

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 05, 2017

1. CWP No.14143 of 2009

Yadwinder Singh & others

...Petitioners

Versus

Financial Commissioner (Appeals-II), Punjab, Chandigarh & others

...Respondents

2. CWP No.17111 of 2009

Yadwinder Singh & others

...Petitioners

Versus

Financial Commissioner (Appeals-II), Punjab, Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Armaan Midha, Advocate,
for the petitioners in both the petitions.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.Arun Jain, Senior Advocate with
Mr.Varun Parkash, Advocate,
for respondent Nos.5 to 7 in both the petitions.

AMIT RAWAL, J.

By this order, I shall dispose of two Civil Writ Petitions bearing
No.14143 and 17111 of 2009 as the common questions of law and fact are
involved.

In CWP No.14143 of 2009, the following relief has been
sought:-

“CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India praying for issuance of a writ, order or direction especially in the nature of certiorari for quashing the impugned order dated 4.2.2009 (Annexure P-7) passed by Respondent No.1, order dated 6.11.2001 (Annexure P5) passed by Respondent No.2, order dated 26.11.1997 (Annexure P-3) passed by Respondent No.3 as well as order dated 26.10.1995 (Annexure P-1) passed by Respondent No.4, respectively being illegal, erroneous, bad in law, contrary to facts and without jurisdiction;

AND

Issue a writ in the nature of prohibition restraining the respondents No.5 to 7 from taking forcible possession of the land from the petitioners, during the pendency of this writ petition;

AND/OR

Issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

In second writ petition, i.e., CWP No.17111 of 2009, the petitioners have sought the following relief:-

“CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India praying for issuance of a writ, order or direction especially in the nature of certiorari for quashing the impugned order dated 4.2.2009 (Annexure P-7) passed by Respondent No.1, order dated 6.11.2001 (Annexure P5) passed by Respondent No.2, order dated 1.4.1999 (Annexure P-3) passed by Respondent No.3 as well as order dated 26.10.1995 (Annexure P-1) passed by Respondent No.4, respectively being illegal, erroneous, bad in law, contrary to facts and without jurisdiction;

AND

Issue a writ in the nature of prohibition restraining the

respondents No.5 to 7 from taking forcible possession of the land from the petitioners, during the pendency of this writ petition;

AND/OR

Issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

On perusal of the relief, it is evident that in both the petitions identical relief has been sought as vide orders under challenge, two suits filed by the respondent-landlords under Section 77 (3) of the Punjab Tenancy Act, 1887 (for short “1887 Act”) read with Sections 7 and 8 of Pepsu Tenancy and Agricultural Lands Act, 1955 (for short “1955 Act”), have been decreed.

Mr.Kanwaljit Singh, learned Senior Counsel assisted by Mr.Armaan Midha, learned counsel representing the petitioners in both the petitions has submitted that petitioners No.1 to 5 are the legal heirs of Surjit Kaur. The respondents are the big landowners and their land was declared surplus. Respondent Nos.5 to 7 are owners of land, which is in cultivating possession of the petitioners since long. They filed two suits on 12.6.1985 under the aforementioned provisions of the Act for ejectment of the petitioners on the ground of non-payment of rent for the years 1979-80 to 1981-82, 1981-82 to 1983-84 and 1985-86 to 1987-88. Conceded position on record is that on 20.6.1990, the petitioners had paid a sum of Rs.36,000/- as arrears of rent for the year 1981-82 to 1983-84 @ Rs.12,000/- in the Court of A.C.Ist Grade. In fact, the provisions of the Act were not complied with. There was no written notice on behalf of the respondents calling upon the petitioners to execute the Kabuliatnama and issue No.2 was decided in favour of the petitioners. However, the Assistant Collector by misreading,

much less misdirecting the evidence, passed the judgment and decree dated 26.10.1995, Annexure P-1 and ordered ejectment of the petitioners on the ground of non-payment of rent for the year 1981-82 to 1983-84. Aggrieved against the aforementioned order, petitioners preferred an appeal before the Collector accompanied by an application seeking condonation of delay of three months and it was specifically pleaded that the ingredients of Section 8 of 1995 Act have not been proved as the respondents were duty bound to prove that they were small landowners.

He has further submitted that sufficient material was available on record before respondent No.3, but without adjudication of the aforementioned contentions, vide order dated 26.11.1997, Annexure P-3, dismissed the appeal being barred by law of limitation. Both the aforementioned orders, i.e., of the Assistant Collector and the Collector were challenged before the Commissioner by filing revision petition. It was specifically averred that the petitioners were never allowed to deposit the rent for the year 1985-86 to 1987-88, though were ready and willing to deposit the same. It is in this backdrop of the matter, application dated 26.4.1996 was moved before the Collector for depositing the arrears of rent and the Collector, vide order dated 9.9.1996, Annexure P-9, held that the amount cannot be deposited in the office of the Collector and, therefore, the application was not allowed and ordered to be filed. In fact, the petitioners had deposited the amount by enclosing the challan, but the same, vide order of the Assistant Collector, was not dealt with and, therefore, the order is not sustainable in the eyes of law. The Financial Commissioner has also committed the same falsity. The landlord was required to prove the following three ingredients as envisaged under the 1955 Act:-

- a) the tenant was cultivating the land for a continuous period of three years;
- b) the landlord is a small landlord; and
- c) the tenant is occupying the agricultural land after 1956.

In support of his contention, he has referred to the ratio decidendi culled out by the Hon'ble Supreme Court in **Dina Versus Financial Commissioner, Punjab, 1996 AIR (SC) 3128** to contend that though Section 8 gives right to the tenant of the fixity of tenure of minimum three years, it would be subject to the conditions enumerated in Section 7. If a tenant commits any one or some or all the contraventions enumerated in Section 7, despite the fact that Section 8 guarantees minimum term of three years, he is liable to be ejected. Thus, on expiry of three years, a tenant is not automatically liable to be ejected. The tenant would be liable to ejectment only on proof of one or some or all the conditions mentioned in Section 7 or Section 7A. The petitioners in the grounds of appeal and revision have categorically mentioned that respondent Nos.5 to 7 are big landowners and their surplus land was also declared vide order dated 30.1.1990, but the authorities did not consider the same and passed the impugned orders. Thus, in view of the ratio decidendi culled out by the Hon'ble Supreme Court, the impugned orders are liable to be set-aside as respondent Nos.5 to 7 are duty bound to prove whether they are small landowners or not. Even proper issues were not framed.

He also relied upon the judgment rendered by this Court in **Shmt Gita Devi Versus Financial Commissioner, Haryana and ors., 1987 PLJ 265** to contend that for deposit of rent beyond period of six months, the Court has the jurisdiction to extend time in appropriate cases.

Thus, for all intents and purposes, the intention of the tenants by offering the rent for the period aforementioned, i.e., 1985-86 to 1987-88 even during the pendency of the proceedings before the appellate court and the revisional court should have been looked into and, therefore, the writ petitions are liable to be allowed.

Per contra, Mr.Arun Jain, learned Senior Counsel assisted by Mr.Varun Parkash, representing respondent Nos.5 to 7 in both the petitions has submitted that the period of six months, as envisaged under Section 7 of the 1955 Act, cannot be extended. For the sake of brevity, Section 7 reads thus:-

“7. Termination of tenancy:- (1) No tenancy shall be terminated except in accordance with the provisions of this Act or except of any of the following grounds, namely:-

*[(a)]****]*

(b) that the tenant has failed to pay rent within a period of six months after it falls due:

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he had failed to pay such arrears during that period;]”

In support of his contention, he has relied upon the ratio decidendi culled out by this Court in **Dhara Singh and another Versus Financial Commissioner, Revenue Punjab and others**, 1995 (1) PLR 128 to contend that under the proviso prescribed under Section 7(1)(b) of 1955 Act, the Statute does not permit any extension of time beyond the period of six months from the date of decree and in case of failure of the tenants to deposit the amount, they are liable to be evicted.

He has further submitted that the date of ejectment, as directed

by the Assistant Collector Ist Grade, Patiala, is 26.10.1995 and the six months expired on 25.4.1996. However, the application for depositing of the amount, as is revealed from Annexure P-9, is dated 26.4.1996, i.e., one day after to that and, therefore, period of six months had already elapsed. In case the grievance of the petitioners, according to Mr.Jain, is accepted, nothing prevented them to send arrears of rent by way of draft/cheque through registered process to the respondents or through money orders for discharging their obligation. Having failed to do so, it is proved that they are defaulters and the period cannot be extended.

He has further submitted that the urban land laws have also been held to be very stringent on account of non-payment of rent in view of the law laid down by the Hon'ble Supreme Court in **Rakesh Wadhawan and others Versus Jagdamba Industrial Corporation and others,** Vol.CXXX-(2000-2) PLR 371, and therefore, on account of non-receipt of payment of rent for the period 1985-85 to 1987-88, the petitioners are liable to be ejected and, thus, urges this Court for dismissal of the writ petitions with costs.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Kanwaljit Singh, for, on perusal of Annexure P-9, date of filing of the application and even the date on the application shown to this Court during the course of hearing is 26.4.1996, whereas the period of six months expired on 25.4.1996. Nothing prevented the petitioners from depositing the rent within the period of six months as indicated in the ejectment order dated 26.10.1995, Annexure P-1.

There was no order of the Assistant Collector for showing the

intention of the petitioners to deposit the amount by way of challan. Nothing prevented them to send the rent by way of following means for the aforementioned period immediately after passing of the ejection order:-

- i) money orders;*
- ii) by way of draft or cheque; and*
- iii) payers' cheque.*

Having failed to pay the rent, the period of six months as per the provisions of law, *ibid*, cannot be extended. The aforementioned view of mine is supported from the ratio decidendi culled out in paragraph 13 of **Dhara Singh's case (supra)**. On similar facts also, this Court passed an order on 24.1.2017 in **Civil Writ Petition No.4971 of 2014 (Meher Singh and others Versus Financial Commissioner and others)**, by taking into consideration the rival contentions of the learned counsel for the parties, much less the provisions of case law cited at bar and on consideration of the matter, i.e., the statutory provisions of law, held that tenants were failed to tender the rent within the period of six months, the time cannot be extended.

The facts in **Dina's case (supra)**, were on different tangent, wherein it was held that the tenants would not be liable to automatic ejection under Section 8 of the Pepsu Tenancy and Agricultural Lands Act, on proving of the fact that the tenants committed one or some of the contraventions as enumerated in Section 7, in essence without taking recourse to provisions of Section 8 of the Act. However, as per the facts revealed here-in-above, it is a case where the tenants were granted time of six months to deposit the rent and having adverted to the facts as enumerated above, the petitioners have failed to prove on record that they had discharged their obligation in making the payment of rent within a period of six months.

In my view, the orders of ejectment are perfectly legal and justified and, therefore, do not call for any interference, much less cannot be devoid of merit and vitiated in law.

Resultantly, the same are upheld and the writ petitions are dismissed.

May 05, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No