

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

CWP No.23600 of 2014
Date of decision : 17.04.2017

Ram Dhan and another

...Petitioners

Versus

The Commissioner, Rohtak Division and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. Indresh Goel, Addl. A.G. Haryana.

Mr. Deepak Balyan, Advocate for respondent No.3.

AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of the impugned orders dated 08.10.2008 (Annexure P-6) and 08.02.2013 (Annexure P-7) of the Collector and the Commissioner, whereby proceedings were initiated under Sections 4, 5, and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 seeking eviction of the petitioners from the land in dispute.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the petitioners submits that specific stand of the petitioners before the Court was that the respondent had not been able to establish the ownership by acquisition of land. This fact is evident from the contents of para Nos.5, 7 and 15 of the writ petition. On comparison of para Nos.5, 7 and 15 of the

writ petition vis-a-vis written statement and even proceedings initiated before the Civil Court, reply was that there was no proposal for acquisition of the land. Even otherwise, the orders of the authorities particularly of the Collector is against the mandate of the authority rendered by this Court in *Sarjiwan Tiwari Vs. Punjab State Electricity Board, 1998(2) RCR (Civil) 2* as proceedings, aforementioned, had been decided in a most fallacious and erroneous manner. In fact, onus to establish the ownership was wholly relied upon by the State which they have failed to discharge, in essence, issues were required to be framed by affording effective opportunities to the parties to lead the evidence in support of the supportive claims and thus urges this Court for setting aside the order under challenge.

Mr. Deepak Balwan, learned counsel appearing on behalf of the respondent No.3 submits that vis-a-vis ownership of the property, same has been proved on record by placing on record the revenue record. The petitioners have failed to establish their possession on the basis of any title, much less, any other documents and rightly declared unauthorized occupant and cannot retained the possession of the property without any such document, rightly so, eviction order has been passed, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that orders under challenge are bereft of the reasoning particularly with regard to the discharging of the onus by the petitioners. Though, revenue record as per Section 44 of the Land Revenue Act, carries a presumption of truth but it is to be rebutted. Issues were required to be framed as per the findings rendered in judgment cited (supra). For the

sake of brevity, para Nos.10 and 12 of the findings reads as under:-

“10. Section 8 of the Act specifically provides that a Collector shall, for the purposes of holding an enquiry under this Act, has the same powers as are vested in a Civil Court under the Civil procedure Code, 1908, but restrict such application to summoning and enforcing the attendance of any persons and examining him on oath, requiring the discovery and production of documents. But this limited application cannot be read with great rigidity because such provisions of the Code are also applicable to any other matter, which may be prescribed. Under Section 17(2)(f), the State Government is further empowered to make rules in regard to any other matter which has to be or may be prescribed. The rules which have been framed under this provision to a larger extent are silent about what procedure must be adopted by the authorities while trying any petition or application under various provisions of this Act. However, that necessarily does not imply that the procedure with regard to documents, framing of issues, examination of witnesses, and execution of an order would ipso facto become applicable. So far any procedure or method has been prescribed under the provisions of the Act or the Rules, the authority concerned is bound to adhere to the same in precedence to the provisions of the Civil Procedure Code. The provisions of the Civil Procedure Code do not bind the hands or limits the jurisdiction of the authority concerned under this Act. The authority would be justified in following a summary procedure so far it is in consonance with the principles of natural justice and basic rule of law. Furthermore, such a procedure must be one which would not prejudicially affect the rights of a party and take the other by surprise. The basic or fair rule of law certainly expects that a person against whom an action is

brought in Court must be put at notice of the case which he is supposed to meet. The respondent should be able to identify his defence and should be given due and reasonable opportunity to prove his case upon leading such evidence as is permissible under the provisions of this Act. Thus, the procedure by and large would have to be left to the discretion of the appropriate authority which he may like to adopt keeping in mind the facts and circumstances of the case and while such procedure must be in consonance and conformity with the provisions of the Act, rules framed thereunder and the principles of natural justice and basic rule of law. In absence of specific provisions, the provisions of the Code are a mere guiding factor for such authority. He is not bound by all the provisions of the Code except to the extent which have been made specifically enforceable under the provisions of the Act and the Rules with a specific reference to Section 8 of the Act.

12. There is nothing in the provisions of this Act or the Rules framed thereunder which would imply that “framing of issues” and/or specifying “points of determination” is prohibited by specific language, or upon application of principles of necessary implication to the provisions of this Act. Thus, it would have to be left to the discretion of the authority whether it considered it proper to narrow the controversy at the out-set by specifying points for determination or not. Such an approach would be in line with the decisions already taken by various courts. To prescribe a hard and fast rule which would be universally applicable is neither possible nor probably permissible. The summary procedure itself does not oust adoption of a proper procedure in the facts of a given case. To provide an immutable system or procedure does not appear to be the legislative intent of the statutes. Susceptibility to decide

cases expeditiously is the under-lying feature of a summary procedure.”

In my view, in such type of matter whenever the application by invoking the provision of aforementioned Act is filed, the authorities below are enjoined upon obligation to frame the issues and call upon the parties to lead the evidence so that finding is precisely on which the parties are at variance. Impugned orders are thus, in my view, are bereft of the aforementioned compliance of the law and, therefore, are not liable to be sustained and are hereby set aside.

The matter is remitted back to the Collector to decide the eviction petition filed by the respondents afresh. In view of the observations given herein, I intend to impose time-line as much time has left in this process.

Parties through their counsel are directed to appear before the Collector on 10.05.2017.

This Court is sanguine of the fact that Collector shall decide the eviction petition by affording 4-4 opportunities to the parties and shall decide the matter within a period of 10 months.

With the aforementioned observations, present writ petition stands disposed of.

17.04.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No