

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 27, 2018

1. RSA No.3193 of 2013 (O&M)

Raj Kumar Jain

...Appellant

Versus

Zila Sainik Board & others

...Respondents

2. RSA No.3196 of 2013 (O&M)

Rajinder Singh

...Appellant

Versus

Zila Sainik Board & others

...Respondents

3. RSA No.3214 of 2013 (O&M)

Swarn Singh & others

...Appellants

Versus

Zila Sainik Board & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.N.K.Malhotra, Advocate,
for the appellants in all the cases.

Mr.Pawan Kumar Jangra, Addl.A.G.Haryana,
for the respondents in all the cases.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three Regular Second
Appeals No.3193, 3196 and 3214 of 2013 preferred at the instance of the
plaintiffs against the judgments and decrees dated 8.7.2013 rendered by the

Lower Appellate Court, whereby the judgments and decrees dated 23.2.2012 of the trial Court decreeing the suits of the appellant-plaintiffs, have been set-aside. The facts are being taken from RSA No.3193 of 2013.

Appellant-plaintiff instituted the aforementioned suit claiming declaration and consequential relief of permanent injunction on the premise that he is tenant under defendant No.1-Zila Sainik Board, Sainik Rest House, Rohtak of Shop No.4, Sainik Rest House, Chhotu Ram Chowk, Rohtak for the last more than 40 years, though the shop was constructed much prior to the year 1960. With the passage of time, the rent was enhanced by mutual agreement. The tenancy of the plaintiff was in perpetuity, regular and month to month. Defendant No.1 had got 14 shops including the shop under the tenancy of the plaintiff and all have been rented out to the tenants, whereas the plaintiff had been regularly paying the rent and there was no default. Defendants No.1 and 2 were requested to get determined the fair rent in terms of Section 4 of the Haryana Urban Control of (Rent & Eviction) Act (for brevity "Haryana Act"), but the same was not acceded to and rather it was told that the rent would be enhanced to ₹2500/- per month, resulting into panic and in this background, the suit aforementioned was filed claiming declaration and injunction that he is tenant and can be only evicted under the Haryana Act instead of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short "1972 Act"). The proceedings initiated before defendant No.5-Collector were also without jurisdiction.

The aforementioned suit was contested by the defendants by filing a joint written statement, wherein it was stated that they had filed an eviction petition under Sections 4, 5 and 7 of 1972 Act in the Court of Sub

Divisional Officer (Civil), Rohtak exercising the powers of Collector and enclosed copy thereof. The jurisdiction of the trial Court was also challenged. It was stated that the lease created in favour of the plaintiff was w.e.f. 1.5.1999 for a period of five years and thereafter the agreement was not extended and, therefore, the possession was unauthorised. It was denied that he is tenant of the shop under defendant No.1. Rather, his status of lessee ceases to exist after the expiry of lease period.

The trial Court, on the basis of the pleadings of the parties to the lis, framed the following issues:-

- 1) *Whether the plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction against the defendants, as prayed for? OPP*
- 2) *Whether the suit of the plaintiff is not maintainable? OPD*
- 3) *Whether the plaintiff has no cause of action and locus standi to file the present case? OPD*
- 4) *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 5) *Whether the plaintiff has not come to the court with clean hands and has concealed the material facts? OPD*
- 6) *Whether the defendants had already filed an application against the plaintiff under Section 4, 5, 7 of Haryana Public Premises Act, 1972? OPD*
- 7) *Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD*
- 8) *Relief.*

The trial Court, on the basis of the evidence led, decreed the suit granting declaration that the tenancy of the plaintiff over the shop was perpetual and month to month and he is in lawful possession of the shop as tenant and the ejectment petition filed before the Collector claiming the

appellant-plaintiff to be unauthorised occupant was without jurisdiction, null and void as only Rent Controller had jurisdiction. Injunction was also granted restraining the defendants from dispossessing the plaintiff forcibly except in due course of law, i.e., proceedings under the Haryana Act. The appeal laid before the Lower Appellate Court by the respondent-defendants was allowed. It is in this background, present Regular Second Appeals have been filed.

Mr.N.K.Malhotra, learned counsel representing the appellant-plaintiffs submitted that there was a categoric admission of the respondent-defendants that the property was not owned by Zila Sainik Board, but was of Sainik Rest House and rightly so, injunction was granted. He referred to letter dated 24.9.1980 (Ex.D8) issued by the Secretary, Haryana Amalgamated Fund for the Welfare of Ex-Servicemen to all the Secretaries, Zila Sainik Board in the Haryana State. There was a categoric admission of the witnesses appeared on behalf of the Board. It is in that background, the declaration qua tenancy was granted. Even otherwise, the possession of the appellant-plaintiffs had not been denied and the only remedy to seek eviction was under the Rent Act, but not under any other law. The findings of the Lower Appellate Court, thus, were perverse holding that the Civil Court did not have the jurisdiction and the eviction could be ordered under 1972 Act. He further submitted that he does not have any instructions from his client as to whether the order of eviction passed by the Collector dated 20.5.2011 was assailed or not and, thus, urged this Court for extension of interim injunction granted by this Court vide order dated 14.8.2013 till the remedy is availed of.

Per contra, Mr.Pawan Kumar Jangra, Addl.A.G.Haryana,

representing the respondents submitted that the plaintiffs have already availed the remedy of appeal, much less writ petition in this Court, i.e., Civil Writ Petition No.14014 of 1993 and the same had been rendered infructuous vide order dated 5.4.2013. The Civil Court did not have the jurisdiction as the remedy was only under 1972 Act, for which the remedy had already been availed of. The plaintiffs were estopped to challenge the status of the Sainik Board as per the provisions of Section 116 of the Indian Evidence Act as the parties were confined to terms and conditions of the agreement dated 3.5.1999. Earlier eviction order passed was not conforming to the provisions of the Act and thereafter fresh proceedings were initiated resulting into eviction order dated 20.5.2011 and, thus, urged this Court for maintaining the order. The trial Court could not have granted declaration to seek eviction under the Haryana Act.

I have heard the 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.Malhotra, for, the view expressed by the Lower Appellate Court vide judgment and decree with regard to the declaration granted by the trial Court directing the defendants to seek eviction of the appellants only under the Rent Act was wholly fallacious, for, as per provisions of Section 9, the jurisdiction of the Civil Court is barred.

The parties were bound by the terms and conditions of the agreement dated 3.5.1999, which are sacrosanct and cannot be deviated. There is a specific clause that on non-continuation or extension of the agreement, status of the lessee would be that of unauthorised. The premises leased out by the authorities would be public premises and the remedy to seek eviction would be only under 1972 Act, but the Lower Appellate Court

while setting-aside the judgment and decree of the trial Court, remained oblivious of the fact that the possession of the plaintiff, even though unauthorised, can be only taken in accordance with law. It has not been brought on record as to whether the order dated 20.5.2011 had attained finality, for, the order dated 5.4.2013 rendered in CWP No.14014 of 1993 was in respect of some earlier writ petition, i.e., much before it. Even Mr.Malhotra has not been able to apprise this Court regarding the availment of the remedy. Be that as it may, even if it is found that the person is in long and settled possession, he cannot be ejected except in due course of law. The aforementioned view of mine is fortified from the judgment rendered by the Hon'ble Supreme Court in Rame Gowda (D) by L.Rs Versus M.Varabappa Naidu (D) by L.Rs & another, 2004 (1) SCC 769. This aspect has not been taken care of while accepting the appeal of the respondent-defendants.

For the reasons stated above, the judgment and decree of the Lower Appellate Court is upheld with regard to the non maintainability of the suit seeking declaration, but as far as injunction is concerned, it is modified by making it clear that in case the defendants have not been able to seek possession of the property from the plaintiffs in accordance with law, the plaintiffs can be ejected in due course of law and by adding a caveat that in case the possession has already been taken, the injunction granted by this Court vide order dated 14.8.2013 shall be deemed to have been vacated.

Appeals stand disposed of in the aforementioned terms.

March 27, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No