

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.8607 of 1998
Date of decision: 05.12.2016

Sheo Nath

... Petitioner

Vs.

Bhola Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: None for the petitioner.

Mr. Gaurav Singla, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondent No.1.

Mr. Pawan Jhanda, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 01.04.1998 (Annexure P-3) passed by learned Financial Commissioner, Haryana, whereby he set aside the order dated 16.01.1997 (Annexure P-5) passed by learned Commissioner, Rohtak Division, Rohtak and ordered the eviction of the tenant-petitioner on the ground of alleged non-payment of batai (lease money).

Notice of motion was issued and dispossession of the petitioner was stayed by a Division Bench of this Court vide order dated 12.06.1998. Contesting respondent No.1-landlord filed his reply. Thereafter, writ petition was admitted for regular hearing and stay was ordered to continue vide order

dated 07.07.1999 passed by a Division Bench of this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the respondents.

It is a matter of record that when petitioner filed his appeal before the Commissioner, Rohtak Division, Rohtak, it was allowed vide order dated 16.01.1997 (Annexure P-5). After hearing the learned counsel for the parties, learned Commissioner came to conclusion that the respondent-landlord failed to rebut the evidence brought on record by the tenant-petitioner herein, regarding payment of batai (lease money). Learned Commissioner, in the operative part of the order (Annexure P-5), observed as under: -

“After giving my thoughtful considerations to the rival arguments of the learned counsel for the parties I find that the submissions made by learned counsel for the appellant carry weight. A perusal of the record of the ACIG reveals that after the tenant had adduced in evidence the two receipts Ex.P2 and P3, the landlord-respondent had made an application on 27.12.1993 for permission to lead additional evidence by way of examination of hand writing expert to disprove the said two receipts but despite availing of four full opportunities he failed to adduce any such evidence for which an adverse inference has to be drawn against him. By tendering into evidence the two receipts in token of payment of batai, the tenant-appellant had discharged his onus of proof. It was for the landlord-respondent to rebut these receipts by leading some cogent evidence which he failed to do. Hence, I accept this appeal, set aside the impugned order of the Collector and uphold that of

the ACIG, Karnal.”

Feeling aggrieved against the abovesaid order passed by the Commissioner, respondent No.1 filed his appeal before the Financial Commissioner, who accepted the same by way of totally non-speaking and cryptic order dated 01.04.1998 (Annexure P-3) and the operative part of the impugned order, reads as under: -

“Having gone through the record and after hearing the arguments of the counsels of both the parties I find that the Collector, Karnal has passed a well reasoned order dated 29.3.95 finding that the receipts in question cannot be treated as genuine; and that if the receipts may be treated genuine even then the respondent tenant has not rendered that 1/3 Batai which at least amounts to Rs.500/-. In the circumstances finding merit in the arguments of the counsel for the appellant. I hereby set aside the Commissioner's order dated 16.1.97 and accept the appeal upholding the Collector's order dated 29.3.95.”

A bare combined reading of both the abovesaid orders would make it crystal clear that learned Financial Commissioner committed a serious error of law, while not at all advertent to the strong observations made by the Commissioner in his order dated 16.01.1997 (Annexure P-5). Once the Financial Commissioner was hearing the matter against the order passed by the Commissioner, it was his bounden duty to deal with the aforesaid findings recorded by the Commissioner. However, he did not do so, for the reasons best known to him. Learned Financial Commissioner fell in serious error of law, while passing the impugned non-speaking and cryptic order, which cannot be

sustained.

Keeping in view the peculiar facts and circumstances of the case, when the writ petition was admitted for regular hearing, following order was passed on 07.07.1999 by a Division Bench of this Court: -

“Admitted.

Stay to continue. It is, however, made clear that admission of this writ petition shall not bar the respondents to file ejectment petition for ejecting the petitioner on the ground of non-payment of rent for the subsequent period or on any other ground.”

Learned counsel for respondent No.1 is not aware whether the abovesaid opportunity granted by this Court, was availed by respondent No.1 or not. Be that as it may, non-availability of this information by learned counsel for respondent No.1 should not detain this Court for disposing of the present writ petition. It is so said because if any fresh ejectment petition was filed by the landlord-respondent No.1, same would have been dealt with in accordance with law by the learned Court of competent jurisdiction. So far as the present writ petition is concerned, impugned order passed by the Financial Commissioner cannot be sustained by any stretch of imagination, it having been found a totally non-speaking and cryptic order.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order dated 01.04.1998 (Annexure P-3) passed by learned Financial Commissioner has been found a patently illegal order, same cannot be sustained. Accordingly, the impugned order (Annexure P-3) is hereby

set aside. Order dated 16.01.1997 (Annexure P-5) passed by learned Commissioner, Rohtak Division, Rohtak is restored. Present writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, instant writ petition stands allowed, however, with no order as to costs.

05.12.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No