

LPA No. 1032 of 2014 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 1032 of 2014 (O&M)

Date of Decision: January 28, 2015

Rakesh Kumar Jaswal & others

...Appellants

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Dinesh Mahajan, Advocate
for the appellants.

Mr. J.S. Puri, Additional Advocate General, Punjab.

Mr. Sanjay Soni, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, JUDGE:

CM No.2351-LPA of 2014

Prayer in the application is for impleading the legal representatives of appellant No.3-Budha Mal who expired on 14.02.2013 leaving behind six legal representatives details of whom are mentioned in para 2 of the application. The application is supported by an affidavit.

In view of the submissions made in the application, the same is allowed. Legal representatives of Budha Mal are impleaded as appellants, subject to all just exceptions. They are impleaded as appellants Nos.3 to 8 in the present Letters Patent Appeal.

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Challenge in this appeal is to the judgment dated 30.05.2014

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passed by the learned Single Judge vide which the writ petition preferred by the nine petitioners stands dismissed. Present appeal has been preferred by petitioners 1, 2, 9, 10 and legal representatives of petitioner No.3 in the writ petition and no appeal has been filed by petitioners 5 to 8. In the writ, they had prayed for quashing of the order dated 28.02.2011 passed by the Deputy Director, Urban Local Bodies, Amritsar, exercising the powers of Collector, under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as 'the 1973 Act') as also the order dated 13.09.2011 passed by the Deputy Commissioner, Amritsar, exercising the powers of the Appellate Authority under the 1973 Act whereby appellants were ordered to be evicted from the public premises i.e. the different gates such as Khazana Gate, Hathi Gate, Lahori Gate, Hakima Gate, Sultanwind Gate having historical significance around the walled city, Amritsar where they have been occupying the Kothris/open spaces illegally.

2. It is the contention of the counsel for the appellants that the authorities under the 1973 Act have proceeded to pass the eviction order against them without taking into consideration the evidence showing their long occupation and usage of vacant spaces. He contended that the predecessors-in-interest of the appellants were allotted and given possession of the premises in question by the Municipal Corporation, Amritsar where they have been carrying out petty businesses and have been surviving on the meager income earned from it. The premises were leased out/allotted in public auction initially for specified periods which was extended from time to time with enhancement of rent. In support of this submission, he has placed reliance upon Annexures P-1 to P-5 attached with the writ petition. He, thus,

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contends that the predecessors-in-interest of the appellants and now the appellants cannot be said to be in unauthorized occupation of the public premises. He further states that the proceedings held against the appellants or their predecessors cannot sustain as no proper show cause notices as envisaged under Section 4 of the 1973 Act have been served on them. Requirement of issuance of notice and service thereof under Section 4 is a mandatory condition and the same having not been complied with will negate the proceedings initiated against the appellants. In support of this contention, he placed reliance upon the judgment of the Bombay High Court (Nagpur Bench) in Mine Manager Manganese Ore (India) Ltd. Versus Shyam s/o Kunjilal Yadav, 2002 (2) RCJ 248. He states that notices which have been issued by the Collector-respondent No.4 were against even the dead persons and, therefore, said notices cannot be said to be served upon the persons who were in unauthorized occupation of a public premises.

3. His further contention is that the ground and the purpose for which proceedings for eviction have been initiated against the appellants namely that the gates of the old city are historical monuments is without any basis as the said gates have not been declared and notified as the historical monuments under the Punjab Ancient and Historical Monuments and Archaeological Remains and Sites Act, 1964 (hereinafter referred to as 'the 1964 Act'). Since no notification has been issued by the Government of Punjab under Section 3 and 4 of the said Act, the show cause notice itself is without justification or basis and thus cannot sustain and deserves to be set aside. He contends that the appellants have been paying rent regularly to the Municipal Corporation upto 2006 whereafter the Municipal Corporation,

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Amritsar-respondent No.2 refused to accept the same and, therefore, no fault can be found on the part of the appellants. They are still ready and willing to pay the amount due to respondent No.2. He submits that the appellants have no other source of the livelihood and in case, they are evicted from the premises, they and their families are likely to starve. Respondent being a welfare State is duty bound to provide alternative sites to the appellants who have been tenants in the premises since long and had been paying rent. In similar circumstances, when Galiara Project was undertaken in the Golden Temple Area and the tenants were evicted, Government formulated a policy and provided alternative sites to them and, accordingly, the appellants also be granted the similar benefit. Prayer has been made for allowing the appeal and setting aside the judgment impugned.

4. On the other hand, counsel for the Municipal Corporation, Amritsar-respondent No.2 contends that the appellants have been occupying the premises/spaces in the various gates without any authority of law. They have not been able to produce any evidence to show that now they are in occupation of the premises under any valid lease or agreement. The initial possession was given to them or their predecessors-in-interest by way of lease but that was for specified period. Even the extension which has been granted, had come to an end in the year 1996. The amount deposited thereafter is not as rent but as use and occupation charges. That too has been paid, as per the admitted facts, till the year 2006 and thereafter, no such charges have also been deposited by the appellants. In any case, he contends that after the extended period of lease came to an end, they are in unauthorized possession of the public premises and, therefore, have rightly been ordered to be evicted

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from the premises in question. He submits that a decision was taken by the Government of Punjab in a meeting dated 23.09.2009 under the Chairmanship of the Chief Minister, minutes of which have been appended as Annexure R-2/1 where discussion was held about the tourism projects being undertaken at Amritsar. One was with regard to the Mega Destination Amritsar which dealt with plans of restorations of the historic gates of Amritsar. A decision was taken that all unauthorized occupants of the gates be evicted at the earliest so that the project could be executed. As per the said decision, petition under Sections 4, 5 and 7 of the 1973 Act was filed by respondent No.2 for eviction of the unauthorized occupants from the gate/kothris/spaces at the different gates. On the basis of the said petition, notices under Section 4 of the 1973 Act were served upon the unauthorized occupants. Written statements were filed by the appellants or their predecessors-in-interest and on due consideration of the evidence as produced before the Collector, order of eviction was passed against the unauthorized occupants. He contends that the argument of the counsel for the appellants that notices were issued to the deceased persons namely Parkash Chand, Charan Dass and Gurcharan Singh and, therefore, it was not proper notice to the unauthorized occupants, is without any basis as unauthorized occupants of the premises had duly appeared before the Collector and filed their written statements and no prejudice has been caused to them. He contends that the requirement and purpose of Section 4 having been fulfilled with the concerned necessary persons appearing before the competent authority to contest the petition, the argument is without any basis. He contends that the action which has been initiated against the appellants may be on the basis of

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the decision taken by the Government dated 23.09.2009 whereby the gates have been referred to as historic gates but proceedings against the appellants have not been initiated under the 1964 Act. Merely because the gates in question have not been declared as historical monuments under the 1964 Act, it cannot be said that they are not historic gates as they are part of the outer wall of the Amritsar city. In any case, it is not disputed by the appellants that the premises possessed by them are public premises and, therefore, proceedings under the 1973 Act would be maintainable against them. He further contends that as of now, there is no policy under which the appellants can be accommodated or allotted alternative sites and their claims will be considered if such a policy is floated by respondent No.2, subject to their eligibility. He, thus prays, that the appeal deserves to be dismissed.

5. We have considered the submissions made by the counsel for the parties and have gone through the records of the case.

6. That fact that the premises in question are public premises is not in dispute. If that be so, proceedings under the 1973 Act could be initiated against the persons who are, in the opinion of the Collector, in unauthorized occupation of the same and that they should be evicted. Notice in writing calling upon all persons who are in unauthorized occupation of any public premises to show cause why they should not be evicted has to be served specifying therein the grounds on which the order of eviction is proposed to be made. Section 4 of the 1973 Act reads as follows:

“4. Issue of notice to show cause against order of eviction:

(1) if the Collector is of opinion that any persons

are in unauthorized occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) *The notice shall;*

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) *The Collector shall cause the notice to be affixed on the outer-door or some other conspicuous part, of the public premises, or of the estate in which the public premises are situate, and in such other manner as may be, prescribed, where upon the notice shall be deemed to have been duly given to all persons concerned.*

(4) *Where the Collector knows or has reason to believe that any persons are in occupation of the public premises, then without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.”*

7. The contention of the counsel for the appellants that show cause notices were issued to some of the deceased persons i.e. Parkash Chand,

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Charan Dass and Gurcharan Singh were not proper show cause notices as envisaged under Section 4 cannot be accepted as in pursuance to these show cause notices where the conditions as specified in Section 4 stood fulfilled cannot be said to illegal when it is an admitted fact that all unauthorized occupants of the premises in question appeared before the Collector and filed their replies to the show cause notices which contain the grounds on which the order of eviction was proposed to be made. No prejudice has been caused to the appellants or their predecessors-in-interest in any manner which would have an impact of rendering the proceedings initiated against the appellants illegal or void.

8. The judgment relied upon by the counsel for the appellants in *Mine Manager Manganese Ore (India) Ltd.'s* case (supra) would not be applicable being distinguishable to the facts of the present case as in the said case, the show cause notice issued under Section 4 of the Act was found fundamentally flawed as it was served upon the alleged unauthorized occupant on the ground that he was an ex-employee of the company whereas during the course of hearing, it was admitted before the Court that the alleged unauthorized occupant, his father or any member of the family was never in service of the company and therefore, the basis for issuing show cause notice on the alleged unauthorized occupant was found to be without any basis. Present is not such a case, instead, it is the plea of the appellants that they or their predecessors-in-interest came to occupy the premises in question on the basis of lease which they acquired through auction/allotment and that too for a specified period. The said lease period/allotment was extended from time to time although subject to increase in the lease money. No evidence has been

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produced on record before the authorities under the 1973 Act or the learned Single Judge which would negate the fact that lease was extended beyond 31.03.1996. It is also not disputed that the receipts issued to the appellants was for the use and occupation charges of the sites in question. After the year 1996, the appellants can very well be said to be unauthorized occupants of the sites in question and in any case, it is an admitted case that since the year 2006, no amount has been paid by the appellants or their predecessors-in-interest to respondent No.2. This apparently leads us to the conclusion that the appellants are in unauthorized possession of the premises in question and, therefore, have been rightly ordered to be evicted from the same.

9. Further it is clear from Section 3 of the 1973 Act and its explanation that merely because some rent has been paid by the person in occupation of any public premises would not deem to have the effect of entering into possession as allottee, lessee or grantee or extension thereof. Section 3 of the 1973 Act reads as follows:-

“3. Unauthorized occupation of public premises.-- For the purposes of this Act, a person shall be deemed to be in unauthorized occupation of any public premises--

(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) where he, being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or

(c) where any person authorized to occupy any public premises has, whether before or after the commencement of this Act,--

(i) sub-let, in contravention of the terms of allotment, lease or grant, without the permission of the State Government or of any other authority competent to permit such sub-letting, the whole or any part of such public premises, or

(ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such public premises.

Explanation:- *For the purposes of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.”*

10. From the aforesaid provisions, it is clear that even if the appellants have deposited some amount, that would by itself not have the effect of legalizing the possession as an allottee, lessee or a grantee. Admittedly, the period of lease had expired way back in the year 1996 and thereafter, there has been no renewal of the same nor has there been any fresh lease deed. The effect thereof is that the appellants are in unauthorized occupation of the public premises and therefore, have been rightly ordered to be evicted from the premises. By now it is settled principal of law that merely because some amount has been received by the lessor from the lessee does not create any lease right in favour of the holder of the receipt and would not extend the lease beyond the agreed period. The status of the occupants with regard to the property in question would be that of an encroacher. The respondents under law also cannot be compelled to extend the lease in question.

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11. The submission of the counsel for the appellants that the reason for eviction of the appellants from the premises was that the gates were historical is without any basis because no declaration has been to this effect issued under the 1964 Act also cannot be accepted. A decision was taken by the competent authority with regard to the Mega Destination Amritsar Tourism Project in the meeting dated 23.09.2009 (Annexure R-2/1) with regard to the restoration of the historic gates of Amritsar for which decision was taken that all unauthorized occupants of the gates would be removed at the earliest. Merely because these gates have not been declared as historical monuments under the 1964 Act would not mean that the decision of the Government was illegal. The fact remains that the premises in question are public premises which are in unauthorized occupation of the appellants which is being sought to be evicted for the purpose of restoration of the gates and that too in pursuance to and for implementation of the Mega Destination Amritsar Tourism Project. The decision of the Government cannot be said to be *male fide* as the same is relatable to and in consonance with a particular project sought to be implemented and for that proceedings have been initiated against the appellants. There are justifiable reasons for initiating proceedings against the appellants under the 1973 Act. In any case, no proceedings have been initiated against the appellants under the 1964 Act.

12. In view of the above, we do not find any merit in the present appeal.

13. A submission has been made by the counsel for the appellants that the appellants are entitled to the alternative sites but in the absence of any policy of the official respondents, no such direction can be issued. However,

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counsel for the Municipal Corporation, Amritsar has stated that as and when any policy is framed or implemented for re-settlement of similarly placed unauthorized occupants, the appellants may put forth their claim. It would, thus, be open to the appellants to apply under the said scheme, if they are eligible to do so. We are sanguine that their claims will be duly considered and decided by the respondents by passing a speaking order in accordance with law. In case of rejection of such a claim, it shall be open to the appellants to avail of their remedy in accordance with law.

14. Since the appellants/predecessors-in-interest, admittedly, are in occupation of the premises in question since long, we, in the peculiar facts and circumstances of this case on humanitarian grounds although at the risk and peril of delay of the Mega Destination Amritsar Project relating to the restoration of gates, permit them to continue in occupation of the said premises for a period of six months i.e. upto 31.07.2015 so that they may make some alternative arrangement provided they deposit the due use and occupation charges with respondent No.2 at the rate as last deposited by them in the year 2006 till 31.07.2015 and then furnish an undertaking in this Court within a period of 60 days from today to hand over the vacant possession of the premises in question to the Municipal Corporation, Amritsar on or before the date specified above alongwith copy of the receipt of amount deposited. They should also undertake not to create any third party right, liability or encumbrance during their occupation of the premises.

The appeal stands dismissed with no order as to costs.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

January 28, 2015

Harish