

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CWP 19687 of 2009

Date of Decision: May 31, 2017

Punjab State Electricity Board, Rupnagar

.....Petitioner

Vs.

Deputy Commissioner, Rupnagar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Munish Kapila, Advocate for the petitioner.

Ms. Anu Pal, AAG, Punjab.

Mr. Vishal Sharma, Advocate for  
Mr. Vijay Lath, Advocate for respondent No.3.

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**M.M.S. BEDI, J.**

This petition has been filed by Punjab State Electricity Board through Senior Executive Engineer, Anandpur Sahib, Hydel Channel (O&M) Division, under Articles 226 and 227 of the Constitution of India for quashing of the order dated October 5, 2006, annexure P-1 and order dated November 17, 2008, annexure P-2 whereby the application filed by the petitioner Board for eviction of respondent No.3-Bhupinder Saini, a Contractor, under Punjab Public Premises and Land (Eviction of Rent Recovery) Act, 1973, for short 'Public Premises Act', has been dismissed by

respondent No.2 (Sub Divisional Magistrate exercising the powers of the Collector), and the Appellate Authority- respondent No.1 (Deputy Commissioner exercising the powers of the Commissioner). A writ in the nature of mandamus has been sought directing respondent No.3 to handover the vacant possession of quarter No.3, Type 3, Dobetta Colony, Nangal Township and pay pending rent to the competent authority.

Brief facts relevant for the decision of the present case as culled out from the pleadings of the parties and the impugned orders are that the petitioner filed an application for eviction against respondent No.3 on account of respondent No.3 being in unauthorized occupation of the public premises and for recovery of damages regarding quarter No.3, Type 3, Dobetta Colony, Nangal Township and for recovery of damages of Rs.1,81,289/- for the period January 1, 1996 to October 30, 2005 and till the date of eviction of respondent No.3. The Collector, Anandpur Sahib dismissed the application on the ground that the petitioner had filed a case under Section 13 of the East Punjab Urban Rent Restriction Act, for short 'the Rent Act' against respondent No.3 in the Court of Rent Controller, Anandpur Sahib on August 6, 1998. The Rent Controller, Anandpur Sahib had dismissed the ejectment petition on December 26, 2005 and the petitioner Board had not filed any appeal in the High Court as such the proceedings under the Public Premises Act, are not maintainable as the petitioner had not been able to seek eviction before the above said authority. The petitioner preferred an appeal in the Court of Commissioner claiming that the property in dispute belongs to the petitioner Board and the property is covered under the Public Premises Act. The said house was allotted to

respondent No.3 in the year 1986 being a Contractor of the Board and vide order dated December 6, 1997, the allotment was cancelled. After cancellation of the allotment, its possession became unauthorized. Respondent No.3 was asked many a times to vacate the house in dispute but he had not vacated the same. The petitioner claimed that in order to get the house vacated, a case was filed in the Civil Court which was dismissed on February 26, 2005 on technical basis. The property in dispute is a public property falling under the Public Premises Act as such it could be got vacated from respondent No.3. It was claimed before the Commissioner that the legal aspects have not been considered by the Collector and the ejectment application has been dismissed without giving an opportunity of hearing to the petitioner and ignoring the fact that respondent No.3 being an unauthorized occupant after cancellation of his allotment was liable to be evicted. Learned Commissioner dismissed the appeal vide order dated November 17, 2008. The operative part of the judgment reads as under:-

“5. After hearing the Id. Counsels for the parties and after careful perusal of the record brought on the file it has been found that this matter is regarding dispossessing the respondent from quarter No.3 type 3 which is at Dubheta Colony, Nangal, It is clear from the documents produced by the respondent Shri Bhupinder Saini that he had got important works of construction of the department of the appellant and due to outstanding payment of lacs of rupees/ non- payment he submitted an application No. B.S./412/85-86 dated NIL addressed to

the Executive Engineer Hydal Construction Division No.1 Nangal Township. On this application the Sub Divisional Officer, Hydal Regulation, Sub Division Nangal, recommended to allot a D-Type quarter to this contractor. On the basis of which the Executive Engineer Hydal Construction, Division No.1 Nangal allotted the quarter in dispute to the respondent on Standard Rent vide order dated 31.12.1985. As such this quarter was allotted to the respondent due to his pending payments/ pending payments. So long as the respondent is not paid the outstanding payments or the issue of the payment is not settled with mutual consent or by the competent authority till then taking any Ex-parte decision regarding dispossession from the quarter against the respondent Shri Bhupinder Saini will be against the natural justice and it is also violation of the agreement of the PSEB executed with the respondent Shri Bhupinder Singh. Therefore, the PSEB has no right that so long as the matter of payment is not settled or if the payment of the rent is not made the respondent could not be dispossessed in the interest of justice. From the proofs produced by the respondent on his part it is clear that he has made the payment of the rent upto 31.12.2008 to the department. The PSEB has not produced any such fact/proof from which it could be proved that the respondent has been

paid the pending payments or he has not paid the rent. Apart from this the Civil Suit R.T. -2/6.8.1998 filed the appellant in the court of Rent Controller, Anandpur Sahib to dispossess the respondent under Section 13 of the East Punjab Rent Restriction Act has also been dismissed by the court vide order dated 26.2.2005. The appellant has also not produced any proof against these orders in the Hon'ble High Court. In the light of the above facts this appeal of the appellant is hereby dismissed and the order dated 5.12.2006 passed by the court below is kept restored. The file after due compliance may be consigned to the record room. The order announced."

The reasons given by Commissioner for dismissing the ejectment petition of the petitioner Board are—

- i) that respondent No.3 is in possession of the quarter allotted to him for consideration of the pending payments due from the Executive Engineer, Hydrel Construction, Division No.1, Nangal Township and he cannot be dispossessed unless and until his dues are paid;
- ii) on account of Rent Controller having dismissed the ejectment application under Section 13 of the Rent Act on February 26, 2005, there is no ground for passing eviction order against respondent No.3.

The petitioner has challenged the orders passed by the Collector and Commissioner. The petitioner has placed on record a letter annexure P-

4 which was written by respondent No.3 to the Executive Engineer, Hydel Construction Division No.1, Nangal, praying for allotment of a quarter in Dobetta Colony, Nangal, stating that in view of his works, an amount to the tune of few lacs involved finalization and that he was not having other work in the said division but was feeling handicapped because in case he shifted to his native village his payments were delayed and that his children were undergoing schooling and his ailing mother was undergoing treatment at a local hospital. The house was allotted to respondent No.3 vide annexure P-5. The petitioner claimed that the Executive Engineer, Hydel Construction Division No.1 had no authority for allotment of the quarter in the Board Colony to a private person who was not an employee of Punjab State Electricity Board. The quarters are allotted as per the respective pay scales of the employees of the Board as provided in annexure P-6 dated November 25, 1980. The quarter is a public premises under Section 2 (e) of the Public Premises Act. Section 2 (e) of the Public Premises Act reads as follows:-

**“Section 2 (e):** "public premises" means' any 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—

- (i) any Municipal Committee, Notified Area Committee, Zila Parishad, Panchayat Samiti, Panchayat or Improvement Trust;

- (ii) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty one percent of the paid up share capital is held by the State Government; and
- (iii) any Corporation [not being a company, as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority established by or under a Central Act as defined in clause (7) of Section 3 of General Clauses Act, 1897, or a Punjab Act and owned or controlled by the State Government.”

As the quarter belongs to the petitioner and has been allotted to respondent No.3 without any authority, the allotment was cancelled vide office order No.46 dated February 6, 1997 by Senior Executive Engineer, Hydel Construction, Division No.1, Ganguwal, vide letter annexure P-7. It is claimed that after the allotment was cancelled vide annexure P-7, respondent No.3 was liable to vacate the quarter. In order to take possession, a wrong decision had been taken to approach Rent Controller by filing an ejectment petition under Section 13 of the Rent Act. The Rent Controller had entertained the petition despite the fact it did not have any jurisdiction to proceed in respect of a person who is in unauthorized occupation of public premises and was in arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) (i) of Section 7 of the Public Premises Act. On the above said grounds, the petitioner claimed that the order dismissing the application for eviction deserves to be set aside.

Respondent No.3 has filed a detailed written statement claiming that the Irrigation Department of Punjab which includes Hydrel Construction Division, Nangal and Ranjit Sagar Dam, Shahpur Kandi had allotted accommodation to many private persons and that the Irrigation Department of Punjab was the landlord of the premises, therefore, it had been allotted to respondent No.3 by Executive Engineer, Hydrel Division, Construction No.1 of December 31, 1985. Respondent No.3 claims that he being a registered 'A' Class contractor with Irrigation department and having constructed Head Regulatory and Railway bridge, his allotment would be legal. A strong reliance has been placed on the order passed by the Rent Controller and the Commissioner claiming that respondent No.3 was entitled to retain the possession till his dues are cleared or till the order passed by the Rent Controller is set aside.

Large number of documents have been appended by the petitioner as well as respondent No.3 in order to substantiate their respective pleas but I am of the considered opinion that the short question which is required to be considered on the basis of the pleadings is whether respondent No.3 is entitled to retain the quarter and has gained immunity from eviction on account of ejectment application under Section 13 of the Rent Act having been dismissed. Another question which is required to be determined is whether the reasoning adopted by the Collector and Commissioner in dismissing the application under Section 7 of the Public Premises Act is reasonable and sustainable in the eyes of law.

It is an admitted fact that respondent No.3 is not the owner of the premises. Rightly or wrongly, he had been permitted to stay in the same

on the basis of allotment. The allotment has been cancelled vide letter annexure P-7 by Senior Executive Engineer, Hydel Construction, Division No.1, copy of which has been appended as annexure P-7. The premises in dispute is a public premises as it belongs to the State Government. The status of respondent No.3 after cancellation of his allotment was an unauthorized occupant in terms of Section 3 (a) of the Rent Act. Respondent No.3 being unauthorized occupant could be ejected only by filing a petition under Section 7 of the Public Premises Act but instead of following the due procedure a wrong decision had been taken to approach the Rent Controller by filing a rent petition under Section 13 of the Rent Act. It is not out of place to observe here that respondent No.3 had taken up a plea in the written statement that the Rent Controller had no jurisdiction to decide the matter as the property fell within the Municipal limits of Nangal and the Rent Act is applicable at Nangal. It was pleaded that the said property was not exempted under the provisions of the Rent Act. Copy of the written statement of respondent No.3 has been placed on record as annexure P-8. The jurisdiction of the Rent Controller was questioned by respondent No.3 in his written statement.

I have considered the impact of the decision of the Rent Controller in the light of Section 15 of the Public Premises Act which reads as follows:-

**“Section 15: BAR OF JURISDICTION.-** No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or

the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section other costs awarded to the State Government, or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs.”

In view of the applicability of provisions of Public Premises Act and the implication of Section 15 of the Public Premises Act, the Rent Controller did not have any jurisdiction to decide the ejectment application. It is settled proposition of law that any order passed by a Court without jurisdiction is a nullity and will not be operative on the rights of the parties despite the fact that the parties have consented to surrender to the jurisdiction of the Court which does not have authority to adjudicate. On account of statutory bar under Section 15 of the Public Premises Act, the quarter in dispute being a public premises and respondent No.3 being an unauthorized occupant after cancellation of the allotment vide annexure P-7 dated February 6, 1997. The only remedy for seeking eviction was an application under Section 7 of the Public Premises Act. Respondent No.3 was an unauthorized occupant after the notice annexure P-7 and the judgment of Rent Controller is without jurisdiction. Respondent No.3 cannot be permitted to continue in possession of the quarter merely on the ground that he is entitled to some payments which appear to have become barred by time. Respondent No.3 had a remedy to claim any payment due on account of the work done by him. It is not permissible under any statute

that in view of any amount due, a person would be permitted to retain the public premises.

In view of above circumstances, the orders passed by the Collector and the Commissioner dismissing the application of the petitioner for eviction of respondent No.3 are hereby set aside.

Petition is allowed. Respondent No.3 is directed to vacate the quarter within a period of two months after the receipt of certified copy of the order. It will be open to the petitioner to prepare a fresh statement of the amounts due and seek recovery in accordance with Section 7 of Public Premises Act.

May 31, 2017  
sanjay

(M.M.S.BEDI)  
JUDGE

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| Whether speaking/ reasoned: | Yes/ No. |
| Whether reportable:         | Yes/No.  |