

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 02, 2017

1. CWP No.22286 of 2010

Amarjit Singh & others

...Petitioners

Versus

Financial Commissioner, Revenue, Punjab & others

...Respondents

2. CWP No.22487 of 2010

Amritpal Singh & others

...Petitioners

Versus

Financial Commissioner, Revenue, Punjab & others

...Respondents

3. CWP No.4921 of 2015

Amarjit Singh & others

...Petitioners

Versus

Financial Commissioner, Revenue, Punjab & others

...Respondents

4. CWP No.5010 of 2015

Amarjit Singh & others

...Petitioners

Versus

Financial Commissioner, Revenue, Punjab & others

...Respondents

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

Present: Mr.Ravish Bansal, Advocate,
for the petitioners in all the petitions.

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

Mr.Roshan Lal, Sharma, Advocate,
for respondent Nos.5 to 31 in CWP No.22286 of 2010.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of four Civil Writ Petitions bearing No.22286 of 2010, 22487 of 2010, 4921 and 5010 of 2015 as the common questions of law and fact are involved. The facts are being taken from CWP No.22286 of 2010.

The petitioners have approached this Court challenging the orders dated 30.3.1999, 19.6.1996 and 8.8.1995 (Annexures P-16, P-12 and P-10) passed by the Assistant Collector, Collector and Commissioner and as well as the order dated 4.10.2005 (Annexure P-18), whereby the revision preferred against the same has been dismissed by the Financial Commissioner and order dated 11.2.2010 (Annexure P-21), whereby the application seeking review of the order dated 4.10.2005, has been dismissed on the premise that the ancestors of the petitioners were in possession of the land in question as Gair Marusi much before the year 1888-89 and after their death, the petitioners are in possession of the property as Gair Marusi/tenants, which is reflected from the jamabandies for the years 1888-89, 1921-22, 1968-69, 1978-79, 1998-99 and 2003-04 (Annexures P-1 to P-6).

Mr.Ravish Bansal, learned counsel for the petitioners has submitted that there was a first round of litigation between the petitioners party and the private respondents in the year 1928-29 and after the death of Wazira (grand-father of petitioner No.5), a dispute arose as to whether Bali Singh is the son of Wazira and, therefore, could retain tenancy rights, whereas the case of the respondents was that as per compromise, if any tenant dies without a male issue, the land would be reverted back to the proprietors. The said litigation ultimately attained finality upto this Court, wherein it has been held that Bali Singh (father of petitioner No.5), being

son of Wazira, has a right to retain the tenancy.

In the second round of litigation between the petitioners party and the respondents, started in the year 1948 after the death of Kirpa son of Gulaba, who died issueless, the stand of the petitioners, was that on account of the death of Kirpa, tenancy rights should be retained by the petitioners, but the respondents wanting the tenancy rights to be reverted back as per the compromise, *ibid*. Hence, the litigation reached upto this Court in Regular Second Appeal No.450 of 1948, decided on 27.6.1951 (Annexure P-7), wherein it has been held that the petitioners are occupancy tenants of 2/3rd share and the remaining 1/3rd share of Kirpa would go to the proprietors.

In the third round of litigation, the respondents in the year 1984 instituted a civil suit for declaration with regard to the land measuring 30 kanals 17 marlas, which was decided in favour of the petitioners vide judgment dated 29.1.1987 (Annexure P-8), wherein it was held that out of total land measuring 30 kanals 17 marlas, the respondents were owners in possession of 1/3rd share, i.e., land of Kirpa, who died issueless and the petitioners are in possession of remaining 2/3rd share as tenants. On 8.5.1990, the respondents-owners submitted a partition application in respect of land measuring 30 kanals 17 marlas before the Assistant Collector Ist Grade, which was partitioned vide order dated 14.11.1990. The respondents got 10 kanals 3 marlas of land. The respondents wanted to evict the petitioners forcibly and once they did not succeed, filed a suit on 22.1.1992 (Annexure P-9) seeking eviction on the ground that rent of Rs.3.42 (annual rent @ 1.14) was due for the harvest of Kharif-1988 and Rabi-1991, which was decreed by the Assistant Collector Ist Grade, Anandpur Sahib vide order dated 8.8.1995 (Annexure P-10) basically on the

premise of order of the Punjab & Haryana High Court at Shimla and also that the rent claimed in the suit had not been paid.

Aggrieved against the aforementioned order dated 8.8.1995 (Annexure P-10) of the Assistant Collector Ist Grade, petitioners preferred an appeal on 7.2.1996 (Annexure P-11) by stating therein that no rent was due as the rent had already been paid and an application for leading additional evidence and as well as for amendment of the written statement was also moved as during that stage, the petitioners had been able to lay hands on the receipts. However, the said application alongwith the appeal was dismissed vide judgment and decree dated 19.6.1996 (Annexures P-12 and P-13). Photocopies of the money orders slips for the year 1988-91 indicating payment of rent had already been attached with the writ petition as Annexure P-14 (colly).

Against the aforementioned order, the petitioners preferred a revision petition before the Commissioner by raising all the pleas, which, vide order dated 30.3.1999 (Annexure P-16) was dismissed and resultantly a second revision preferred before the Financial Commissioner met with the same fate vide order dated 4.10.2005 (Annexure P-18) and thereafter on 22.1.2008, warrant of possession was issued by the Collector, which was challenged in the revision before the Commissioner, who also dismissed the same on 3.7.2008 and against the said order, two revision petitions bearing Nos.822 and 823 of 2008 had been filed. Review petition was also preferred, which had also been dismissed vide order dated 11.2.2010 (Annexure P-21) and, thus, urges this Court that the impugned orders are not sustainable on the following grounds:-

- a) The Collector and the Commissioner ought to have given

an opportunity for causing amendment in the written statement, much less prove the money orders slips regarding the payment of rent;

b) The grounds for seeking ejectment of the tenants have been prescribed under Section 9 of the Punjab Security of Land Tenures Act, 1953 (for short “1953 Act”) and the procedure for dealing with the same has been provided under Section 14-A of the aforementioned Act;

c) The authority dealing with the aforementioned application is enjoined upon an obligation to send a notice in the prescribed form either to deposit his rent or value thereof or give the proof of having paid the same, much less the refusal of the landlord to give receipt. The aforementioned provisions have not been followed;

d) The tenant is not liable to be ejected for non-payment of the rent. In support of his contention, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Subhash Chand Versus State of Haryana & others, 2011 AIR (SC)**

409. The orders have been upheld by holding that there is already adjudication upto this Court regarding relationship of landlord and tenant, but the authorities were enjoined upon an obligation to decide the matter independent of the aforementioned findings by taking into consideration the per pleadings seeking eviction of the petitioners and the orders are silent about the fact that the rent had already been paid by Lakha Singh (father of petitioner No.1) through money orders

slips (Annexure P-14). Dispute is only with regard to the rent of land measuring 10 kanals 7 marlas, which has been deposited in pursuance to the interim order dated 15.12.2010 passed by this Court and, thus, urges this Court for setting-aside the impugned orders.

Per contra, Mr.Yatinder Sharma, learned Addl.A.G.Punjab, representing the State and Mr.Roshan Lal Sharma, learned counsel for respondent Nos.5 to 31 in CWP No.22286 of 2010 have submitted that the petitioners have not come to this Court with clean hands. Written statement to the petition filed under Section 9 of 1953 Act claiming the arrears of rent had been annexed as Annexure R5/3, wherein the stand of the respondents was that they had become owners by virtue of occupancy tenants, much less by adverse possession. In this regard, they have also drawn the attention of this Court to Paras 1 and 5 of the written statement on merits, which read as under:-

“1. That para No.1 of the plaint is correct to the extent of admission of the rights of the defendants. Rest of the facts mentioned in this para of the plaint are wrong and denied. The defendants are the occupancy tenants of the suit land and not the ordinary tenants. The ancestors of the defendants were occupancy tenants over the land in question and consequently the defendants also remained occupancy tenants over the suit land. The averments of the plaintiffs settled the ancestors of the defendants over the land in question and the intention of the parties at the time of creation of tenancy was that the defendants and their ancestors will never be ejected at the time of creation of the tenancy. The ancestors of the defendants made nau-taur and broke the land in question. They brought the land in question under plough and made the same fit for cultivation. The ancestors of the defendants were settled over

the land in question as occupancy tenants on a nominal and favorable rent. The possession of the defendants and their ancestors remained continuous, since the creation of tenancy more than 100 years back. The defendants and their ancestors have also been planting and nourishing the trees in the land in question and have been and are enjoying the usufruct thereof. The defendants and their ancestors have also raised their abadies in the land in question since the time of their ancestors for the purpose of proper and better cultivation of the land in question. The provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights), Act, 1952/1953 area attracted and applicable to the facts of the present case. The defendants cannot be ejected from the land in question at any costs. The above assertions of the defendants also finds corroboration from Sharat Wazil-UL-Arz and revenue records of long standing. At any rate, it is submitted that in case the defendants and their ancestors are not found to be occupancy tenants at the time of creation of tenancy then they have acquired occupancy tenancy rights to the suit land by operation of law. The defendants fulfill all the requirements, attributes and characteristics of occupancy tenancy rights, regarding the suit land.

5. That para No.5 of the plaint with all its clauses is correct to the extent of admission of the rights of the defendants. Rest of the facts mentioned in this para of the plaint are wrong and denied. The defendants and their ancestors were settled over the suit land as an occupancy tenants and their said rights stood enlarged into ownership rights as has been stated above. Even if the learned court comes to the conclusion that the defendants have not become the owners of the suit land even then they are not liable to ejectments because the occupancy tenancy rights of the defendants are for perceptually. In constructions of the defendants are existing in the suit land since to raise of their ancestors and they were given the right to raise construction, to repair and reconstruct over the suit

land at the time of creation of occupancy tenancy, when the ancestors of the defendants were settled over the suit land by the ancestors of the plaintiffs. All the ancestors made in this para of the plaint alongwith its clauses is an after thought and is just a connected story of the plaintiffs and their alleged co-sharers.”

Against the order of warrant of possession, the petitioners had filed a civil suit for declaration and consequential relief of permanent injunction seeking restraint against the respondents from dispossessing them from the land in dispute and the ad-interim application was dismissed vide order dated 9.5.2008 (Annexure R-5/1). Appeal filed against the same had also been dismissed. The review petition was also dismissed being belated one before the Financial Commissioner. Even on merits, the petitioners have no cause as the earlier suit filed by the ancestors against the answering respondents was decreed by the Court of Sub Judge, Una vide judgment and decree dated 17.7.1947 and the Appellate Court also upheld the claim of the answering respondents vide decree dated 4.3.1948, which was further confirmed by this Court vide judgment dated 17.6.1951 declaring that the present respondents, who were plaintiffs therein, have a right to be put as owners in possession of the land in dispute in place of Kirpa, who died without male issue. The respondents had to file a civil suit seeking declaration to seek partition regarding the same land and further seek permanent injunction against the present petitioners, who were tenants therein, restraining them from claiming any right of ownership or from alienating, mortgaging or transferring further the land in dispute. One of the respondents earlier filed a suit claiming rent under Section 3 of the Act from Kharif 1948 to Kharif 1953, which was decided on 5.3.1953 by the Assistant Collector Ist Grade, Una in favour of the plaintiffs and the decretal

amount was recovered. Once the petitioners had denied the title of the answering respondents, they cannot take up the plea of having paid the rent, in essence they have no intention to pay the rent as they had claimed the ownership by way of occupancy tenants and, thus, urge this Court for dismissal of the writ petitions.

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.Ravish Bansal, for, the stand of the petitioners as noticed, *ibid*, shows that they had claimed the right of occupancy tenants, much less adverse possession, in essence they did not accept themselves to be tenants. The occupancy tenants can acquire the ownership on the basis of the long and settled possession. There is no rejoinder to the written statement filed on behalf of the petitioners with regard to filing of the previous eviction petition claiming rent, which was recovered. This itself shows conduct of the petitioners to be perpetual defaulters. Payment of rent under the directions of this Court would not condone the ground of seeking eviction.

The ratio decidendi culled out in **Subhash Chand's case (supra)**, would not apply to the facts of the present case as it was a case where the tenant had actually placed on record material to show sufficient cause of not paying the rent. There is a categorical stand taken in the written statement that the amendment application was an afterthought, much less tantamounts to withdrawing of the admission and relief has been declined. Even the money orders slips, being self created documents, could not have proved the payment of rent. Had it been so, the petitioners would have vigilant in taking of the stand in the written statement. Even the status of

the respondents as owners has also been acknowledged by the petitioners in the order dated 27.6.1951 (Annexure P-7) passed in Regular Second Appeal No.450 of 1948. The application for amendment was filed after 3½ years of the filing of the written statement. Even the certificate from the concerned post office was required to be placed on record to, *prima-facie*, establish the authenticity of the aforementioned money orders slips, which has not been done in the instant case. Even the findings by the Civil Court have attained finality in favour of the respondents. All these factors leads to an irresistible conclusion that the petitioners had been defaulter in making of the payment of the rent and, therefore, rightly so have been ordered to be ejected.

For the foregoing reasons, I do not find any illegality and perversity in the orders under challenge, much less falling with the realm of judicial review. Resultantly, the same are upheld.

The writ petitions are dismissed.

May 02, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No