

LPA no. 1234 of 2014 (O&M) 1

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

LPA no. 1234 of 2014 (O&M)

Date of Decision : 02.12.2016

Rajesh Kumar and another

....Appellant(s)

Versus

Amin Chand and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN**

Present : Mr. Puneet Jindal, Sr. Advocate with
 Ms. Sakshi, Advocate for appellant

 Mr. S.K.Aneja, Advocate for respondent no.1 and his L.Rs

 Mr. P.S.Bajwa, Addl. AG, Punjab

MAHESH GROVER, J.

 This Letters Patent Appeal is directed against the judgment of
learned Single Judge dated 12.5.2014.

 We may notice the facts in brief. The appellants who are
landlords initially filed proceedings under the Punjab Security of Land
Tenures Act, 1953 Act (hereinafter referred to as the 'Act') seeking eviction
of the respondent-tenant on the ground that he had not paid the rent for the
Rabbi 1978-1980. Notice in form 'N' was duly issued to the respondent-
tenant who came and contested the claim of the appellants about non-
payment of rent by producing certain witnesses who were disbelieved,
leading to the passing of ejectment order which was taken up in appeal
where it met the same fate. Eventually the matter was determined by the

Collector. This led to the filing of the CWP no.9590 of 1987 where from the impugned judgment has emerged. At the time of the admission of the writ petition this Court passed an interim order which we deem it appropriate to extract herebelow:-

“CM no. 4109 of 1988

In re: CWP no. 4590-1987

Present : Mr. Ravinder Chopra

The interim order dated 17.12.1987 is made absolute subject to the condition that the petitioner deposits the arrears of rent with A.C Ist Grade on or before 20.6.1988 and in future keeps on depositing the rent after harvesting every crop till the decision of this writ petition. The deposit made can be withdrawn by the land-owner without prejudice to the rights in this writ petition.”

Evidently the restraint order carried a condition of payment of rent regularly after harvesting each crop. This was blatantly violated by the respondent and consequently an application came to be filed seeking vacation of the interim directions where this Court passed the following order:-

“ The order, dated 6th May, 1988 was only a conditional stay, as he has already been observed above. If the writ petitioner has not deposited the rent as contemplated by the order of this Court, then the necessary consequences have to flow. With these observations, this application stands disposed of.

November 3, 1993

Sd/-
(R.S.Mongia)
Judge”

In these proceedings the respondent who is a writ petitioner admitted that rent was deposited on 16.12.1992 and some rent is still due. In fact a clear admission was there that rent for 1993 rabbi was still pending. This leads to one irresistible conclusion that the respondent had been erratic in making payments of rent. The interim order came into existence in 1988 and clearly there was a default till 1992 if the admission of the respondent is to be construed. Section 14-A of the Act needs to be extracted:-

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

(i) a land-owner 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 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in reply to such application, provided that the tenant's rights to compensation and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected.

(ii) a land-owner 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 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 land-owner 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 to give a receipt as the case may be or both within 60 days of the receipt of the notice.”

A perusal thereof leaves no room for doubt that if a tenant makes a default in paying the rent and offers no sufficient reasons for it, eviction is to be a necessary consequence. Once a notice in the prescribed form is issued that is a sufficient wake up call for the tenant to deposit the rent within one month as mandated in the notice. Beyond that no further

notice is required to be given under the provisions of Act. We notice that in the first instance Assistant Collector had established non-payment of rent which was further fortified by the conduct of the respondent in the writ proceedings as well where he conceded that after 1988 when the writ petition was admitted he failed to deposit rent till 1992. We are thus of the opinion that there is absolutely no doubt that the respondent is a tenacious tenant who wants to stay on, to enjoy the fruits of the property without payment of rent.

Learned Single Judge rightly noticed the judgment of the Financial Commissioner but ignored that one month's notice was issued to the respondent to pay the rent but went wrong in observing that the notice itself cannot be taken as a demand for payment of rent. In fact the language of the form 'N' in which notice is to be issued would be enlightening and the same is extracted herebelow:-

“Attached is a copy of the application made by your landlord for recovery of arrears of rent due from you.

You are now required within a month of the receipt of this notice to

- (1) deposit the rent or the value thereof (if rent payable in kind) in this court; or
- (2) give proof of having paid the rent;
- (3) give proof of not being liable to pay the whole or part of this demand; or
- (4) give proof of the landlord's refusal to receive the rent or give a receipt for it.

If you fail to comply with the above orders,
you will be ejected summarily from the land and your landlord
put in possession.”

We conclude by observing that under the Act under provisions
of Section 14-A and form 'N' there was no necessity of issuing any further
notice except the one which is mandated by law and the conduct of the
respondent to repeatedly default in payment of rent would entail his eviction.

Hence, instant appeal is hereby allowed. Respondent is directed
to be evicted from the disputed land forthwith.

At this stage, learned counsel for the respondents contend that
the land in question had been declared surplus.

We find no such material on record except an application that
has been produced before this Court now. The order passed in this regard is
of the year 1980 while instant proceedings were initiated in 1983 and at no
stage of the proceedings, respondents raised such a plea. Therefore, this plea
is rejected.

(Mahesh Grover)
Judge

02.12.2016
rekha

(Shekher Dhawan)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No