

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

**CWP No.5027 of 2012 (O&M)
Date of decision:24.01.2017**

Yogita Sharma and others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vijay Lath, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. G.S.Kaura, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

The petitioners are aggrieved of the impugned orders dated 12.11.2010 (Annexure P-6) passed by the Sub Divisional Magistrate-cum-Assistant Collector Grade I, Jalandhar exercising the powers of Commissioner – respondent No.3 and 22.11.2011 (Annexure P-8) of the Deputy Commissioner, Jalandhar exercising the powers of Commissioner – respondent no.4, whereby, the ejectment proceeding initiated by respondents under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as “1973 Act”) has been upheld, in essence, ejectment of the petitioners being wife of late Sh. Prem Dutt Sharma being lessee had been ordered.

Mr. Vijay Lath, learned counsel appearing on behalf of the petitioners submits that as per the contents of the lease deed dated 01.09.2007 (Annexure P-13), the lease period commenced from 1st September 2007 to 31st August 2010. Unfortunately, the husband of the petitioners, Prem Dutt Sharma expired, resulting into issuing of notice dated 22.05.2009.

He has also drawn the attention of this Court to the previous lease deeds to submit that from time to time, the lease of the premises had been taken from the respondents, i.e., Shop No.4, Sainik Rest House, Jalandhar, on the various terms and conditions. None of the conditions of the lease deed entitles the authorities to seek ejectment on the demise of tenant as the tenancy is always inheritable, thus, all the proceedings initiated, were, without jurisdiction. The petitioners are paying the rent and clause 4 of the lease deed also entitle them to increase the rent by 15% after three years in accordance with norms of the PWD.

He further submits that his clients are not averse to make the entire payment, if the respondent-authorities are willing to lease out the premises but the entire proceedings are vitiated in law, much less without jurisdiction.

Mr.G.S.Kaura, learned counsel appearing on behalf of respondent No.2 submits that lease deed was only between Prem Dutt Sharma, husband of the petitioner No.1 and District Sainik Welfare Officer, Jalandhar and therefore, the lease deed automatically stood terminated resulting into issuance of the notice, thus, the proceedings cannot be said to

be without jurisdiction. The petitioners are not paying any rent and thus, are defaulters. No useful purpose would be served in setting aside the impugned orders as the period of lease is over as the order of the Deputy Commissioner is after the expiry of the period of lease deed. He, thus, prays for maintaining the impugned orders.

I have heard learned counsel for the parties and appraised the paper book.

The law of inheritance of tenant is no longer *res integra*. As per the terms and conditions of the lease deed, on demise of the lessee, lease deed cannot be said to be terminated, but, inheritable. The lease deed was for three years, i.e., w.e.f. 01.09.2007 to 31.08.2010. However, notice dated 22.05.2009 (Annexure P-2) under the provisions of 1973 Act, was issued, much less before expiry of the period. In my view, the said act and filing of the petition under 1973 Act was without jurisdiction. All these factor have not been taken into consideration. Thus, the orders are bad in law and not sustainable in the eyes of law, resultantly, the same are set aside. Regarding payment of rent, no proof has been placed on record by either of parties. Liberty is granted to the respondents to raise a demand of arrears and the petitioners on receipt of demand shall produce the same and in case of failure of proof of rent, they shall pay the entire arrears of rent within time granted by the respondents. The respondents shall also explore the possibility of leasing out the premises and if otherwise, shall take the possession or seek ejectment but all proceedings in accordance with law.

Accordingly, the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

January 24, 2017
savita

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