bid which has been attached by respondent no.4 in his reply as Annexure **R-4/1**. Not only this there cannot be any lease in perpetuity and a specified time frame is required to be there. Mere omission in the Rent Note (**P-3**) of not mentioning the exact period will not make any difference in view of the terms and conditions of the auction bid.

As far as the second argument of the petitioner is concerned, it is evident from the record that the summons were sent by the Collector, Patiala to petitioner which were refused and as per the report made on the summons it is clear that the petitioner had refused the same after going the contents of the summons. It is also evident from the record that photographs were annexed before the Authorities below from which it was clear that notice had been pasted on the residence of the petitioner but inspite of this the petitioner intentionally did not appear. The argument that as per Section 4 of 1973 Act there was no pasting of notice on the public premises seems to be attractive at the first blush, however, the facts as narrated above shows that there was substantial compliance of giving intimation to the petitioner who had intentionally not appeared. Thus, it can safely be concluded that the petitioner was not condemned without giving due opportunity to contest, on the other hand it is evident that the petitioner is deliberately trying to derive undue benefit by seeking a hypertechnical application of provisions of Section 4 of the 1973 Act. It is settled position of law that procedural law is handmaid of justice and when procedural law is compared or pitted against the principles of natural justice, the application of principles of natural justice would override literal application of procedural provisions. Thus, the second objection taken by the learned Counsel for the petitioner is also devoid of any

merit.

Third objection of the petitioner that he is entitled to protection under the Rent Act, 1949 is concerned, the judgments of the Hon'ble Supreme Court referred *supra* are squarely applicable to the case, who have authoritatively held that with respect to a public premises, any action taken by a landlord, the claim for protection under any State Rent Control Act will not apply. Admittedly, the landlord is State and the premises in question comes under the definition of Public Premises. Thus, this objection is also devoid of any merit.

Finally, the argument that the records relating to bid were forged, since they were not signed by the petitioners is concerned, this Court is of the opinion that such an objection is not tenable at this stage especially when two Authorities below have already gone through the record minutely and have come to a conclusion that the petitioner is liable to be evicted from the premises. Not only this, the State is presumed to do every Act in a lawful manner until and unless the contrary is proved by way of cogent and reliable evidence. Mere bald assertions cannot be taken to be cogent evidence.

At this stage, learned Counsel for the petitioner has submitted that since the possession of the premises has already been taken over by the respondents by not giving him an opportunity to remove his belongings which are still lying in the premises and, therefore, prayer was made for permitting the petitioners to take out the belongings from the demised premises. The prayer seems to be genuine and thus accepted and the Authorities are directed to appoint an official who would oversee the entire process after giving due notice to the petitioner so as to enable him to remove his belongings from the premises/or wherever lying as per inventory.

In view of the above, present petition is hereby dismissed with
aforesaid directions.

**(JASWANT SINGH)
JUDGE**

July 30, 2015
Vinay