

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

**CWP No.13769 of 2016
Date of decision:21.02.2017**

Mehma Singh and others

... Petitioners

Vs.

Financial Commissioner, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Surjit Singh Swaich, Advocate
for the petitioners.

Mr. S.S.Rangi, Advocate
for the caveator/respondent No.5.

AMIT RAWAL J. (Oral)

In pursuance to the order dated 09.02.2017, costs of ₹2,000/- has been deposited in the Institute of Blind, Sector 26, Chandigarh. Copy of the receipt has been given to the Court which is taken on record. The same be tagged at the end of the paper book.

The controversy raised in the present writ petition involving question of fact and law is whether after dismissal of the proceedings initiated under Section 14-A of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as “1953 Act”), the landlord can initiate the proceedings under the Punjab Tenancy Act, 1887 (hereinafter referred to as “1887 Act”).

Mr.S.S.Swaich, learned counsel appearing on behalf of the

petitioners submits that concededly, in an earlier round of litigation, the respondents have been declared to be owners of the property and the said finding had attained finality upto this Court. He further submits that once the landlord was not successful in the proceedings initiated under the provisions of 1953 Act, he cannot be permitted to take/resort to the provisions of 1887 Act, in view of Section 9 of 1953 Act, having overriding effect. The language of Section 9 of 1953 Act begins with a non-obstante clause.

In support of his contention, relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass 2016 (3) RCR (Civil) 812** to contend that for seeking an ejection, the conditions prescribed under Section 9 of 1953 Act, are to be adhered to. None of the conditions as prescribed under Section 9 of 1953 Act, has been complied with or were available and therefore, the eviction could not have been passed. All the authorities have not taken the note of the fact that the authority did not have the jurisdiction to try and entertain the petition under Section 40 of 1887 Act. At the best, the landlord/respondent(s) could have assailed the finding in the Competent Court rendered in the proceedings initiated under Section 14-A of 1953 Act but not in the manner and mode as indicated above.

Per contra, Mr. S.S.Rangi, learned counsel appearing on behalf of respondent No.5 submits that the provisions of Sections 40 of 1887 Act and 14-A of 1953 Act, are para-materia to each other. It is a doctrine of

election and therefore, it does not lie in the mouth of tenant to contest the petition on the ground of alleged jurisdictional error. Once the petitioners are tenants and their status would be of tenants, cannot be better than that of. Having lost upto this Court, remedy for the landlord was to seek ejection on the grounds enumerated in the eviction petition, thus, the orders under challenge are perfectly legal and justified, much less do not call for any interference or can be adumbrated within the embrace of *doctrine akin* to judicial review. He, thus, urges this Court for dismissal of the present writ petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Rangi, for, plain and simple reading of the language of Sections 9 of 1953 Act and 14-A coupled with Section 40 of 1887 Act which read as under:-

“9. *Liability of the tenant to be ejected:-* (1) *Notwithstanding anything contained in any other law for the time being in force, {no land-owner other than land owner who is member of Armed Forces of the Union or a non-resident Indian} shall be competent to eject the tenant except when such tenant –*

- (i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner, or*
- (ii) fails to pay rent regularly without sufficient cause, or*
- (iii) is in arrears of rent at the commencement of this Act, or*
- (iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent*

customary in the locality in which the land is situate, or

(v) has used, or uses, the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it, or

(vi) has sublet the tenancy or a part thereof, provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part, or

(vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application made to him for this purpose by the land owner;

viii) has the tenancy for a fixed term, supported by a registered agreement entered into by the land owner and the tenant, and such term has expired.

Explanation – For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of execution of decree or order, directing him to pay such arrears of rent.

(2)] Notwithstanding anything contained hereinbefore a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area;

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option if the area of his tenancy under the land-owner concerned is in excess of the area from which he can be ejected by the said land owner;

Provided further that if the tenant holds land of several land-owners and more than one land-owner seeks his ejectment, the right to ejectment shall be exercised in the order in which the

applications have been made or suits have been filed by the land-owners concerned, and in case of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest land-owner.

Explanation.- Where a tenant holds land jointly with other tenants, only his share in the joint tenancy shall be taken into account in computing the area held by him.”

“14-A. Procedure for ejectment and recovery of arrears of rents etc.

Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A.-

(i) a land owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector First Grade having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of sub-section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenants rights to compensation and acquisition of occupancy rights, if any under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected;

(ii) a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector Second Grade, having jurisdiction, who shall thereupon send a notice in the form prescribed to the tenant either to deposit the rent or value thereof, if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlords refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of Section 10 of this Act, the Assistant Collector

finds that the tenant has not paid or deposited the rent he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii) (a) if a landlord refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the

Assistant Collector second Grade, having jurisdiction of the fact;

(b) on receiving such application, the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case may be, or both, within 60 days of the receipt of the notice.”

Section 40 of 1887 Act:-

40. Grounds of ejectment of tenant for a fixed term-A tenant not having a right of occupancy by holding for a fixed term under a contract or a decree or order of competent authority, shall be liable to be ejected from his tenancy at the expiration of that term, and, on any of the following grounds, before the expiration thereof, namely :-

(a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it ;

(b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;

(c) on any ground which would justify ejectment under the contract, decree or order.”

leaves to irresistible conclusion that the provisions of Section 9 of 1953 Act have overriding effect on the provisions of 1887 Act. The respondent-landlords could have assailed the order of dismissal of the petition filed under Section 14-A of 1953 Act by availing the hierarchy of the appeal or revision but not in the manner and mode as indicated above, i.e., by invoking the provisions of Section 40 of 1887 Act. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in Shyam Lal's case (supra). For seeking ejectment of tenant, the landlord has to bring the petition within the parameters of Section 9 of 1953 Act. All these factors were required to be visited by the authorities. Having failed to do so, I am of the view that the orders under challenge do not conform to the reasons, much less legitimate expectation, particularly when the objections in this regard were taken, therefore, the orders are not sustainable and liable to be set aside.

The argument of Mr. Swaich with regard to limitation for the purpose of entering into mutation is wholly misplaced, much less untenable, in essence, there is no limitation for the purpose of claiming title.

However, this order of mine will not arrest the hands of the respondents-landlord to avail the remedy or already availed under Section 14-A of 1953 Act, in essence, the landlord is at liberty to avail the remedy by assailing the order dated 20.04.2001 (Annexure P-2), whereby, the petition filed under Section 14-A of 1953 Act was dismissed by filing an

appeal and revision. In case, the aforementioned remedy is availed, the period spent in the proceedings initiated under Section 40 of 1887 Act shall be deemed to have been condoned by taking the aid of provisions of Section 14 of the Limitation Act. In case, any such petition is filed, the petitioners are at liberty to take up all the defences available under law.

Resultantly, the writ petition is disposed of while setting aside the impugned orders.

(AMIT RAWAL)
JUDGE

February 21, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No