

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

LPA No. 2158 of 2013. [O&M]
Date of Decision: 22nd April, 2015.

Surender Kumar
Versus
Appellant through
Mr. Mani Ram Verma, Advocate

FC, Haryana & Ors.
Respondents through
Mr. R.D.Sharma, DAG, Haryana.
Mr. Atul Lakhanpal, Sr. Advocate with
Ms. Bably Advocate, for respondents
No. 5 to 10.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B.BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J.

This Letters Patent Appeal is directed against the order dated 16th September, 2013 whereby learned Single Judge has dismissed the appellant's writ petition in which he challenged the eviction order passed by the Assistant Collector 1st Grade [ACIG] as well as by the Appellate and Revisional orders passed under the Punjab Security of Land Tenures Act, 1953.

[2]. The appellant is a tenant under respondents No. 5 to 10 on land measuring 72 kanals 9 marlas situated in village Bhattu Kalan, now District Fatehabad. The landlords filed eviction petition on 'Form-L' under Section 14-A of the Punjab Security of Land Tenures Act, 1953 [for short 'the Act'] on the ground of non-payment of '*Batai*' [share in crop as rent] as per *Jhar-Pedawar* for the Crops Rabi and Kharif, 1994. The ACIG, Fatehabad vide order dated 25.1.1999 [P-1]

held that the appellant's predecessor-in-interest, namely, his father who was the original tenant had not paid '*Batai*' [share in the crop] for Rabi and Kharif, 1994 and he did not do so despite his admission for non-payment made on 14.06.1995 and 11.9.1995.

[3]. The appellant's predecessor filed the appeal which was dismissed by the Collector on 17.11.1999. Thereafter, the tenants filed a revision petition before the Commissioner, Hisar Division, who though held that the amount [of rent] for Kharif, 1994 was recoverable from the tenants but still directed that the amount so determined be paid within 30 days, failing which the eviction order would become operative.

[4]. Since in view of Section 24 of the Act read with Section 84[3] of the Punjab Tenancy Act, 1887, it is required that in the event of acceptance of revision petition by the Commissioner, he has to forward the case to the Financial Commissioner for acceptance of revision petition, the Commissioner, Hisar Division vide his above stated order dated 29.10.2003 sent the case to the Financial Commissioner.

[5]. It is apparent from the record that the tenants failed to take advantage of the order passed by Revisional Authority also and did not deposit the due amount of rent within the extended period of 30 days.

[6]. On the contrary, the tenants moved an application on administrative side before the Commissioner, Hisar Division, namely, the Revisional Authority who by way of an administrative letter dated 24.12.2003 [P-4] directed the ACIG to assess the rent for Kharif,

1994 so that the tenant could avail the opportunity for payment of that amount as per the revisional order dated 29.10.2003. No notice was apparently given to landlord[s] while issuing this administrative order.

[7]. The ACIG then passed an order dated 21.04.2004 whereby he called upon the parties for the fixation of the amount of rent for the crop Kharif, 1994.

[8]. The above stated order of the ACIG was challenged by one of the landlord before this Court in CWP No. 7457 of 2004 which was allowed by a Division Bench on 04.03.2008 holding as follows:-

“The petitioner obtained the order of ejectment in 1999 but a concession was granted to the respondents in 2003 to deposit the rent for Kharif, 1994. Thereafter, there was a ding-dong battle and the matter kept getting delayed without deposit of rent. It may be restated that the order of ejectment was passed on January 25, 1999 and deposit of outstanding rent was to be made within 30 days from the date of order failing which ejectment would be operative. It is now 9 years since the date of the original order and the petitioner is still out of possession. We have been constrained to make the above observations regarding the tactics employed by the unsuccessful litigant because litigation must attain finality some time and if litigation is dragged on successfully to frustrate the party who was to reap its fruits, the object of the respondents is achieved but importantly, the dockets of the court get unnecessarily burdened and citizens lose faith in justice.

Consequently, this petition is allowed, order Annexure P/5 is hereby quashed. The petitioner shall be entitled to have Rs.10,000/- as costs”. [Emphasis applied].

[9]. In the light of the observations and findings given by this Court vide the order reproduced above, the Financial Commissioner rejected the recommendation made by the Revisional Authority and confirmed the eviction order dated 25.01.1999 passed by the ACIG vide his order dated 08.07.2008.

[10]. The orders passed by the Financial Commissioner as well as ACIG and the Collector were challenged by the appellant-tenant before the learned Single Judge who has dismissed the writ petition.

[11]. Learned Single Judge has observed and rightly so that the principle of *res-judicata* would apply as in the light of earlier Division Bench decision in favour of the landlords, the appellant-tenant can not be heard to say that the eviction order was erroneously passed.

[12]. Be that as it may, we have heard learned counsel for the parties at considerable length and gone through the record.

[13]. The question that arises for consideration is whether the appellant-tenants were given an opportunity to deposit the rent for Kharif, 1994 and whether they failed to avail such opportunity, rendering themselves liable for eviction?

[14]. It has come on record and has been so expressly noticed by the ACIG in his order dated 25.01.1999 that after filing of the eviction petition [on 18.04.1995], ACIG assessed the amount of rent payable by the tenants on 11.09.1995, which was to the tune of ₹23,350/-, i.e., ₹21,423/- as principal amount of rent, ₹1600/- as interest, ₹77/- as costs and ₹250/- as Counsel fee. The assessment order was separately impugned by the tenants before the Collector

who dismissed the appeal on 03.09.1996. The tenants wanted to prolong the proceedings. Hence, they were proceeded *ex-parte*. Still their application to set aside the *ex-parte* proceedings was allowed on 24.02.1997.

[15]. The above stated arrears of rent as assessed by the ACIG were still not deposited. The ACIG has further noticed that the tenants in their reply admitted that they have not paid '*Batai*' for Rabi and Kharif, 1994, though according to them the payable amount of '*Batai*' [value of share of landlord in the crop] for the both Crops was ₹10,380/-. However, despite the above stated admission, even the amount of ₹10,380/- was never paid or deposited in the Treasury by the appellant.

[16]. Not only this, the Revisional Authority, i.e., Commissioner, Hisar Division after about four years, i.e., on 29.10.2003 gave another opportunity to the tenants to deposit the arrears of rent within 30 days, failing which eviction order was to be operative. They hoodwinked the Revisional Authority and did not comply with its order. Instead, the tenants secured another order on administrative side by misleading the Revisional Authority and in the absence of the landlords whereby the ACIG was directed to assess the rent for Kharif, 1994. The said order was secured by concealing the material facts that there was already an assessment order duly upheld by the Appellate Authority.

[17]. In the light of the above noticed undisputed facts, we are of the considered view that even without applying the principle of *res-judicata* on the strength of the order dated 04.03.2008 passed by a

Coordinate Bench, the appellant-tenants have themselves invited the consequences of eviction due to repeated, persistent and deliberate non-deposit of the assessed amount of rent. We, thus, do not find any merit in this appeal, which is accordingly dismissed. No order as to costs.

(SURYA KANT)
JUDGE

22nd April, 2015.
dinesh

(P.B.BAJANTHRI)
JUDGE