

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.8151 of 2015
Date of decision: 11.02.2016

Hazara Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. GS Punia, Senior Advocate with
Mr. AS Sullar, Advocate for the petitioner.
Mr. Rahul Dev Singh, DAG, Haryana.
Mr. Deepak Balyan, Advocate for respondents No.2 and
3-HUDA.

1. Whether reporters of 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?

S.J. VAZIFDAR, A.C.J. (Oral)

The petitioner has challenged an order dated 18.06.2013 passed by the Collector and an order dated 24.06.2014 passed by the appellate authority. The Collector held that the HUDA is the owner of the land in question and not the petitioner and that the petitioner's possession of the land is illegal. HUDA was directed to take appropriate action to take possession of the land. The appellate authority upheld this order. These orders were passed pursuant to a learned Single Judge's order dated 04.08.2011 in RSA No.1296 of 2010.

2. The facts leading to the impugned orders are these.

The petitioner's case is that his father was granted a lease in respect of the land under the East Punjab Utilization of Land Act, 1949 for a period of 20 years. The petitioner inherited the leasehold rights upon the death of his father. The lease expired on 20.10.1978.

The petitioner filed Civil Suit No.607 of 1997, which was disposed of by a judgment dated 19.12.2002. The learned Judge held that the petitioner was in possession of the property and rejected the respondent's contention that possession thereof was taken in the year 1980. The petitioner claims to have been in possession thereafter. The learned Judge however held that the petitioner was in possession of the property as a trespasser. Accordingly, the learned Judge granted an injunction restraining the respondents from dispossessing the petitioner except in due course of law. However, the petitioner did not challenge the findings that his possession of the land was that of a trespasser. The respondents' appeal against this order and judgment was dismissed. The appellate court also held that the petitioner had rightly been held to be a trespasser by the trial court. This judgment was not challenged by the petitioner.

The petitioner thereafter filed another suit seeking a declaration that he had become the owner in possession of the land. The petitioner's case was based on the ground that he had acquired occupancy rights in respect of the property by virtue of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 and the entries made in the revenue records. The suit was

dismissed. The appeal was also dismissed. A learned Single Judge of this court disposed of the RSA by directing the authorities to afford the petitioner an opportunity of hearing and pass a speaking order. The notice issued by the respondent under Section 18 of the Act was however upheld.

3. It is in these circumstances that the impugned order has been passed. As we mentioned earlier, the finding that the petitioner was in possession and that the respondents had not taken possession has attained finality. Moreover, the finding that the petitioner is in occupation of the land as a trespasser has also attained finality in view of the aforesaid proceedings and the orders and judgments passed therein.

4. The petitioner's only contention against the impugned order is that the authorities failed to take into consideration the provisions of the East Punjab Utilization of Lands (Haryana Amendment) Act, 2014, which inter alia amended Section 5 of the principal Act. The Amending Act in so far as it is relevant reads as under:

"1. (1) This Act may be called the East Punjab Utilization of Lands (Haryana Amendment) Act, 2014.

(2) It shall be deemed to have come into force with effect from the 24th September, 1986.

2. For section 5 of the East Punjab Utilization of Lands Act, 1949 (hereinafter called the principal Act), the following section shall be substituted, namely: -

5. Where the Collector has taken possession of any land under section 3, he may lease or renew the lease to any person on such terms and conditions, as he may deem fit, for the purpose of growing any type of crop :

Provided that the Collector may renew the lease, which expired on or before the 24th September, 1986, and the lessee is in cultivating possession of the land belonging to State Government or Gram Panchayat, as the case may be:

Provided further that the period of lease shall not be less than seven years and more than ninety-nine years in totality:

Provided further that the Collector shall take the use and occupation charges from lessee for the period from expiry of lease till its renewal.

***Explanation* /.- For the purposes of this section, the words "any person" shall mean a person himself who was granted lease by the Collector on or before the 24th September, 1986 under the provisions of this Act, or his legal heir.**

***Explanation* 11.- The cultivating possession of the lessee shall be ascertained on or before the 24th September, 1986."**

5. It is possible however that the petitioner's attention was not drawn to the Amending Act as it was notified on 9th April 2014 only a little more than two months prior to the order of the appellate authority impugned in this petition. It is for the petitioner to make an application under the Amended Act of 2014 for having the lease renewed and for the Collector to consider the same in accordance with law. The orders passed in the above proceeding in the suits as well as in the proceedings before the authorities do not preclude the petitioner from doing so. The petitioner's right, if any, under the Amendment Act, 2014 remains unaffected.

6. Having said that the petitioner would be entitled to rely upon the finding in his favour regarding possession. Even in the

event of the petitioner making an application under the Amendment Act, 2014 the authorities will consider it in the light of the observation and finding in the legal proceedings.

7. The writ petition is disposed of in the above terms.

In order to protect the petitioner's possession and rights it is ordered that in the event of the petitioner making an application under Section 5 of the East Punjab Utilization of Land (Haryana Amendment) Act, 2014 on or before 31.03.2016, the respondents and the petitioner shall maintain status quo of the property till the same is decided and for a period of 8 weeks after the service of the order upon the petitioner in the event of the same being adverse the petitioner.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

11.02.2016
Rajan