IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.10155 of 2017
Date of decision:12.05.2017

Rohtash Kumar ... Petitioner

Vs.

Financial Commissioner Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mani Ram Verma, Advocate
for the petitioner.

AMIT RAWAL J.

The petitioner has knocked the door of this Court in the nature of certiorari for quashing the orders dated 22.03.2017 of the Financial Commissioner (Annexure P-4), 15.07.2011 of the Commissioner (Annexure P-3), 05.05.2010 of the Collector (Annexure P-2) and 14.06.2007 of the Assistant Collector Ist Grade-cum-DRO (Annexure P-1).

Mr. Mani Ram Verma, learned counsel appearing on behalf of the petitioner submits that Shri Surja father of predecessor-in-interest of petitioner and proforma respondents was tenant on the land in dispute under Kishan Chand which was allotted to him by the Custodian Department, which vide sale deed dated 17.11.1980 sold the same to Sh. Ravinder Nath Gupta. After his death on 12.11.1993, the land was succeeded by his legal representative.

He further submits that Aakash Gupta, legal representative of Ravinder Nath Gupta filed an ejectment petition and the ejectment was ordered by the Assistant Collector Ist Grade on 17.10.1995 on the ground of subletting. The matter upto the highest hierarchy attained finality but the decree was not executed. However, the same was sought to be enforced by filing an execution application by Prem Nath Gupta and Inder Jit Gupta on the basis of some civil Court decree having obtained from the legal representatives of Ravinder Nath. The decree was obtained on the basis of some false plea. The aforementioned execution was objected by the petitioner on the various grounds including the maintainability of execution application, much less being time barred etc..

He also submits that though there is no limitation prescribed under Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "1953 Act"), therefore, by applying the provisions of Article 136 and 137 of the Limitation Act, the ejectment could not have been executed in the year 2004 and thus, the same was barred by law of limitation.

In support of his contention, relies upon the judgment rendered by the Financial Commissioner in **Sardara Singh vs. Guryani Brij Bhallabh Kaur 1997 (3) RCR (Civil)** 682 as it was not a civil Court decree and thus, all these points have not been pondered upon by the authorities below and therefore, the orders under challenge are not sustainable in the eyes of law and liable to be set aside.

I have heard learned counsel for the petitioner, appraised the paper book, judgment cited at bar and of the view that there is no force and substance in the submissions of Mr. Mani Ram Verma. The ejectment suits are being tried as per the procedure prescribed under Section 14-A of 1953 Act and the grounds for eviction are being sought under other provisions of the Act. Now the question which arises is whether in the absence of any provision provided under the Act for seeking execution of the decree, whether general principles of limitation as apply to the civil Court decree, would apply or provisions of Articles 136 and 137 of the Limitation Act as referred to by Mr. Verma.

It would be apt to refer the provisions of Articles 136 and 137 Limitation Act read as under:-

136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil Court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137.	Any other application for which no period of limitation is provided elsewhere in this Division.	3 yrs	When the right to apply accrues.

In my view, the provisions of Articles 136 and 137 would apply, for, though no doubt the decree passed by the revenue Court is not a civil Court decree but the decree cannot be kept in abeyance on the ground that other party had not sought the execution but the facts indicated reveal that in the meantime, the subsequent transferee, Mr. Gupta, had expired and owing to litigation amongst the legal heirs, by virtue of the decree, cause of action accrued to the beneficiaries of the decree to seek execution. The ratio decidendi culled out in the judgment aforementioned rendered by the Financial Commissioner would not be applicable to the facts and circumstances of the present case. Even by applying the provisions of Article 137, limitation of 3 years would begin only when the "Right Accrues".

In view of the aforementioned provisions, even if the right to sue accrued, in case of private respondents, who had sought the execution after accrual of the right in pursuance to the civil Court decree amongst the legal representatives of Mr. Gupta, thus, such a plea on behalf of the petitioner qua decree having become un-executable being barred by law of limitation is wholly misplaced and un-tenable. Rightly so, the authorities below dismissed the appeal and revision preferred against the order of Assistant Collector on this ground. It is basically an attempt to tire out the decree holder and to frustrate the decree of 1995.

Resultantly, I am of the view that the orders under challenge are perfectly legal and justified and do not call for any interference.

Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 12, 2017
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No