

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

Date of Decision: May 11, 2017

1. CWP No.25799 of 2013 (O&M)

Garib Singh

...Petitioner

Versus

Union of India & others

...Respondents

2. CWP No.25773 of 2013 (O&M)

Jaswant Singh

...Petitioner

Versus

Union of India & others

AMIT RAWAL, J. (Oral)

By this order, I shall dispose of five Civil Writ Petitions bearing No.25764, 25773, 25779, 25799 and 25784 of 2013 as the common questions of law and fact are involved.

The aforementioned writ petitions have been filed by the lessees, who have been ordered to be evicted in proceedings initiated under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short “1971 Act”).

The grievance of the petitioners is that in the years 1980 and 1981, i.e., on 25.8.1980 and 28.1.1981, were leased out land measuring 5 acres at yearly rent of Rs.1400/-, which was to increase from time to time. After 1994, the lease period was not extended by the Corporation and ultimately the petitioners received the notices under Section 4 of 1971 Act calling upon them to hand over the possession, failing which the proceedings under the aforementioned provisions of the Act would be initiated.

Mr.Rajesh K.Dadwal and Mr.Ramdeep Partap Singh, learned counsel representing the petitioners submit that the notice under Section 4 did not indicate the ground of eviction except the fact that lease had expired in the year 1994. The same was duly replied and the receipts with regard to payment of rent were also placed on record, yet the authorities below, while passing the eviction order, imposed damages running into lacs of rupees.

Patwarkhana and canal colony but no action has been taken seeking eviction from the aforementioned land. In fact, the piece of land for which the eviction is sought, is situated on the G.T.road. Eviction petition has been filed at the behest of certain officers.

Mr.Vivek Singla, learned counsel representing the respondents submits that the possession of the land has been taken in November, 2016 and the land is being used by the Military for undertaking Military exercises and other allied purposes. The status of the lessees did not continue after the year 1994 and rightly so, the authorities below have ordered for damages. The petitioners cannot be permitted to approbate and reprobate in one breath as they were unauthorised occupants since 1994 and, thus, the proceedings initiated are liable to be upheld and prays for dismissal of the writ petitions.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the execution of the lease deeds is not in dispute, much less non-continuation after 1994. The eviction notices are of February, 2012.

It is a matter of record that the petitioners have been paying damages from 1994 onwards, which fact is evident from the copy of the receipt (Annexure P-2), which reads thus:-

“No.AAA 0213366

I.A.F.A.-175

RECE

Regt.or official

Station: Pathankot

Date: 6.4.11”

Be that as it may, the provisions of the Act are no longer required to be re-considered as for ordering damages, there has to be a notice under Section 7 of 1971 Act, which reads thus:-

“7. Power to require payment of rent or damages in respect of public premises.—(1) Where any person, is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

[(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]</

was filed, which is evident from Annexure P-5. In the absence of any notice under Section 7 of 1971 Act, which deals with the damages, the authorities below could not have imposed the damages.

Resultantly, I am of the view that there is some force in the submission of the learned counsel for the petitioners with regard to the imposition of damages. Accordingly, the order of eviction is upheld, but with regard to damages, the same is quashed.

Writ petitions in part are allowed.

May 11, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No