

CWP no.15720 of 1991

and connected case

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP no.15720 of 1991(O&M)

Main Pal and others

....Petitioners

Versus

The Commissioner Rohtak Division, Rohtak and others

...Respondents

2. CWP no.15721 of 1991(O&M)

Main Pal and others

....Petitioners

Versus

The Commissioner Rohtak Division, Rohtak and others

...Respondents

Date of Decision :06.01.2016

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?Yes

2) To be referred to the Reporters or not?Yes

3) Whether the judgment should be reported in the Digest?Yes

Present : Mr. Ram Pal, Advocate for the petitioners

Mr. Sandeep S Mann, DAG, Haryana

Ms. Vanita Sapra Kataria, Advocate for private respondents

MAHESH GROVER, J.

This order will dispose of two writ petitions bearing CWP no. 15720

and 15721 of 1991.

CM no. 11539 of 2015 in CWP no. 15720 of 1991

The applicants are purchasers of share of disputed property from

respondent no.4. The dispute pertains to proceedings initiated by respondents no. 4 to 7 seeking eviction of the present petitioners under the provisions of The Punjab Security of Land Tenures Act 1953. Since the applicants have purchased the share from respondent no.4 their interest would be common to the other respondents and therefore it would be in the fitness of things if the application is allowed and the said respondents are impleaded as party respondents. Ordered accordingly.

CM no. 11548 of 2015 in CWP no.15721 of 1991

The applicants are purchasers of share of disputed property from respondent no.5. The dispute pertains to proceedings initiated by respondents no. 4 to 10 seeking eviction of the present petitioners under the provisions of The Punjab Security of Land Tenures Act 1953. Since the applicants have purchased the share from respondent no.5 their interest would be common to the other respondents and therefore it would be in the fitness of things if the application is allowed and the said respondents are impleaded as party respondents. Ordered accordingly.

Main cases

The facts have been taken from CWP no. 15720 of 1991

The petitioners impugn order dated 3.7.1991 by which their eviction has been ordered while accepting the application filed by the respondents no. 4 to

in Form-L by invoking the provisions of Section 9(1) and 14-A of the Punjab Security of Land Tenures Act 1953 seeking eviction of the present petitioners on the ground that they had not paid rent from Kharif 1981 to Rabi 1985. The land in possession of the petitioners (in both the petitions) have been described in the respective petitions and are enumerated herebelow:-

CWP no.15720 of 1991 “Land over killa no. 23//5-7-8, 24//1,

10, 11, 16/7/1, total 51 kanals 18 marlas”

CWP no. 15721 of 1991 “Land measuring Killa no.16//7/1(6-

8), 23//5 (7-11), 7(7-11), 8(6-17), 24//1(7-11), 10(8-0), 11(8-0), total

51 kanals 18 marlas, situated in village Pabsara, Tehsil and District

Sonepat.”

The rate of rent was Rs.10/- per acre per year. The petitioners did not dispute that the rent was not deposited for the disputed period but rather took up a plea that since the respondents were not living in the village and reside elsewhere they had no knowledge of their address, preventing them from depositing the rent. The Assistant Collector Ist Grade accepted the plea by appreciating that an application was moved by the present petitioners to deposit the rent in Court in the year 1984. Further proceedings before the Collector and Commissioner resulted in over turning of the order of the Assistant Collector and ejection of the petitioners from the disputed land was ordered. It is now the

cause of grievance to the petitioners.

It is contended by the learned counsel for the petitioners that the respondents were living in a city and they were unaware of their address which prevented them from making the payment of rent. It is however said that the rent was deposited in 1985 by moving an application before the competent authority in this regard. Apart from this plea, no other plea has been raised.

Learned counsel for the respondents oppose the prayer of the petitioners to contend that once default has been admitted the Act as it stands today and the manner in which it has been interpreted by the Hon'ble Supreme Court and by this Court would leave no manner of doubt that the petitioners were liable to be ejected from the land in question on account of default of payment of rent. Reliance has been placed on cases titled as **Mrs. Raj Kanta vs. The Financial Commissioner, Punjab and another** reported as 1980 PLJ 346, **Surja vs .The State of Haryana and others** reported as 1980 PLJ 117, **Amar Nath vs. Financial Commissioner, Haryana** reported as 1995(1) PLR 359 and **Shanti Parshad vs. Sohan Singh etc.** reported as 1975 PLJ 53.

Section 9 (1) and 14-A of The Punjab Security of Land Tenures Act, 1953 Act are extracted herebelow:-

Section 9- Liability of tenant to be ejected – (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) fails to pay rent regularly without sufficient cause; or
- (iii) is on arrear 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 or 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
- (vi) has sublet the tenancy or 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
- (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.

Explanation – For the purpose of clause (iii) a tenant shall be deemed to be in arrear of rent at the commencement of this Act only if the payment of arrear is not made by the tenant within a period of two months from the date of notice of the execution of decree or

order, directing him to pay such arrears of rent.”

Section 14-A Procedure for ejectment and recovery of arrears of Rent etc. - Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of Section 9-A

- (i) a landowner, desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction who shall thereafter proceed as provided for in sub-section (2) of section 1 of this Act and the provisions of sub section (3) of the said section shall also apply in relation to such application, provided that the tenants' right to compensation and acquisition of occupany rights, if any, under the Punjab Tenancy Act 1887 shall not be affected;
- (ii) a landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlord's refusal to receive the same or to give a receipt within the period specified in the notice. Where

after summary determination, as provided for in sub-section (2) of section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii)(a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act or refuses to give a receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact;

(b) on receiving such application the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or give a receipt, as the case may be, or both, within 60 days of the receipt of the notice.”

While Section 9 enumerates the conditions in which a tenant can be validly ejected by a land owner, Section 14-A prescribes the procedure. The petitioners have been unable to show any restraint or fetter placed by the language of the statute in terms of Section 9 requiring respondent landowner to initiate the proceedings against them under the Act. Neither any dispute regarding

relationship of landlord and tenant has been raised before this Court nor any other

justification provided which would indicate that proceedings against the petitioners under the provisions of Punjab Security of Land Tenures Act, 1953 were not maintainable.

If that be so then the only question that has to be determined is regarding the default and its effect. The default once again is not disputed but only a plea regarding unawareness of the address of respondent – landlord has been pleaded which on facts has been discarded by the Courts below in the impugned order by noticing that there has been a festering dispute between the petitioners and forefathers of the respondents and thus the plea that they were unaware about the whereabouts of the respondents was not worthy of credence. I would tend to agree with the reasoning of the impugned order.

The Court would then examine the effect of the default from Kharif 1981 to Rabi 1985 which has been conceded. The Hon'ble Supreme Court in **Mrs. Raj Kanta vs. The Financial Commissioner, Punjab and another** reported as 1980 PLJ 346 has laid the matter to rest by interpreting failure to pay rent regularly without sufficient cause. For the purposes of reference relevant observations are extracted herebelow:-

“4. The only point that has been canvassed before us is as to whether or not the High Court was right in interpreting section 9 of the Act by holding that the term 'regularly' used in section

9(i)(ii) would not include a single default. While the Revenue Courts

had held that the mere fact that the tenants made a single default in payment for the rent for Kharif 1961 was sufficient to attract the penalty of ejectment envisaged by section 9(i)(ii) of the Act, the High Court took the view that on a proper interpretation of the term 'regularly' it will appear that the legislature did not contemplate that ejectment should be ordered straightaway even if a single default, though unexplained, is committed by the tenant which interpretation would run against the avowed object of the legislation which was to advance and ameliorate the lot of the tenants. The High Court had considered the matter at very great length and placed a very wide interpretation on the term 'regularly, so as not to include within its ambit one single default. It has also referred to a number of authorities and Dictionaries to show that the word 'regularly' does not mean absolute symmetry. Having gone through the reasons given by the High Court we are unable to agree with the view taken either by the Single Judge or the Division Bench of the High Court. There can be no doubt that the Act is a piece of social legislation meant to ameliorate the lot of the tenants and to further the rights of the tenants by conferring on them the status of a permanent tenancy or the rights to purchase the land on payment of instalments. At the same time, we cannot overlook the fact that the landlords within a

very limited sphere have been assured protection in respect of the rights which they possess in the land and have been given the right to eject the tenants on specified grounds which are contained in the various sub clauses of section 9 of the Act. One such sub clause is sub clause (ii) which falls for interpretation in the instant case.

Section 9(1) as also clauses (i) and (ii) may be extracted thus:-

Section 9- Liability of tenant to be ejected – (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) fails to pay rent regularly without sufficient cause;

5. While interpreting the word 'regularly' the High Court seems to have overlooked two important circumstances. In the first place, the word 'regularly' has been used immediately after the phrase 'fails to pay rent' and is followed by the words 'without sufficient cause'. Secondly there is nothing in the section to indicate that the legislature intended to exclude one single default. The High Court attempted to supply words to the section which are not there. In

doing so it has failed to consider that if once the Court was to lay

down a particular line of demarcating by extending the connotation of the word 'regularly' to exclude one default, it is difficult to explain why the legislature contemplated only one default and not two or three for that matter.”

In case of **Bhagirath Ram Chand vs. State of Punjab and others**

reported as AIR 1954 Punjab 167, Full Bench of this Court has noticed that undoubtedly the main thrust of the provisions of the Act are directed towards preventing the landlords from ejecting their tenants except on the grounds mentioned in section 9, but at the same time, it cannot be denied that the legislature undoubtedly provided some protection to the landlords by conferring on them a limited right to eject their tenants and one of the grounds being failure to pay rent regularly without sufficient cause.

While concluding the Hon'ble Supreme Court in Raj Kanta's case (supra) observed as under :-

“8. On a consideration of the authorities mentioned above, it seems to us that the legislature clearly intended to use the word 'regularly' to mean payment of rent in a uniform and consistent manner without any breach or default. The legislation never contemplated that a single default could be condoned. This inference is fortified by the words “without sufficient cause”. In other words, the legislature clearly provided that if the tenant had committed a

default, whether one, two or more, the same could only be condoned if sufficient cause is shown and not otherwise. If, however, we accept the interpretation of the High Court, then the words “sufficient cause” become absolutely redundant.

9. On an overall consideration of the matter, a correct interpretation of the plain language and the words and phrases used in clause (ii) of section 9(1) of the Act seems to us that the word 'regular' connotes a consistent course of conduct without any break or breach and the words 'regular payment of rent' mean that the rent should be paid punctually without any default or laxity. Although the Act is heavily loaded in favour of the rights of the tenants so as to confer on them several important benefits and privileges yet as the Act is confiscatory in nature, so far as the landlord is concerned it should be strictly construed within the limited sphere inasmuch as the landlord is conferred limited grounds on which ejectment is permissible under section 9 of the Act which appears to be a safety valve for the limited rights that are left with the landlord under the Act. In order therefore to advance the object of the Act so as to assure the limited protection to the landlord, the language employed in the various clauses of section 9 has to be

construed so as to give real benefit to the landlord within the limited range that the section operates. In the instant case, the words 'failure to pay rent regularly without sufficient cause' postulate the following conditions:-

- (1) there must be a failure on the part of the tenant to pay rent;
- (2) such failure must be to pay rent regularly, that is to say, the rent should be paid punctually consistently without any break or breach.
- (3) if there is any default ranging from one to several, the tenant has got to show sufficient cause if his case is to be taken out of the mischief of section 9(1)(ii)."

The aforesaid view finds resonance in few of the judgments of this Court rendered in 1980 PLJ 177 and 1995(1) PLR 359

In conclusion, since the petitioner admits the default and shows no sufficient cause, I am of the view that aforesaid observations rendered by the Hon'ble Supreme Court would be attracted to the facts of the instant cases rendering the petitioners liable for ejectment.

Instant petitions are hereby dismissed.

January 06, 2016
rekha

(MAHESH GROVER)
JUDGE