

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17814-2015

Date of Decision: 12.02.2016

Amit Kumar and another

---Petitioners

Vs.

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

-----Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: Mr. O.P. Goyal, Sr. Advocate with
Mr. Nirmal Singh, Advocate
for the petitioners.

Mr. R.K.S. Brar, Addl. A.G., Haryana.
For respondent Nos.1 to 3.

Mr. Sushil Bhardwaj, Advocate
for respondents No.4 to 6.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the award dated 23.07.2015 (Annexure P-16) passed by the Permanent Lok Adalat (Public Utility Services), Narnaul whereby the petition/application of the petitioners challenging the disconnection of the electricity supply to the shop and seeking directions for restoration of the same was dismissed.

It is averred in present petition that the father of petitioner No.1, namely Suresh Kumar was a tenant in the premises of Vishwakarma Samaj Bhavan @ 400/- per month in the name and style of M/s Sheonarain Sanjay Kumar and initial receipt (Annexure P-1) for six months from 24.10.1988 to 30.4.1989 was issued by Vishwakarma Samaj Bhavan. The firm M/s Sheonarain Sanjay Kumar was registered under the Central Sales Tax Act. The firm was also registered under the Haryana Value Added Tax Act (for short 'the Act') w.e.f. 01.04.2003 (Annexure P-4).

After the death of the father of petitioner No.1 in November 2005, he became the proprietor of M/s Sheonarain Sanjay Kumar and he has been in continuous occupation of the premises. He has been regularly paying electricity charges. In proof of his occupation of the premises, petitioner No.1 has annexed the income tax returns for the assessment years 2011-12 to 2015-16. He has also annexed the copy of the licence issued by the Market Committee, Kanina to M/s Sheonarain Sanjay Kumar renewed upto 31.03.2016.

On the application of petitioner No.1, an electric connection bearing No.KC-21-1448 was installed in the premises in 2014. But later a complaint dated 08.06.2015 was moved by Vishwakarma Samaj Bhavan to respondent No. 1, alleging that petitioner No.1 had got electric connection by submitting forged ownership papers which related to some other property. On the said complaint, a notice dated 18.6.2015 (Annexure P-11) was served on petitioner No.1 calling upon him to give proof of his legal possession within two days. Petitioner submitted his reply stating that he had already submitted attested copy of rent receipt, copy of licence duly attested by Market Committee, Kanina and site plan at the time of grant of connection and that he was again submitting the said documents. Being dissatisfied with the reply and for his failure to submit the required documents in proof of ownership and legal possession vide order dated 29.06.2015 (Annexure P-13), the electricity supply to the premises was disconnected.

Petitioner No.1 filed a petition before the Permanent Lok Adalat (Public Utility Services), Narnaul, seeking directions that the electricity connection of the petitioner be directed to be restored. The said petition was dismissed vide the impugned award dated 23.07.2015.

Aggrieved, the petitioners have filed the present petition.

In the reply filed on behalf of respondents No.4 to 6, it has been stated that petitioner has never been their tenant. There is no relation of tenant and landlord between them. It has been stated that documents appended with the writ petition as rent receipts are forged and fabricated. It has been stated that the shop in question was rented out to Om Parkash son of Mahadev Parsad brother of the deceased father of petitioner No. 1, namely Suresh Kumar son of Mahadev Parsad for the purpose of go-down. The electricity connection was also provided in the said shop vide Account No.KC-21-120 in favour of Sh. Sagar Mal father of respondent No.5 and 6. Om Parkash remained in possession of shop but did not pay the electricity bills and ultimately the electricity supply was disconnected vide PDCO dated 03.07.2003 by the department on account of arrears of bills amounting to Rs.14,644/- which dues are still outstanding. There was no electricity supply to the said shop since 2003. Petitioner No.1, in connivance with his uncle Om Parkash fabricated a gift deed in his favour and relying on that applied for electricity connection in the name of petitioner No.1 and got installed the electricity connection No. KC-21-1448 in 2014.

When the answering respondents came to know about the fraud committed by petitioner No.1, they made a complaint to the Electricity Department that petitioner had never been their tenant and that he had obtained electricity connection by providing forged documents. Despite being asked to submit documentary evidence with regard to his ownership and legal possession of the shop in question, petitioner No. 1 failed to do so. Hence the Electricity Department disconnected the

electricity supply vide PDCO No.17/892 dated 30.05.2015. It is stated that Om Parkash has kept the shop closed even after passing of the award i.e. 23.07.2015. The authorities of DHBVNL have visited the premises several times for removing the energy meter but found the premises closed at all times. On 26.08.2015, they issued a memo to petitioner No.1 for depositing the energy meter.

Petitioner No.1 filed replication disputing the averments in the written statement that the petitioner was never the tenant of the respondents 4 to 6. He has also disputed their assertion that Om Parkash has been in occupation of the premises. It has been asserted that if the respondents are disputing the relationship of landlord and tenant they should have filed a rent petition under the Haryana Urban (Control of Rent and Eviction) Act, 1973.

Heard learned counsel for the parties and perused the record.

In this petition, the only question that requires adjudication is the validity of the award of the Permanent Lok Adalat whereby the application filed by the petitioner seeking directions to the DHBVNL to restore the electricity connection bearing No.KC-21-1448 was dismissed.

Before the Permanent Lok Adalat, the respondents had pleaded that in the reply to the notice issued by the DHBVNL on the complaint of Vishwakarma Samaj Bhavan, the petitioner had only submitted a 27 years old rent receipt alleged to have been issued by the Vishwakarma Samaj Bhavan, Kanina on 19.10.1988 as a document of proof of possession. Besides, it was also objected that the rent receipt was issued to some other firm M/s Sheonarayan Sanjay Kumar, whereas the name of the father of petitioner No.1 is neither Sheonarayan nor Sanjay Kumar.

Faced with this objection petitioner No. 1 moved an application before the Permanent Lok Adalat, for amendment of the main application. The Lok Adalat vide order dated 15.07.2015, directed the petitioners to file a detailed petition mentioning the persons to whom and the period for which the rent had been paid by petitioner No.1. However other than the receipt dated 19.10.1988 , no receipt was produced by petitioner No.1. A mention of receipt dated 05.04.1998 was made in the written statement but it was not produced. It was also asserted that rent had been paid upto 31.03.2015 and in proof of the same Income Tax returns showing the payment of rent under the heading of Trading and Profit and Loss Account for the year ended 31.03.2014 and 31.03.2015 were produced.

When learned Lok Adalat confronted the counsel for the petitioners to substantiate the assertion that the rent had been paid upto 2013, by showing the actual receipts, he left the Court stating that the Permanent Lok Adalat may decide the case in any manner as deemed appropriate. Accordingly, holding that the petitioner No.1 had failed to prove that he was in possession of shop in question as tenant, the petition was dismissed. It was, however, observed that the findings given in the application would not affect the status of petitioner No.1 regarding shop in question in any other proceedings.

It is not disputed that the earlier electricity connection KC-21-120 was disconnected vide PDCO dated 03.07.2003 and at that time an amount of Rs.14,644/- was outstanding. Thereafter, petitioner No.1 applied for fresh electric connection on 05.09.2014 along with which he initially submitted three documents, namely rent receipt of the year 1988, licence of Market Committee and photocopy of VAT registration. Even

before the learned Lok Adalat, petitioner No.1 was not able to submit any document regarding ownership or tenancy other than the receipt of 1988.

The procedure for providing new electricity connection is specified in the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014. Relevant part thereof is reproduced as under:

"xx xx xx xx"

4.4 Procedure for providing New Electricity Connection

4.4.1 Application for new connection

(1) The applicant shall apply for release of new connection in the prescribed application form.

(2) Application forms shall be available at the local office of the licensee on payment of prescribed charges.

(3) The licensee shall also put up all application forms on its website for free download. The licensee shall also display in each office, the address and telephone numbers of offices in the respective area of supply where filled-up application forms pertaining to that particular area can be submitted. Any assistance or information required in filling up the form shall be provided free of cost to applicants at the local office of the licensee.

(4) The licensee shall also provide alternative avenues for applying for new connection or modification in existing connection through website, customer care centers and other technological means, which minimize the applicant's interface with the licensee during the process.

(5) Application form for new connection must be accompanied with a photograph of the applicant, identity proof of the applicant, proof of applicant's ownership or legal occupancy over the premises for which new connection is being sought, proof of applicant's current address and the no dues certificate mentioned in Regulation

4.3.1 or in its absence undertaking to pay outstanding dues of the previous owner and in specific cases, certain other documents as detailed in Regulations 4.4.1 (7) to 4.4.1 (11).

(6) Processing fee (non - refundable), as per rates prescribed under Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations 2005, shall be paid by the applicant while applying for a new connection.

(7) Any one of the following documents shall be considered as acceptable proof of identity:

(a) If the applicant is an individual:

(i) Electoral identity card;

(ii) Passport;

(iii) Driving license;

(iv) Ration card;

(v) Photo identity card issued by a Government agency;

(vi) PAN card;

(vii) Aadhaar Card

(b) If the applicant is a company, trust, educational institution, government department, the application form shall be signed by an authorized person along with a relevant resolution/ authority letter of the company / institution concerned. In case of a registered company, all the Directors shall be jointly and severally liable.

(8) Any one of the following documents shall be considered as acceptable proof of ownership or occupancy of premises:

a) In case of Agriculture supply connection:

A copy of khasra girdawari / jamabandi in the name of the applicant.

b) For all other connections:

(i) Copy of sale deed / allotment letter or lease deed or rent deed in the name of the applicant;

(ii) Registered General Power of Attorney from the owner in favour of the applicant alongwith (i) above;

(iii) Property tax receipt or tax demand notice as proof of ownership and rent deed or any other legal proof of being a tenant and paying rent as proof of occupancy;

If there is no document as listed above with the applicant, then the licensee's official shall visit the site of connection and confirm regarding the proof of legal occupancy of the applicant through other means including municipal committee water/ sewerage bill or statement of neighbours."

As per Clause 5 of Regulations 4.4.1 Application form for new connection must be accompanied with a photograph of the applicant, identity proof of the applicant, proof of applicant's ownership or legal occupancy over the premises for which new connection is being sought. The claim of the petitioner was that he was in occupation as a tenant. Thus as per clause 8 thereof he was required to produce the rent deed or any other legal proof of being a tenant and paying rent as proof of occupancy.

As is evident from the award of the Ld. Permanent Lok Adalat the petitioner was not able produce any such document which would show his tenancy, which was being disputed by the respondents No. 4 to 6.

Clause 8 also deals with a situation where no document as those listed therein are available. In that event the licensee's official shall visit the site of connection and confirm regarding the proof of legal occupancy of the applicant through other means including municipal committee water/ sewerage bill or statement of neighbours. There is nothing on record to indicate that the petitioner made any such a request before the respondent DHBVNL to verify his occupancy in this manner, nor was any such plea raised before the Ld. Permanent Lok Adalat.

In these circumstances no fault can be found with the award

of the Ld. Permanent Lok Adalat.

However, if the assertion of the the petitioner that he is a tenant is correct, he is not without legal redress. Like other Rent Restriction Acts, the Haryana Urban (Control of Rent & Eviction) Act, 1973 contains sufficient provisions with regard to the obligation of the landlords to provide and not to interfere with the amenities enjoyed by the tenants. Electricity supply is one such amenity. The relevant Sections 9 and 10 are reproduced below:

"9. Landlord to provide certain amenities.-

(1) If the amenities of electricity, sewerage or tap water supply have been made available in any locality by the State Government or a local authority, the tenant of the building or rented land of such locality shall be entitled to the employment thereof subject to the provisions hereinafter contained.

(2) If the landlord at the written request of the tenant fails to agree in writing to provide all or any of the amenities within a period of thirty days or fails to provide the same within a period of ninety days of such request, the tenant may apply to the Controller for that purpose. The Controller may, on such application by the tenant and after such enquiry as he may deem fit, permit the tenant to have such amenity at the cost of the landlord on such conditions as he may deem proper. The tenant shall be entitled to deduct the expenses incurred by him in providing the amenity from the rent payable to the landlord till the full amount is realized :-

Provided that the rate of deduction of such expenses shall not exceed fifty per centum of the amount of rent:

Provided further that the Controller may reject the application if he is satisfied that such an order

will cause undue hardship to the landlord keeping in view his source of income, or would involve expenditure incommensurate with the benefit sought to be achieved.

(3) The Controller may fix the extent and specification of the amenity as far as possible keeping in view the circumstances of the case and also the estimated cost thereof.

(4) After the amenity has been provided, the tenant shall immediately thereafter send the details of the expenses incurred by him to the landlord.

(5) In case of dispute as regards the quantum of the Amount spent for providing the amenity, the same shall be decided by the Controller after enquiry on an application made to him.

(6) The landlord shall be entitled to enhance the rent of the building or the rented land to the extent of eight per centum per annum of the amount spent for providing such amenity from the date the amenity is provided:

Provided that where the tenant has initially incurred the expenses for providing such amenity, the enhancement of rent shall not be allowed till the amount spent by the tenant has been realized.

10. Landlord not to interfere with amenities.-

(1) No landlord shall without just and sufficient cause, cut off or withhold any of the amenities enjoyed by the tenant.

(2) A tenant in occupation of a building or rented land may, if the landlord has contravened the provision of this section, make an application to the Controller complaining of such contravention.

(3) If the Controller on enquiry finds that the tenant has been in enjoyment of the amenities and that they were cut off or withheld by the landlord without just or sufficient cause, he shall make an

order directing the landlord to restore such amenities :-

Provided that if the Controller is satisfied from affidavit or otherwise that immediate enjoyment of the amenities is essential, he may by order in writing allow the tenant to get such amenities restored on such terms and conditions as may be imposed by the Controller subject to his final decision as regards the expenses on the restoration of such amenities."

It would thus be open to the petitioner to resort to these provisions, if so desired.

The DHBVNL, in its reply before the Ld. Permanent Lok Adalat had stated that if the petitioner submits proper documents proving legal possession of the premises in question , the supply may be reconnected. The same position has been maintained during these proceedings. In these circumstances it would also be open to the petitioner to apply for re-connection provided he is able to satisfy the requirements of the relevant Regulations.

Accordingly the petition is disposed of.

12.02.2016
Atul

(HARINDER SINGH SIDHU)
JUDGE