

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

1. CWP No.1750 of 2008
Date of decision : 12.05.2017

Mohinder Singh

...Petitioner

Versus

Deputy Commissioner-cum-Commissioner and others

...Respondents

2. COCP No.707 of 2009
Date of decision : 12.05.2017

Mohinder Singh

...Petitioner

Versus

Shri Abhinav Trikha and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. D.S. Bali, Sr. Advocate with
Mr. Aman Vashisht, Advocate for the petitioner.

Mr. Mandeep Singh Bedi, Sr. Advocate with
Mr. Ajitpal Singh Sabharwal, Advocate
for respondent No.3 (In CWP No.1750 of 2008)
for respondent Nos.2 to 7 and 9 and 10
(In COCP No.707 of 2009)

AMIT RAWAL, J.

This order of mine shall dispose of CWP No.1750 of 2008 and

COCP No.707 of 2009.

The petitioner has approached this Court challenging the impugned orders dated 26.04.2005 of the Collector (Annexure P-6) and 19.12.2007 of Deputy Commissioner-cum-Commissioner, Gurdaspur (Annexure P-7) in proceedings initiated under Section 5 read with Section 7 (2) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 seeking eviction of the petitioner from the land measuring 71 kanals 14 marlas as described in the application.

Mr. D.S. Bali, learned Senior Counsel assisted by Mr. Aman Vashisht, learned counsel appearing on behalf of petitioner submits that Sharan Singh was a tenant of the aforementioned land. In fact, he was on 1/3rd batai of the entire piece of land and on his demise, tenancy was inherited by the petitioner and Balbir Singh, being sons. Balbir Singh also died in the year 1976 and, therefore, the petitioner had been cultivating the suit land and paying, regularly, rent to the Gram Panchayat. In the year 1984, Gram Panchayat attempted to dispossess the petitioner illegally and forcibly, which necessitated the petitioner to file the suit for permanent injunction which was decreed on 04.12.1984, holding therein that Gram Panchayat cannot forcibly dispossess the petitioner except in due course of law. Despite that Gram Panchayat attempted to dispossess the petitioner, thus, another civil suit on 11.06.1999 was filed. The tenancy of the petitioner was never terminated. The petitioner was never declared to be in unauthorized possession. In this regard, he has drawn the attention of this Court to the definition of “Premises” and “Public Premises” as per the provision of Section (d) and (e) of Section 2 of 1973 Act and as well as of

“tenant” in Punjab Tenancy Act and submits that in fact, predecessor-in-interest of the petitioner was inducted as tenant vide Resolution dated 23.07.1964 (Annexure P-1), wherein the aforementioned land in question was given to Sharan Singh on rent on 1/3rd batai. Thus, the Collector did not have jurisdiction to try the matter. He has also drawn the attention of this Court to the written statement of the State to contend that status of the petitioner and predecessor-in-interest as batai Terhara is not denied, in essence, entry as Gair Dakhilkar in Column No.10 has also not been denied and, therefore, the petitioner cannot be said to be in illegal and unauthorized occupation.

By referring to the definition as per Sub-Section 5 of Section 4 of the Punjab Tenancy Act, 1887, he submits that “tenant” means a person who holds the land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person but it does not include an inferior landowner, a mortgagee of the rights of a landowners, a person to whom a holding has been transferred or an estate or a person who takes from the Government a lease of unoccupied land for purpose of subletting it. As per Sub-Section 6 of Section 2 of The Punjab Security of Land Tenures Act, 1953, “tenant” has the meaning assigned to it in the Punjab Tenancy Act, 1887 and includes a Sub Tenant and Self Cultivating Lessee but shall not include present holder under the Resettlement Act.

The authorities in entertaining the application have not applied its judicial mind to the controversy involved, as the provisions of 1973 Act could not have been applied for seeking eviction of the tenant but only on the ground mentioned under Section 9 of the Punjab Security of Land

Tenures Act, thus, the possession of the petitioner is lawful and under the resolution of the Gram Panchayat.

He further submits that resolution dated 23.07.1964 (Annexure P-1) was also proved through the testimony of Hari Singh and thus urges this Court for setting aside the order under challenge.

Mr. Mandeep Singh Bedi, learned Senior Advocate assisted by Ajitpal Singh Sabharwal, Advocate for respondent(s) submits that status quo order was granted by this Court on 09.12.2008, whereas possession was already taken on 01.12.2008. There is categoric reply that the resolution dated 23.07.1964 is forged and fabricated document. There is no entry in the revenue record qua status of the petitioner as Gair Dakhilkar. The jamabandi for the year 1999-2000 (Annexure P-4) shows the nature of the ownership of the land as Panchayat Deh. The Panchayat after having taken the possession had been leasing out the land by auctioning and incurring the income. A copy of the lease deeds have been annexed along with the written statement as Annexures R-3/1, R-3/2, R-3/3 and payments receipt of the lease money has also been placed on record as Annexures R-3/4 and R-3/5. The aforementioned Resolution dated 23.07.1964 (Annexure P-1) was never passed by the Gram Panchayat. The petitioner did not pay rent to the Gram Panchayat at any point of time. The possession was taken in the presence of the Social Education and Panchayat Officer, BDPO and District Development and Panchayat Officer and thus urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

Except the Resolution, there is no other documentary evidence placed on record to establish that the petitioner had been a tenant and paying the rent regularly. The Resolution has also not been proved in accordance with law as proceedings of the Gram Panchayat have not come on record. The testimony of Hari Singh is only Hear-say evidence. This fact has been noticed by the Registrar. Had there been payment of the rent, same would have been included in the column meant for rent, thus, petitioner cannot be branded as a tenant being Gair Dakhilkar thus is in unauthorized possession without paying the rent as ownership of the Gram Panchayat has been reflected in Column No.4. Thus, the provision of Sub-Section 5 of Section 4 of the Punjab Tenancy Act, 1887, Sub-Section 6 of Section 2 of 1953 Act, would not come to the rescue of the petitioner.

In my view, the premises are the “Public Premises” as per Sub-Section (e) of Section 2 of 1973 Act which means the premises belonging to or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of any Municipal Committee, Notified Area Committee, Zila Parishad, Panchayat Samiti, Panchayat or Improvement Trust, etc.

The petitioner has failed to discharge the onus of payment of rent and their possession was of unauthorized and, therefore, Collector had jurisdiction to entertain and try the petition filed under Sections 5 read with 7(2) of 1973 Act. Once the respondents have already taken the possession of the property and which fact has been proved on record through lease deeds, as noticed above, and deposit of the lease money, before grant of status quo order and, therefore, there is no willful disregard and violation of the order

passed by this Court bringing the respondent within the loop of the Contempt of Courts Act.

Resultantly, orders under challenge, in my view, do not call for interference and cannot be said to be erroneous or illegal or vitiated in law and same are upheld.

Writ petition stands dismissed and in Contempt petition, rule is discharged.

12.05.2017

Pawan

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No