

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

**CR No. 6999 of 2018(O&M)
Decided on: 15.10.2018.**

Fatte Singh

.....Petitioner

Versus

Baba Hirdey Ram Tapo Bhumi Sankat Mochan Jan Kalyan Trust

.....Respondent

AND

CR No. 7007 of 2018 (O&M)

Fatte Singh

.....Petitioner

Versus

Baba Hirdey Ram Tapo Bhumi Sankat Mochan Jan Kalyan Trust

.....Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.J.S.Hooda, Advocate
for the petitioner (s).

LISA GILL, J.

This order shall dispose of CR No. 6999 of 2018 and CR No. 7007 of 2018. Present impugned orders have been arisen from the proceedings emanating from a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1972 (for short the 'Act') filed by the respondent-landlord against the petitioner-tenant.

Civil Revision No. 6999 of 2018 has been filed challenging

order dated 06.09.2018, passed by the learned Rent Controller, Faridabad. Preliminary issue framed regarding the relationship of landlord and tenant between the parties was decided vide the said impugned order.

Civil Revision No. 7007 of 2018 has been filed impugning order dated 01.10.2018, passed by the learned Rent Controller, Faridabad, whereby provisional rent of the premises in question has been assessed.

Brief facts necessary for the adjudication of the case are that the respondent-trust filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, through its president-Gopal Singh Siwach. Petitioner-trust claimed itself to be the owner of 16 shops as detailed in the petition. It was pleaded that the tenants had approached the petitioner-trust to take the shops on rent. Rate of rent was fixed at the rate of ₹1500/- per month for each shop excluding electricity charges. Rent was to be enhanced at the rate of ₹100/- after every eleven (11) months. Initially, the tenant paid the rent however, he thereafter had not paid the rent since June 2007 till the year 2014. The tenant was alleged to be in arrears of rent to the tune of ₹2,90,400/-. Legal notice dated 01.10.2014 was issued by the trust through its president vide registered post to clear the arrears and to vacate the premises within 15 days, but he refused to do so. Registered letter/notice was returned with remarks of refusal. It was pleaded that due to non-payment of rent, the petitioner-trust was unable to do the welfare work for which it was constituted. Moreover, the trust wished to let out the shops to genuine persons who would pay the rent on time. Hence the petition.

Petition was resisted by the respondent while claiming that

the petitioner had no *locus standi* to file the petition. Petition was not maintainable because its alleged president-Gopal Singh Siwach, through whom the petition was filed, was not connected with the petitioner trust and had no authority to file the petition. The shops and premises, it was contended were being maintained by the Mandir Vikas Society since the year 2007. The tenants including the present petitioner were regularly paying rent to the Mandir Vikas Society, through its organizers. Dismissal of the petition was thus prayed for.

Preliminary issue was framed in the present petition along with eight other rent petitions filed. The matter was decided by the learned Rent Controller, Faridabad, vide impugned order dated 06.09.2018, while holding that the said petitions were maintainable.

Relationship of landlord and tenant, it was held existed between the parties. Tenant had failed to prove tender of rent either to the trust or even to the Mandir Vikas Society, as averred. The matter was thereafter, adjourned to 01.10.2018 for assessment of the provisional rent.

The provisional rent was assessed as ₹1500/- per month by the learned Rent Controller, Faridabad, vide order dated 01.10.2018, which is the subject matter of C.R No. 7007 of 2018.

Aggrieved therefore, the above said revision petitions have been filed.

Learned counsel for the petitioner vehemently argues that petition under Section 13 of the Act, is not maintainable through Gopal Singh Siwach, who in-fact has no authority to file the petition as it is the Mandir Vikas Society, which is at the helm of affairs. It is further argued

that rent had been paid regularly by the petitioner to the said Mandir Vikas Society. Therefore, the preliminary issue has been wrongly decided.

In respect to order dated 01.10.2018, learned counsel for the petitioner submits that the provisional rent in any case has been wrongly assessed w.e.f. 2011. The earlier president of the trust passed away in the year 2012. In view of the fact that no such petition for eviction or any notice of recovery of rent was ever served upon the petitioner, there is a presumption that the rent was in-fact paid by the petitioner. Therefore, the assessment of the provisional rent from 2011 onwards is clearly unjustified.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

It is to be noticed that Ramdass Chela Sukhram Dass was the owner of land measuring 37 Kanal 14 Marlas. Ramdass suffered a consent decree (Mark A) in favour of the trust. This decree was registered before the Sub-Registrar on 09.04.1999. As per the registered trust deed dated 25.08.1998 (Ex.PW2/A), it emerges that the said trust was registered at the instance of Baba Kalyan Dass, its general secretary Mathura Dass and president-cum-chairman Tejram. Tej Ram was the father of Gopal Singh Siwach (petition under Section 13 of the Act was filed by the trust through Gopal Singh Siwach). He was one of the trustees along with Mathura Prasad. In accordance with the consent decree, land measuring 37 Kanal 14 Marlas was transferred in favour of the trust as reflected in Ex.P-1 i.e. jamabandi for the year 2007-08. Registered amended deed no. 306 of the trust (Ex.PW2/B) was executed on

15.04.2014. Amendment was carried out in the original trust deed seeking two objectives, one being the appointment of the new president (Gopal Singh) as the earlier president Tej Ram had died and the other wherein the newly appointed president was authorized as signatory of the bank account of the trust on death of the previous president. It was mentioned in the document that a meeting of the governing body of the trust was held on 16.07.2012, which was then adjourned to 21.09.2012 for appointment of Gopal Singh Siwach, son of the previous president as president-cum-chairman/trustees. Gopal Singh Siwach was unanimously selected as the president of the trust on 21.09.2012. Resolution was passed on 23.03.2013 authorising Gopal Singh Siwach as a signatory of the bank account of the trust.

In respect to the decision of the learned Rent Controller, Faridabad *qua* the preliminary issue, I do not find any ground whatsoever to interfere in the impugned order dated 06.09.2018.

Eviction petition has admittedly been filed by the trust in question through its president. Learned Rent Controller, Faridabad, vide impugned order dated 06.09.2018, has rightly held that the petitioner is not entitled to question the locus of the president-Gopal Singh Siwach or his entitlement to be the president of the trust or not. This is specifically so, in view of the clear cut admission of the petitioner that he is a tenant under the respondent-trust. Gopal Singh Siwach, has drawn the authority to file the petition in his capacity as the representative of the trust on the basis of the registered amended deed Ex.PW2/B. This deed is based on the original trust deed which is also a registered document i.e. Ex.PW2/A.

Registered trust deed of 1998 was never challenged, either by the present petitioner or any other person. It is rightly observed by the learned Rent Controller, Faridabad that in case the Mandir Vikas Society, if, at all, is aggrieved in respect to the question of Gopal Singh Siwach being the President of the trust, the same would be a subject matter of different proceedings.

Learned Rent Controller, Faridabad, has rightly proceeded to observe that the authenticity of the trust deed or the amended trust deed is not within the domain of the rent controller and he is not required to adjudicate upon the same in the facts and circumstances of the case. It is reiterated that the petitioner has admitted himself to be a tenant under the respondent-trust. Therefore, it is rightly held by the learned Rent Controller, Faridabad that relationship of landlord and tenant existed between the trust and the tenant i.e. the present petitioner. Moreover, the petitioner has failed to prove any receipt or proof of the amount of rent purportedly paid to the Mandir Vikas Society. Learned counsel for the petitioner is unable to point out any document etc., which would indicate the payment of such rent to the Mandir Vikas Society.

Learned counsel for the petitioner is unable to point out any illegality, infirmity, in the findings returned by the learned Rent Controller, Faridabad, on the preliminary issue in regard to the relationship of the landlord and the tenant between the parties.

In respect to the assessment of provisional rent, argument raised by learned counsel for the petitioner that as the earlier president had not filed an eviction petition or had not served any legal notice for

deposit of the rent in question, therefore it should be presumed that rent had been paid by the petitioner, is not tenable. It is for the petitioner to prove that he has in-fact been paying the rent regarding the premises, admittedly taken on rent from the respondent-trust. As far as the assessment of the provisional rent is concerned, learned Rent Controller, Faridabad, has ignored the averment of the landlord-trust that there was a provision for an increase at the rate of ₹100/- in the rate of rent in every 11 months and proceeded to assess the rate of rent @ ₹1500/- per month. It is not disputed by learned counsel for the petitioner that the premises in question had been taken on rent from the trust at the rate of ₹1500/- per month. There is indeed nothing on record to indicate the deposit of any amount towards the rent due towards the trust. As noticed earlier, the tenant was not even able to produce any receipts of rent which may have been deposited with the Mandir Vikas Society. Neither is there any merit in the argument that the rent, should at best, have been assessed from the year 2014 onwards as the earlier president had never set up any demand for deposit of rent. This argument is clearly fallacious, untenable, hence rejected. Therefore, there is no infirmity or perversity in the impugned order dated 05.10.2018, whereby provisional rent has been assessed. It is noticed that the said amount was to be deposited by 15.10.2018 i.e. today. However, keeping in view the facts and circumstances of the case, the time afforded to the petitioner to deposit the provisional rent by 15.10.2018 is extended till 15.11.2018.

No other argument has been raised.

Both the revision petitions are accordingly dismissed with

the modification in the date by which the provisional rent/arrears thereof be deposited. Needless to say, no order for eviction of the petitioner be passed on account of non-payment of the amount till 15.11.2018.

October 15, 2018
s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No