

CWP-10638-2013

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

CWP-10638-2013

Date of Decision: 23.05.2016

Kishan Chand

... Petitioner(s)

Versus

Financial Commissioner, Punjab and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr. Arun Bansal, Advocate,
for the petitioner.

Mr. B.M.Vinayak, DAG, Punjab.

Mr. H.S.Saggu, Advocate,
for respondent Nos.2 to 8.

Paramjeet Singh Dhaliwal, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the orders dated 25.01.2013 (Annexure P-4) passed by respondent No.1-Financial Commissioner, Punjab, 13.07.2007 (Annexure P-3) passed by the Commissioner, Jalandhar Division, Jalandhar, 05.09.2006 (Annexure P-2) passed by the

CWP-10638-2013

Collector, Hoshiarpur and 31.05.2005 (Annexure P-1) passed by the Assistant Collector-Ist Grade, Mukerian.

Brief facts relevant for disposal of writ petition are to the effect that respondent Nos.2 to 8 filed a suit for eviction of the petitioner and proforma respondents from land measuring 3 kanals 9 marlas, as described in head-note of plaint, and also for recovery of Rs.1977/- as arrears of rent since khariff 1994 to rabi 1997. The said suit was decreed by the Assistant Collector-Ist Grade, Mukerian vide order dated 21.09.2001. Against the same, the petitioner and proforma respondents filed appeal before the Collector, Hoshiarpur who accepted the same vide order dated 28.11.2003 and remanded the case to the Assistant Collector-Ist Grade for recording issuewise findings. Vide impugned order dated 31.05.2005 (Annexure P-1) passed by the Assistant Collector-Ist Grade, the suit was again decreed. Being dissatisfied, the petitioner and proforma respondents preferred an appeal before the Collector, Hoshiarpur which has been dismissed vide impugned order dated 05.09.2006 (Annexure P-2). Feeling aggrieved, the petitioner and proforma respondents preferred revision before the Commissioner, Jalandhar Division, Jalandhar which has been dismissed vide impugned order dated 13.07.2007 (Annexure P-3). Against that, the petitioner and proforma respondents preferred another revision before respondent No.1 which has also been dismissed vide impugned order dated 25.01.2013 (Annexure P-4). Hence, this writ petition.

CWP-10638-2013

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that no notice for recovery of rent has been given by the private respondents to the petitioner. Section 14-A (ii) of the Punjab Security of Land Tenures Act, 1953 (for brevity, '1953 Act') makes it clear that a notice in Form 'N' has to be served on the petitioner to deposit the rent and it is only on failure on the part of the tenant to deposit the rent that the tenant is liable to be evicted by the Assistant Collector, therefore, eviction suit was not maintainable. Moreover, the petitioner has acquired the ownership rights in view of provisions of Punjab Occupancy (Vesting of Proprietary Rights) Act, 1952 as he has been recorded as an occupancy tenant in records. In support of his contentions, learned counsel has relied upon ***Khem Chand vs. Financial Commissioner, Haryana, Chandigarh*** 1996 (1) RRR 287.

Per contra, learned State counsel and learned counsel for respondent Nos.2 to 8 vehemently opposed the contentions of learned counsel for the petitioner and contended that Section 9(1) (ii) of the 1953 Act provides that a tenant is liable to be ejected if he “*fails to pay rent regularly without sufficient cause.*” In the present case, there was a clear default on the part of the petitioner to pay rent for the period w.e.f khariff 1994 to rabi 1997, therefore, the revenue authorities have rightly evicted the petitioner and proforma respondents. In support of his

CWP-10638-2013

contentions, learned counsel for respondent Nos.2 to 8 has relied upon *Manohar and others vs. Financial Commissioner, Haryana and others* 2000(2) PLJ 460.

I have given my thoughtful consideration to rival contentions of learned counsel for the parties.

Section 9 (1) (ii) of the Act provides that the tenant should pay rent punctually and consistently without any break or breach and even a single default in the payment of rent committed by the tenant would make him liable for eviction.

Vide impugned order dated 31.05.2005 (Annexure P-1), the Assistant Collector Ist Grade has recorded a categorical finding that the tenants have not paid rent w.e.f. khariff 1994 to rabi 1997. Petitioner-Kishan Chand in his cross-examination admitted non-payment of rent to respondent Nos.2 to 8. Consequently, the order for eviction passed by Assistant Collector-Ist Grade has become enforceable. The said findings have been affirmed by the Collector, Divisional Commissioner and Financial Commissioner vide impugned orders (Annexures P-2 to P-4, respectively). The conduct of the petitioner and others in delaying the proceedings by resorting to the revision petitions and then this petition is clearly an attempt to by-pass the process of law.

So far as the contention of learned counsel for the petitioner that he has acquired rights of occupancy tenant or has become owner of the land, is concerned, the revenue authorities have recorded concurrent

CWP-10638-2013

finding that the petitioner has failed to produce any evidence to this effect, rather respondent Nos.2 to 8 have been shown to be owner of the disputed land in the revenue records.

So far as the contention of learned counsel for the petitioner that he had not been issued notice in Form 'N', is concerned, the same is untenable as the formality of issuing a notice in a particular form has to be followed in the cases where the summary procedure is followed and not in cases like the present one. In this regard, reliance can be placed upon *Manohar's case (supra)*. In his cross-examination, the petitioner admitted his default of non-payment of rent for the period from *kharriff* 1994 to *rabi* 1997. It seems that the petitioner and proforma respondents were aware of the outstanding arrears of rent. They had to make the payment. In such a situation, the question of issuing any notice in any form to the petitioner does not arise. In the present case, the Assistant Collector-Ist Grade had chosen the lengthy procedure of a suit under Section 77 of the Punjab Tenancy Act, 1887 instead of a comparatively easier and summary procedure as envisaged under the provisions of the 1953 Act. By this procedure, the petitioner and proforma respondents have not been prejudiced whatsoever. Rather, the petitioner had a better opportunity to prove his case. The petitioner being a defaulter who had not paid anything to the landlord w.e.f. *kharriff* 1994 to *rabi* 1997, seeks the shelter of law.

CWP-10638-2013

In view of above, I do not find any ground to interfere in the concurrent findings recorded by the revenue authorities.

Dismissed.

Costs made easy.

23.05.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge