

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5443 of 2016
Date of decision:27.09.2016

Bhagwan Singh

... Petitioner

Vs.

Punjab Wakf Board

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Sharma-I, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the order under challenge, whereby, he has been evicted from the demised premises leased out to him by virtue of lease deed dated 08.01.1985 executed between him and Wakf Board.

Mr. Rahul Sharma, learned counsel appearing on behalf of the petitioner submits that by virtue of aforementioned lease deed, the petitioner was put in possession of the agricultural land. The Wakf Board initiated the proceedings of ejectment under the provisions of the Punjab Tenancy Act, 1887 (hereinafter referred to as "1887 Act"). The said proceedings were decided on 03.11.2005. Against the aforementioned order, the respondent-Wakf Board filed an appeal before the Additional Deputy Commissioner-cum-Collector which, vide order dated 15.05.2006 was dismissed, relegating the party to file its claim before the competent Court as per the

provisions of Wakf Act, 1995. The Wakf Board instituted the suit under the aforementioned provisions but realizing the fact that since the title of the property is in dispute, therefore the jurisdiction could not have been invoked and transferred the matter to the Civil Court. The Civil Court erroneously entertained the aforementioned petition as it was an eviction petition under the East Punjab Urban Rent Restriction Act, 1949.

He further submits that the petitioner is entitled to the protection of tenancy of holding over, in view of the provisions of Section 116 of the Transfer of Property Act and also as per the ratio decidendi culled out in paragraph 18 by the Hon'ble Supreme Court in **Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass 2016(3) RCR (Civil) 812.**

He also submits that both the Courts below have passed the order of eviction by exercising the powers of Rent Controller. In fact, the entire proceedings are vitiated in law owing to the jurisdictional error as no cause of action had accrued to the Wakf Board as there was no default as per the provisions of Section 9 of Punjab Security of Land Tenure Act, 1953 and thus, eviction petition was not sustainable in the eyes of law.

He further submits that no doubt, the petitioner had filed a written statement before the Tribunal which did not have the jurisdiction and therefore, the petitioner should have been given another chance to file written statement.

I have heard learned counsel for the petitioner and appraised the paper book.

As per the findings rendered by the Hon'ble Supreme Court in paragraph 18 of the judgment rendered in Shyam Lal's case (supra), a person who has been inducted as tenant after expiry of duration of the lease deed, is entitled to the protection of the tenancy and his status would be of holding over as per the provisions of Section 116 of the Transfer of Property Act.

Paragraph 18 of the judgment reads thus:-

*“18. If the lease in the instant case has to be deemed to be a lease from year to year and the terms thereof cannot be looked into to determine the total duration thereof what would follow is that the tenant remained in possession beyond the legally presumptive period of the lease (one year) with the implied consent of the landlord. In the present case such consent ceased to exist only upon institution of the cross objection in the suit filed by the tenant, as mentioned earlier. The tenant, therefore, acquired the status of a tenant holding over or a tenant at will, which would confer on him protection under the 1953 Act requiring the landlord to establish proof of any of the conditions specified in Section 9 of the 1953 Act before being entitled to a decree of eviction. **From the above it would necessarily follow that to be entitled to protection from eviction under the 1953 Act any person claiming such protection has to come within the fold of the expression “tenant” under the 1953 Act read with the relevant provisions of the 1887 Act. Statutory protection would be available only***

to a statutory tenant, namely, a tenant under the Act. The Punjab Act of 1953 read with the relevant provisions of the 1887 Act do not include a tenant whose lease has expired. Nevertheless, retention/continuance of possession after expiry of the duration of the lease with the consent of the landlord will continue to vest in the erstwhile tenant the same status on the principle of holding over. Such continuance even after expiry of the deemed period of the lease under Section 106 of the Transfer of Property Act, as in the present case, would clothe the occupant with the status of a tenant under the Act in view of Section 116 of the Transfer of Property Act which deals with the consequences of holding over. The operation of Section 116 of the Transfer of Property Act would confer legitimacy to the possession of the tenant even after the termination or expiration of the deemed period of the lease so as to confer on him a status akin to that of a statutory tenant and hence protection from eviction as envisaged by the provisions of the Act of 1953.”

In the first instance, the argument of Mr. Sharma, looks very attractive that there was no fault in the provisions of Section 9. Before giving reasons, I am of the view that provisions of Section 9 are required to be extracted :-

“9. Liability of tenant to be rejected- [(1) Notwithstanding anything contained in any other law for the time being in force

no land owner shall be competent to eject a tenant except when such tenant-

- (i) is a tenant on the area reserved under this Act or is a tenant of a small landowner[or]*
- (ii) fail to pay rent regularly without sufficient cause [or]*
- (iii) is in arrears of rent at the commencement of this Act [or]*
- (iv) has failed , or fails , without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is ;situate [or]*
- (v) has used, uses the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it [or] has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet , the tenant shall be liable to be ejected only from such part[or]*
- (vi) has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet, the tenant shall be liable to ejected only from such part [or]*
- (vii) refuses to execute a Qabuliyat or a Patta, in the*

form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the land-owner. {and}

{viii) has the tenancy for a fixed term, supported by a registered agreement entered into by the landowner and the tenant, and such term has expired.}

Explanation -- For the purposes of clause (iii) a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution or decree or order , directing him to pay such arrears of rent.]

(2) Notwithstanding anything contained herein before a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area :.

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option only if the area of his tenancy under the landowner concerned is in excess of the area from which he can be ejected by the said land owner:

Provided further that if the tenant holds land of several land owners and more than one land owner seeks his ejectment, shall be exercised in the order in which the

applications have been made or suits have been filed by the landowners concerned and incase of simultaneous applications or suits the priority foe ejectment shall commence serially from the smallest land owner.

Explanation -- Where a tenant holds land jointly with other tenants only his share in the joint tenancy shall be taken into account in computing the area held by him.”

But the fact remains that the eviction of the petitioner was sought on the ground of arrears of rent. No doubt, the petitioner had made an attempt before the Court below by placing on record the photocopy of the few drafts prepared qua arrears of rent. In fact, all the pleas have already taken in the written statement filed before the Tribunal and no new stand could have been taken, in case, his request, as noticed above, to file second written statement is accepted.

It is conceded position on record that tenancy stood terminated. Of course the status of the plaintiff would be of holding tenant. At the best, the Court could have treated the proceedings under Section 106 of the Transfer of Property Act as filing of the petition before the competent authority and as well as, before the District Judge itself is a notice, therefore, the hyper technical objection qua maintainability of the petition under the provisions referred to above, in my view, is wholly misplaced. As per the claim of the Wakf Board, the petitioner is in arrears of rent since 1988-89. Since then, he is continuing in possession of the property. I am of the view that petitioner has continued in possession despite termination of

the tenancy, rightly so, the eviction order has been passed.

In view of the aforementioned observation, I do not intend to differ with the findings rendered in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

September 27, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No