Shivani Gupta
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6319 of 2015
Reserved on: 01.10.2018
Date of decision: 17.10.2018

Rajinder Kumar @ Raj Kumar and others ....Petitioner(s)

Versus

Financial Commissioner, Haryana and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. K.B. Sharma, Advocate,
for the petitioners.

Ms. Vibha Tewari, AAG, Haryana.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two writ petitions i.e. CWP Nos. 6319 and 6320 of 2015 since common questions of facts and law are involved in both the writ petitions. Reference is being made to ***CWP No. 6319 of 2015, Rajinder Kumar @ Raj Kumar and others vs. Financial Commissioner, Haryana and others.***

The landlords challenge the concurrent findings of the authorities below in the petition under Articles 226 and 227 of the Constitution of India whereby, their application for ejectment on the ground of non-payment of rent had been dismissed for the crop years 1990-92 and 1993-95. It is on this account that there are two writ petitions preferred which are being disposed of by common order.

The reasoning which weighed with the Assistant Collector, Ist Grade, Hodal was that the general power of attorney of the petitioners

namely Jhaman Dass had issued a receipt dated 17.04.2001 (Annexure P-5) whereby, he admitted that he had received the rent for the subsequent period from Kharif 1995 to Rabi 1998 and in which also, it had been mentioned that nothing remained to be taken or given and, therefore, the plaintiff had already received the rent for the disputed crops from the defendants. Resultantly, vide order dated 07.01.2003 (Annexure P-1), the eviction petition filed under Section 14-A of Punjab Security Land Tenures Act, 1953 was dismissed for the land measuring 54 kanals 9 marlas. The same has been upheld by the District Collector, Faridabad on 05.05.2005 (Annexure P-2) and by the Revisional Authorities namely the Commissioner on 19.02.2008 (Annexure P-3) and the Financial Commissioner on 08.05.2012 (Annexure P-4).

Counsel for the petitioners has vehemently argued that as per the receipt also, reference was made to the crop year of Kharif 1995 to Rabi 1998 and, therefore, the Courts were not justified to dismiss the eviction applications which were pertaining to the earlier periods for the year 1990-92 and 1993-95 and there was no specific mention in the receipt for the said periods.

The whole issue, thus, hinges on once the landlords have received the amount of *batai* for the subsequent period are entitled as such to claim that for the earlier period there are still arrears. The receipt executed by their general power of attorney on 17.04.2001 would go on to show that it was specifically mentioned that nothing remains to be received. The contents of the receipt read as under:-

> *"I, Jhamandass son of Shri Hari Chand, am the resident of Palwal Tehsil Palwal District Faridabad.*

> *That I am the General Attorney of Shri Rajinder Kumar, Vinod Kumar, Naresh Kumar sons os Shri Bhagwan Dass, resident of Gurgaon Jaikampura. That today on dated 17.04.2001 I received Rs.28,500/- (Twenty Eight Thousand Five Hundred only) as amount of Batai from Shri Ram etc. in case titled as Shri Ram etc. Vs. Rajinder etc. 14-A and E Tehsil Hodal regarding the land situated in Mauja Hassanpur 15 kanal 9 Marla and 54 Kanal 9 Marla from Kharif 1995 to Rabi 1998. That amount of Rs.28,500/- of the aforesaid Batai has been received; nothing remains to be received. Therefore, after hearing and understanding without any pressure and force, with the pure mind and pious heart receipt has been written so that it may be used at the time of necessity. Today dated 17.04.2001."*

Once the attorney himself has held that nothing remains to be received, the authorities below were well justified in holding out that once the rent had been accepted for subsequent years, the general power of attorney would have clarified that there is any amount due for the earlier periods which are for the year 1990-92 and 1993-95.

In the present case, it has been noticed by the authorities that since the petitioners are not accepting the rent, the tenants had filed the application in the Court of the Assistant Collector, Second Grade , Hodal for receiving the said rent and it was in such circumstances the rent had been received by their general power of attorney. The Commissioner at Gurgaon Division has noticed that the rent can be demanded for a period of 3 years and the amount demanded for the earlier three years had been deposited in the treasury as per the orders of the Assistant Collector 2nd Grade and the petitioners had received the said amount from the treasury. It

is, thus, apparent that there has been constant dispute inter se the petitioners and the private respondent regarding the payment of the rent.

It is also to be noticed that on an earlier occasion, the eviction had been allowed on 21.07.1988 for non-payment of rent which had been modified by the Collector, that the same could only be done after the tenant was resettled on the surplus land. The Commissioner had interfered vide order dated 09.10.1992 which was set aside by the Financial Commissioner on 03.02.1994 with the direction that the tenant would not be ejected from the land in dispute until he was resettled on the surplus area.

It is, thus, apparent that there has been a constant battle as such for evicting the tenants by the petitioners-landlords. Once the receipt by their attorney shows that they have received the full payment for the subsequent crop year and the attorney has mentioned nothing remains due, the argument as such raised by counsel for the petitioner that it was only for that particular years is not tenable.

Accordingly, there is no merit in the present writ petitions and the same are dismissed.

17.10.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No