

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

RSA No.2460 of 1991

Date of Decision.16.02.2018

State of Haryana

.....Appellant

Vs

Pt. Ved Parkash Shashtri (since deceased) through LRsRespondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. Jagdish Manchanda, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The State of Haryana is in regular second appeal against the judgment and decree passed by the lower Appellate Court, which set aside the judgment and decree dated 26.07.1989 rendered by the trial Court whereby the suit of the respondent-plaintiff was dismissed.

Before advertng to the rival contentions of the parties, it would be apt to give preface of the matter. The respondent-plaintiff instituted a suit challenging the order dated 18.02.1986 passed by the SDO (Civil) in proceedings titled as “State of Haryana Vs. Pt. Ved Parkash Jyotshi” to be ineffective, illegal and null and void in respect of the shop in question i.e. the suit property on the premise that he was a tenant of Shop No.3 in Zila Sainik Board, Karnal since 1974 and had been paying rent regularly to the defendant. The suit aforementioned was filed in the year 1986. It was averred that the rent from the month of February, 1985 onwards was not paid as the payment of rent was not accepted by the defendant. The defendant adopted all means and modes for getting shop No.3 vacated on

one pretext or the other and having failed to achieve their ulterior motives, an application under Section 4 and 5 of the Haryana Public Premises and Land (Eviction & Rent Recovery) Act, 1972 was instituted in the Court of Sub Divisional Officer (Civil), Karnal by the State of Haryana through Deputy Commissioner and President of Zila Sainik Board, Karnal, resulting into passing of the impugned order dated 18.02.1986. The aforementioned order was passed without jurisdiction and in the absence of notice required to be issued under the Act *ibid*, the same was not maintainable. The reason given for seeking vacation was that the shop in question was required for the purpose of opening of CSD(I) Canteen by the General Officer, Commanding, Punjab, Haryana, Himachal Pradesh area, Head Quarter, Ambala Cantt. It was pleaded that the Zila Sainik Board, during the pendency of the application, constructed three more shops and the same were given to the pensioner office. Both the institutions i.e. Zila Sainik Board and CSD were separate entities. There was relationship of landlord-tenant between the plaintiff and the defendant, therefore, the proceedings under the 1972 Act were not maintainable.

The aforementioned suit was contested by the defendant wherein customary objections with regard to maintainability, cause of action, jurisdiction and non-joinder of necessary parties were taken. On merits, it was stated that the plaintiff was allotted a shop bearing No.3 of the Sainik Rest House, Karnal @ ₹250/- per month since 15.01.1976 and not from 1974 as alleged. The aforementioned allotment was cancelled by the Deputy Commissioner and President of Zila Sainik Board vide letter dated 2.1.1985. Relationship of landlord and tenant was emphatically denied. It was stated that the eviction order was legally passed and the plaintiff could

have availed the remedy of appeal. Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the impugned order dt. 18.2.86 is null, void and without jurisdiction as alleged, if so, its effect? OPP*
- 2. Whether the defendant is not owner of the disputed property, if so, its effect? OPP*
- 3. Whether the suit is bad for want of notice u/s 80 CPC? OPD*
- 4. Whether the suit is barred by principle of res judicata? OPD.*
- 5. Whether the plaintiff has no cause of action? OPD*
- 6. Whether this Court has no jurisdiction? OPD*
- 7. whether the suit is bad for non-joinder of necessary parties? OPD*
- 9. Relief.”*

Both the parties led their respective evidence. The trial Court on the basis of evidence brought on record, dismissed the suit, holding that the order under challenge was not null and void, much less, could not have been said to be passed without jurisdiction. The respondent-plaintiff assailed the aforementioned judgment and decree dated 26.07.1989 by filing civil appeal bearing No.64/13 of 1989. The lower Appellate Court set aside the aforementioned judgment and decree and decreed the suit holding therein that the defendant was not the owner of the disputed property and therefore, could not initiate proceedings. It is in this backdrop of the matter, the present appeal has been filed.

Mr. Rajbir Singh, AAG, Haryana appearing for the appellant with lot of eloquence and vehemence assailed the judgment and decree passed by the lower Appellate Court by raising following submissions:-

- (i) The lower Appellate Court has committed illegality and perversity in decreeing the suit by holding that the property was not of Zila Sainik Board and therefore, could not prove the premises to be public premises falling within the jurisdiction of 1972 Act but failed to ignore the testimony of Rajbir, DW1, Clerk, who categorically stated that disputed shop was of Zila Sainik Board, an organ of the Haryana State. Though he stated that it belonged to the Provincial Government but the entire evidence and cross-examination had to be read in conjunction and not in isolation.
- (ii) The suit was not maintainable as there was an emphatic bar for the Civil Court to entertain the suit challenging the action initiated under the 1972 Act. The finding of the lower Appellate Court vis-a-vis the non-serving of show cause notice as per Section 4 of the 1972 Act was also patently wrong and perverse. While giving such perverse finding, the lower Appellate Court being the last court of fact and law remained oblivious of the cross-examination of the plaintiff, who admitted that he appeared before the SDM i.e. Collector under the Public Premises Act in the proceedings and filed the written statement. Even the finding of the lower Appellate Court that the Deputy

Commissioner had passed the cancellation order was also fallacious as Ex.P4 dated 2.1.1985 clearly stipulated that the respondent-plaintiff was directed to hand over the possession by 2.2.1985.

- (iii) The disputed property was owned by the Haryana State and as per Ex.D1 was occupied by one of its Department i.e. Zila Sainik Board which is not a separate entity, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court.

During the pendency of the appeal, a misc. application bearing No.1876-C of 1994 under the provisions of Order 22 Rule 4 CPC was moved for bringing on record the legal representatives of Ved Parkash, who died on 21.03.1994 through counsel Mr. Jagdish Manchanda and a similar application was moved by the State bearing No.4680-C of 1994, which were allowed.

Mr. Manchanda, learned counsel appearing on behalf of the respondent-plaintiff submitted that the judgment and decree of the lower Appellate Court is perfectly legal and justified. The cancellation order was held to be without jurisdiction as the Collector had no jurisdiction to initiate proceedings under the 1972 Act. Vide Ex.P3 dated 27.01.1976, the Secretary Zila Sainik Board, Karnal wrote a letter to Ved Parkash-plaintiff for allotment of the shop at monthly rent of ₹250/- per month whereas the proceedings were initiated under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 by the Haryana State. However, vide impugned order dated 2.1.1985 the allotment of the respondent-plaintiff and three others was cancelled by the Deputy Commissioner. He

referred to the document Ex.P1, an application dated 24.12.1975 submitted by the respondent-plaintiff whereby he requested to the Secretary, Zila Sainik Board to allot the shop in his name on account of the fact that his partner Tara Chand had left the premises. In view of that request, the order dated 27.1.1976, Ex.P3 was issued intimating the respondent-plaintiff that shop No.3 had been transferred in his name, thus, urges this Court for dismissal of the appeal.

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. Rajbir. The finding rendered by the lower Appellate Court is perfectly legal and justified. It is settled law that the order passed under the Public Premises Act without jurisdiction, the jurisdiction of the Civil Court under Section 9 CPC can be invoked. Exception case of such a kind is where it has been on the basis of evidence proved that the allotment was cancelled in accordance with law, therefore, provisions of Public Premises Act could be invoked. However, the Rajbir, Clerk when appeared emphatically stated that terms and conditions of the allotment were not violated. There was no occasion arose for the Department to cancel the allotment and invoke the provisions under the 1972 Act. Even one month notice was also not given, therefore, there was a deviation to the principle of natural justice. The Department could have placed on record the material to show that there was compliance of natural justice and the proceedings initiated were in accordance with law. It was the Collector who cancelled the allotment of plaintiff and ordered him to vacate the premises within 30 days. No show cause notice was issued under Section 4 of the 1972 Act which is mandatory requirement of law. For the sake of brevity, provisions of

Section 4 and 5 of the Haryana Public Premises and Land (Eviction & Rent Recovery) Act, 1972 are reproduced as under:-

“4. ISSUE OF NOTICE TO SHOW CAUSE AGAINST ORDER OF EVICTION.-

(1) If the Collector is of opinion that any persons are in unauthorised occupation of any public premises situate, within his jurisdiction and they should be evicted, the collector shall issue in the manner hereinafter provided a notice in writing calling upon all person concerned, to show cause why an order of eviction should not be made. (2) The notice shall(a) specify the grounds on which the order of eviction is proposed to be made; and (b) require all persons concerned. that is to say, all persons who are or may be, in occupation of or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.

(3)The Collector shall cause the notice to be affixed on the outer door or some other conspicuous part of the public premises or the estate. in which the public premises are situate, and in such other manner as may be prescribed whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Collector knows or has reasons to believe that any persons are in occupation of the public premises, then without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

5. EVICTION OF UNAUTHORISED PERSONS :-*(1) If, after considering the cause if any, show by any person in pursuance of a*

notice under Section 4 and any :evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises are its unauthorised occupation, the Collector may make an order of eviction for person to recorded therein, directing that the public premises are in unauthorised occupation, the Collector may make an order of eviction for person to recorded therein, directing that the public premises shall be vacated on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof and cause a copy of the order to be affirmed on the outer door or some other conspicuous part of the public premises or of the estate in which the public premises are situate.

(2) If any person refuse or fails to comply with the order of eviction within thirty days of its publication under sub-section (1), the collector or any other officer duly authorised by him in this behalf may evict that person form and take possession of the public and may, for that purpose, use such force as may be necessary.”

In view of the fact that the Department did not initiate the proceedings by complying with the principles of natural justice and as well adherence to the provisions of 1972 Act, the action taken was without jurisdiction and rightly so, the trial Court entertained the suit by invoking the provisions of Section 9 of the Code of Civil Procedure.

Even from the testimony of DW-1, it has come on record that shop was of Zila Sainik Board and in that regard, reference was made to mutation No.9409 sanctioned on 5.6.1972, Ex.D1, wherein the Provincial Government had been shown to be owner of the property and the possession

Mahila Ashram. No documentary evidence had been placed on record to show whether the ownership of the property was changed from Provincial Government to the Zila Sainik Board. In this respect of the matter, it was found that the person, who is not the owner, could not have initiated the proceedings under the Public Premises Act. Therefore, the lower Appellate Court rightly decreed the suit on two counts: (i) no compliance of principle of natural justice and (ii) the Department failed to prove its ownership.

As an upshot of my finding, I do not intend to differ with the finding rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 16, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No