

211

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

CWP-7776-2013

Date of decision : 27.02.2017

Rajesh Kumar

... Petitioner(s)

Versus

District Collector, Fazilka and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sapan Dhir, Advocate
for the petitioner.

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

Mr. I.S. Sidhu, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the orders dated 08.08.2012 (Annexure P-6) and 31.01.2013 (Annexure P-8), whereby the petition filed under Sections 4, 5 and 7 of the Punjab Public Premises & Land (Eviction and Rent Recovery) Act, 1973 (for short 'the Act'), has been allowed.

One of the prime contention of Mr. Sapan Dhir, learned counsel appearing on behalf of the petitioner is that originally one Chiman Lal was inducted as tenant by the erstwhile Municipal Committee and put into possession of shop. By virtue of the Agreements (Annexure P-1 & P-2), the tenancy had exchanged hand and the rent was being paid by the predecessors-in-interest of the petitioner, much less, the petitioner, which had been acknowledged by the Municipal Committee. However, there is no

compliance of the provisions of Section 4 of the Act. Show cause notice given is of 05.12.2002, whereas the petition has been filed in 2006. Had the proper opportunity of hearing been given, the petitioner would have explained. Even otherwise, the proceedings under the aforementioned Act, cannot be tried as summary proceedings and issues are required to be framed. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in **“Sarjiwan Tiwari V/s Punjab State Electricity Board” 1998 (2) RCR (Civil) 2.**

Per contra, Mr. I.S. Sidhu, learned counsel for respondent No.3 submits that the orders, under challenge, are perfectly legal and justified. The petitioner is the unauthorized occupant and cannot retain the premise and rightly have been ordered to be evicted. There is no equity in his favour as no *lis* between him and the Municipal Committee/respondent No.3, owing to the facts and circumstances narrated by Mr. Sapan Dhir, learned counsel for the petitioner, in essence, originally Chiman Lal was inducted as tenant and there was no authority to Chiman Lal to pass over the tenancy rights to a third party.

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

During the course of the hearing, Mr. I.S. Sidhu, learned counsel representing the Municipal Committee/respondent No.3 had shown the copy of the notices dated 05.12.2002, but a mode of communication is wanting. This Court called upon Mr. I.S. Sidhu, whether it was sent by Registered Post and the answer is 'Yes'. No other show cause have been brought on record to establish that there was a compliance of the provisions of principles of natural justice. In my view, the petitioner is required to be

given effective opportunity for compliance of the same, in case the issues are framed, in view of the *ratio decidendi* culled out by the judgment rendered in **Sarjiwan Tiwari** 's case (supra).

Resultantly, the impugned orders dated 08.08.2012 (Annexure P-6) and 31.01.2013 (Annexure P-8) are hereby set aside and the matter is remitted back of the Deputy Director, Urban Local Bodies-cum-Collector, Fazilka to try the petition filed under Sections, 4, 5 & 7 of the Act, afresh after framing the issues by taking into consideration the stand/averments and pleadings between the parties to the *lis* and decide the same as expeditiously as possible preferably within a period of 6 months from the receipt of the certified copy of this order

Learned counsel for the parties and as well as the parties are directed to appear before the Deputy Director, Urban Local Bodies-cum-Collector, Fazilka on 20.03.2017.

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

27.02.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No