IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.4971 of 2014 (O&M)
Date of decision:24.01.2017

Mehar Singh and others ... Petitioners

Vs.

Financial Commissioner and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the petitioners.

Mr. Vijay Sharma, Advocate and
Mr. P.N.Aggarwal, Advocate
for respondents No.10 to 13

AMIT RAWAL J.

The petitioners have invoked the provisions of Article 226/227 of the Constitution of India for quashing of the orders dated 05.07.2007 (Annexure P-5) passed by Assistant Collector, Ist Grade, Patiala; 11.02.2009 (Annexure P-6) passed by Collector (Additional Deputy Commissioner Patiala; 13.10.2009 (Annexure P-7) passed by Divisional Commissioner, Patiala Division, Patiala and 12.02.2014 (Annexure P-11) passed by Commissioner, Punjab, Chandigarh.

Mr. G.S.Punia, learned Senior Counsel assisted by Ms.Harveen Kaur, Advocate appearing on behalf of the petitioners submitted that the Financial Commissioner, totally ignored the provisions of Sections 7 and 7-A of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as "1955 Act"). In order to lay emphasis, he has referred to certain facts which are summarized herein below:-

He submitted that the predecessor-in-interest, Pritam Singh and his father Sardar Singh were inducted as tenants on the suit land with liability to pay fix Chakota of ₹270/- per annum since 1956 which was correctly recorded in the jamabandis for the years 1958-59, 1963-64 and 1968-69. The respondent-landlords filed a suit for eviction of the petitioners under Section 77(3) of the Punjab Tenancy Act, 1887 (hereinafter referred to as "1887 Act") read with Section 7, 7-A and 8 of 1955 Act from the area situated in Muradpur, Tehsil and District Patiala comprised of the land in dispute and also for recovery of rent at the rate of 1/3rd share of the produce amounting to ₹6383.83 paise regarding the aforesaid land for the crops Hari 1978 to Sauni 1980.

The aforementioned suit was decreed by the Assistant Collector, Ist Grade (SDO)(S), Patiala, vide decree sheet dated 05.01.1984 (Annexure P-1), whereas, copy of the judgment has been attached as Annexure R-10/4 and the landowners were held entitled to Chakota of ₹4933.24 paisa and the petitioners were directed to deposit the decreetal amount within a period of six months and the operative part of the decree has been extracted in paragraph 4 of the writ petition.

He further submitted that thereafter, an application for execution of the aforementioned decree was filed and the Assistant Collector, Ist Grade, Patiala, vide order dated 30.12.1988 (Annexure P-2) held that the aforesaid amount had already been deposited and the decree stood satisfied. Thereafter, Ram Lal, father of respondents No.5 and 6 filed another suit against Pritam Singh, father of the petitioners under Section 77

(3)(e),(n) of 1887 Act, for ejectment by wrongly mentioning that the execution of order dated 05.01.1984 was still pending on the ground of arrears of rent for the purpose of crop Kharif 1994 to Rabi 1997 and also on the point that they are small landowners and requires the suit land for their personal cultivation. A copy of the plaint has been annexed as Annexure P-3.

He further submitted that in the aforementioned ejectment petition, the respondents did not accept the petitioners as tenants and contested the same by raising the objection and denied the factum of relationship of landlord and tenant.

However, during the pendency of the suit, Ram Lal original owner died and his legal heirs respondents No.5 to 8 were impleaded. Ram Lal during his life time sold the suit land to Mukhtiar Singh and others (respondents No.10 to 13), who were impleaded as party in the suit and additional issues, in this regard were also framed. The Assistant Collector, Ist Grade, Patiala, vide order dated 05.07.2007 (Annexure P-5) passed the ejectment order but did not grant any time which is requirement of law and drawn the attention of this Court to the operative part of the order which reads thus:-

> *"In the aforementioned discussions, the issues no.1 to 7 and additional issues no.1 and 2 are decided in favour of the plaintiff and against the defendant. Therefore, suit of the plaintiff for recovery of an amount of Rs.45,684/- is decreed with costs for the crop Kharif 1994 to Rabi 1997. Since the defendant has not paid the amount of 1/3rd Batai, therefore, the*

defendant is ordered to be evicted from the suit land. Decree sheet be prepared."

Aggrieved against the aforementioned order, Pritam Singh, father of the petitioners preferred an appeal before the Collector, Patiala which was dismissed, vide order dated 11.02.2009 (Annexure P-6) and the said order of the Collector was assailed by filing a revision petition under Section 16 of 1887 Act, before the Divisional Commissioner, Patiala Division, Patiala. The same was also dismissed on 13.10.2009 (Annexure P-7).

Thereafter, the revision petition was preferred before the Financial Commissioner, Animal Husbandry, Punjab, Chandigarh but the same was erroneously dismissed, vide order dated 27.10.2010 (Annexure P-8). The aforementioned orders were challenged before this Court by filing Civil Writ Petition bearing No.20067 of 2010. However, during the pendency of the writ petition, Pritam Singh died and petitioners were impleaded as legal heirs. This Court, while issuing notice of motion on 11.11.2010 stayed the dispossession of the petitioners subject to deposit of arrears of rent before the Assistant Collector, Ist Grade, Patiala within a period of 15 days from today. Thereafter, this Court, vide order dated 04.10.2012 (Annexure P-9) allowed the writ petition and remanded the matter back to the Financial Commissioner for considering the issues. The aforesaid order was assailed by Mukhtiar Singh and others (respondents No.10 to 13), by filing a Letter Patent Appeal bearing No.2021 of 2012 and this Court, in addition to the order passed by a Single Judge, framed two following questions (Annexure P-10) which read thus:-

> *"1. Whether private respondents are liable to be evicted for the land in dispute, for non-payment of rent? And*
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> *2. Whether the appellants are entitled to evict the private respondents on the ground that they and/ or their vendors were "small land owners"?"*

The Financial Commissioner dismissed the revision petition vide order dated 12.02.2014 (Annexure P-11) by committing the same very mistake and did not pursue the statutory provisions. The Financial Commissioner wrongly observed that the rent was due since Kharif 1984 which was not at all in issue since ejectment suit was filed for recovery of rent of crop Kharif 1994 to Rabi 1997. He further submitted that the Financial Commissioner also did not decide the issue on which the remand was made and straightway ordered ejectment without affording any opportunity to deposit the arrears of rent. In this regard, he has drawn the attention of this Court to the provisions of Section 7 of 1887 Act to contend that no tenancy can be terminated except in accordance with law and in case the tenant has failed to pay rent within a period of six months after it falls due. For the sake of brevity, the provisions of Section 7 extracted in the grounds of writ petition which are not disputed by other side are extracted herein below:-

> *"7. Termination of tenancy : - (1) No tenancy shall be terminated except in accordance with the provisions of this Act or except of any of the following grounds, namely:-*
>
> *3[(a)] ****]*
>
> *(b) that the tenant has failed to pay rent within a period of*

six months after it falls due:

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he had failed to pay such arrears during that period;]"

The Financial Commissioner was required to give opportunity to pay arrears of rent within a period of six months, therefore, there was no compliance of the statutory provisions of law. In this regard, he has drawn the attention of this Court to the ratio decidendi culled out by the Hon'ble Division Bench of this Court in **Hira Singh and others vs. Musamat Gauran 1966 PLJ 10 .** He also submitted that the Court has jurisdiction to extend the time for making payment under the provisions of 1955 Act and in this regard, relied upon the judgment rendered by this Court in **Smt. Gita Devi vs. Financial Commissioner, Haryana and others 1987 PLJ 265.** Mr. Punia, also referred to the Full Bench judgment of this Court rendered in **Gurmail Singh and another vs. Financial Commission Revenue and others1980 PLJ** 603, whereby, while interpreting the the provisions of Section 22 of the Punjab Security of Land Tenure Act, 1953 (hereinafter referred to as "1953 Act"), it was held that period of one month for deposit of rent cannot be extended by the Assistant Collector or Appellate or Reivsional Authority, in essence, they did not have any jurisdiction vested in them but the same was held altogether on different ground.

He also relied upon the ratio decidendi culled out by the

Hon'ble Division Bench of this Court in **Yaga Ram vs. Financial Commissioner and Principal Secretary and others 2011 (1) Land L.R.605** to contend that while interpreting the provisions of 1953 Act, the Hon'ble Division Bench has also taken into consideration the judgment rendered by the Hon'ble Supreme Court in **Rakesh Wadhawan and others vs. Jagdamba Industrial Corporation and others, Vol.CXXX-(2000-2) PLR 371** to contend that the procedure for compliance of Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 has to be followed, in essence, the matter was required to be remitted back to the Financial Commissioner as per the provisions of 1953 Act. Even the report dated 25.07.2016 called by this Court does not satisfy the requirement of law, whereby, the respondents were wrongly found small landowners. He has referred to the provisions of Section 7-A of 1955 Act to contend that for the purpose of termination of tenancy, the tenancy must be subsisting at the commencement of 1955 Act and the commencement date is 30.11.1956, which read thus:-

> *"7-A. Additional grounds for termination of tenancy in certain cases:(1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, may be terminated on the following grounds in addition to the grounds specified in Section 7 namely:*
>
> *(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II;*

(b) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit;

Provided that no tenant [other than a tenant of a landowner who is [member of the Armed Forces of the Union or a Non-Resident Indian] shall be ejected under this Section:-

(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres;

Until he is allotted by the State Government alternative land of equivalent value in standard acres."

The report does not record the satisfaction in standard acres but in acres and therefore, the same is liable to be set aside.

Per contra, Mr.Vijay Sharma and Mr. P.N.Aggarwal, learned counsels appearing on behalf of the private respondents No.10 to 13 submitted that in the previous proceedings held on 05.01.1984, the relationship of landlord and tenant had already been held. Even if the order dated 05.07.2007 of the Assistant Collector while passing the ejectment, did not indicate period of six months which expired on 05.01.2008. No explanation of *bonafide* or intention to pay the rent has been reflected. If at all the petitioners were to pay the rent, they could have deposited and contested the matter on merits, the way it has been done. The petitioners have already been allotted more land. They have more holding and unnecessarily holding on to the aforementioned land. A person who seeks equity must do equity. The *malafide* intention is writ large. The specific issue no.1 with regard to relationship of landlord and tenant had been rendered in favour of the private respondents. The law of tenancy is clear as the tenant is always a tenant. In the eviction order dated 05.01.1984, there is already adjudication of issue regarding relationship of landlord and tenant. Even if the respondents are not paying the rent, it would not cloth them the status of trespasser.

They also referred the Full Bench judgment of this Court rendered in **Gurmej Singh and others vs. Financial Commissioner and others 1981 AIR (Punjab) 34**, wherein, with regard to the provisions of 1953 Act holding, law has been settled that the tenant is bound to pay the arrears of rent within a statutory period and if the tenant does not pay the rent, the statutory period cannot be extended by the appellate or revisional authority. In fact, the petitioners had also filed a civil suit claiming the declaration of having become owners by way of adverse possession, thus, the title of ownership of private respondents is admitted.

They further submitted that the scope of interference under Article 226 of the Constitution of India is limited. All the authorities have already appreciated and rendered a finding against the petitioners. There is hardly any scope of judicial review and the matter does not fall under any of the provisions which would enable the Court to lift the veil and interfere. The tenants are owners of more than 5 acres of land, whereas, the landlord are owners of 5 acres which is less than 30 standard acres of land, thus, the report qua provisions of Section 7-A is perfectly legal and justified.

They have also referred to the judgment rendered by this Court in **Dhara Singh vs. Financial Commissioner, Revenue, Punjab 1995(1)**

RRR 136 and thus, urged this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Punia for the reasons that the conduct of the petitioners had not been fair and honest, for, even in the previous ejectment proceeding passed on 05.01.1984, the petitioners did not deposit the arrears of rent compelling the respondents to file the execution application on 30.12.1988, six months period though had lapsed.

It is strange that despite granting six months' time in the previous ejectment petition, the petitioners did not deposit the arrears of rent. Even if the Assistant Collector, vide order dated 05.07.2007, Annexure P-5, whereby, the rent of crop Kharif 1994 to Rabi 1997 was sought, though did not order deposit of the amount within a period of six months which, expired on 05.01.2008, but cannot take the benefit of not awarding any opportunity, if at all there was bonafide, could have volunteered to do so. There is no proof, any interim order or averment by either of the party that the ejectment order assailed in appeal. There could have been some force in the submissions of Mr. Punia, had there been any interim order passed by the Appellate Authority, i.e., the Collector. Having failed to obtain the interim order, the time granted by the trial Court lapsed and the appeal was dismissed on 11.02.2009, thus, the ejectment order was passed by taking into consideration the provisions of Section 7, *ibid,* attained finality.

No doubt, while entertaining the writ petition at the first instance, this Court had granted the status quo order by directing the petitioners to deposit the arrears of rent but that would not entail into extension of time as it has been held in the judgment rendered in Gurmej Singh's case (supra) cited by Mr.Sharma that time cannot be extended by the appellate or revisional authority. The finding on issue No.3 qua small landowners had already been rendered in favour of the respondents by the Assistant Collector Grade I. Even during the pendency of the appeal or revision, the petitioners did not offer to make payment of rent within the aforementioned period, thus, the *bonafide* was conspicuously lacking. All these factors weighed in the mind of the authorities below, therefore, I am of the view that the orders under challenge are upheld and do not find any illegality and infirmity.

The judgments relied upon by Mr. Punia would not apply to the present case. The judgment rendered by the Hon'ble Division Bench of this Court in Yaga Ram's case (supra) is in respect of the provisions of 1953 Act, wherein, there is special provision under Section 14A of 1953 Act, for assessment of rent and by affording an opportunity. By taking into consideration the provisions of Section 14A of 1953 Act and as well as ratio decidendi culled out in Rakesh Wadhawan's case (supra), the Division Bench was of the opinion that the authorities were required to assess the arrears of rent and thus, afford an opportunity within time line to the tenant but the said fact would not apply as the provisions of other Acts cannot be interpreted for the interpretation of the present Act, language of which is clear and unambiguous.

There is no force in the submission of Mr. Punia, that report is not in consonance with the direction of this Court. The report indicates the determination of the claim of the private respondents being small landowners, i.e., provisions of Section 7-A, *ibid.*

Before undertaking the aforementioned task, the FCR had called the report of Tehsildar and Patwari which was taken on record. Both the parties filed the affidavit showing their land holding in village. The operative part of the order of the Financial Commissioner reads as under:-

> *"7. I have heard the arguments of both the parties and also perused the reports of the revenue authorities as well as the affidavits of the parties. The report has categorically mentioned that the respondents Mukhtiar Singh, Piara Singh and Jagtar Singh s/o Jiwan Singh own land measuring 67 bighe 03 Biswas which amounts to 13.98 acre in three villages viz. Multanpur. Muradpur and Chamarheri. This includes the land measuring 27 Bighe-12 Biswas (5.75 Acre) which is the suit land in village Muradpur. Thus, the respondents do not own land more than 30 Standard Acres, thereby meeting the requirements of the Act, 1955.*
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> *8. On the other hand, the petitioners, i.e., the LRs of the deceased Pritam Singh hold land measuring 52 Bighe -01 Biswas, which amounts to 10.84 Acres in village Muradpur. Out of this land measuring 10.84 Acres, the LRs of the deceased Pritam Singh hold land measuring 5.75 Acres as tenants and own land measuring 5.09 Acres as owner, is substantiated by the report submitted by the lower revenue authorities.*

9. As per the proviso of the Act ibid the tenant is liable to be rejected from the suit land measuring 5.75 acres as the tenants are also separately owners of land measuring 5.09 acres which is under their personal cultivation.

The report is submitted.

To be communicated."

Thus, the aforementioned finding, in my view, is perfectly legal, justified, much less is in consonance with the provisions of Section 7-A, *ibid.*

No ground is made out for interference in the impugned orders.

Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

January 24, 2017
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No