

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

103

CR No.441 of 2016

Date of decision:23.5.2019

Nagar Council Barnala

... Petitioner

versus

Kulwant Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Harinder Kumar, Advocate,
for the petitioner
Ms.Maninder Preet Kaur, Advocate,
for the respondent
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner, i.e. the Nagar Council, Barnala, has challenged the order of the learned Civil Judge (Junior Division), Barnala, dated 19.10.2015, by which the preliminary issue arising in the suit instituted by the respondent herein, i.e. on the issue of jurisdiction of the civil court to entertain such a suit, has been decided against the petitioner-defendant and in favour of the respondent-plaintiff.

The preliminary issue framed, as recorded in the order of the learned trial Court, is as follows:-

“1. Whether the court has jurisdiction to try the present suit under Section 15 of Punjab Premises Act? OPP

2. Relief.”

2. The suit instituted by the respondent herein is one seeking a declaration to the effect that the respondent-plaintiff is “a genuine owner in possession of one *Khokha* (kiosk) no.14 size 8'x8'”, with the description of

the property also naturally given in the plaint, with him further seeking a declaration to the effect that the order passed by the Deputy Director, Local Self Government, Punjab, Patiala, on 22.7.2014, exercising powers of a Collector under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the Act), is an order that is null and void and not binding on the plaintiff.

3. In the order passed by the Collector under the Act, dated 22.7.2014 (copy Annexure P-1), it is stated that notices under Sections 4(1) and 7(3) of the Act were issued to the respondent herein, who appeared before that authority in response thereto on 22.2.2011, and filed a reply to the notices on 14.6.2012.

It has been held in that order that the respondent herein (plaintiff before the trial Court and respondent before the Collector), had in fact admitted in paragraph 3 of his reply to the notices that the Nagar Council, Barnala, was the owner of the land (on which a kiosk had been erected by him). As per the order, the respondent herein had also admitted that he was not a tenant on the disputed land.

Noticing also that the respondent herein had not been able to lead any evidence with regard to his ownership of the land, it was held that it was the Nagar Council that was the owner thereof, over which the respondent herein had tried to take unauthorized possession by placing a wooden kiosk thereupon.

4. Consequently, his eviction therefrom was ordered immediately, with him also directed to pay Rs.20,000/- for using the disputed land unauthorizedly, and to further pay a sum of Rs.2,000/- per month till the

vacation of the land, in addition to Rs.5,000/- as “legal expenses”. The respondent was also directed to vacate the land within a period of 30 days from the date of passing of the order.

5. That order having been challenged by way of a civil suit before the learned Civil Judge (Junior Division), Barnala, the impugned order has come to be passed, in which the aforesaid reproduced preliminary issues were framed.

Having framed the issues and having reproduced Section 15 of the Act, that Court came to the following conclusion:-

“Filing suit for declaration is not hit by Section 15 of Punjab Premises Act, since in the present suit civil rights of plaintiffs are involved and present issue has to be decided by proper adjudication before the civil court. Therefore, this court has jurisdiction to try the present suit and preliminary issue is hereby decided in favour of plaintiff and against the defendant.”

6. Learned counsel for the petitioner submits that the learned trial Court has wholly erred in holding as above, because the ownership of the suit property is not disputed even by the respondent in his plaint. His entire case in the plaint is to the effect that he having placed a kiosk (“*khokha*”) on the suit land, for which he had been paying *Teh-bazari* fee to the Nagar Council, the order passed by the Collector is wholly unsustainable.

Learned counsel further submits that therefore, the jurisdiction of the Collector not being in doubt, the civil court wholly erred in assuming jurisdiction in the face of the bar contained in Section 15 of the Act of 1973.

He also relies upon a judgment of a coordinate Bench of this Court in Amarjit Singh vs. The Punjab State and other, 2010(1) RCR (Civil) 98, to submit that the civil court has no jurisdiction to entertain such a suit.

7. Learned counsel for the respondent-plaintiff on the other hand reiterates what she has submitted yesterday, to the effect that the trial Court having found that civil rights of the respondent herein were involved in the suit, in respect of which he has sought a declaration, the question of title needs to be decided by a civil court and consequently the bar contained in the aforesaid provision would not operate against the plaintiff.

8. When the matter had come up for hearing yesterday, learned counsel for the respondent-plaintiff had been asked to point out from the pleadings in the suit, i.e. from the plaint, as to any reasoning given to substantiate any averment made therein, that the Collector who had passed the order was acting without jurisdiction in passing the said order, thereby making the order null and void so as to therefore not oust the jurisdiction of the civil Court.

Today, she has stated very fairly on that issue, that no such averment has been made in the plaint; but she reiterates what she had already argued yesterday as stated hereinabove.

9. Before considering the matter, the provision itself needs to be looked at and is therefore reproduced hereinbelow:-

“15. Bar of jurisdiction.- No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorized occupation of any public premises or the recovery of the arrears of rent payable under

sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government, or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs.”

Thus, the jurisdiction of the civil Court is very clearly barred even in terms of sub-clause (a) of Section 15 of the Act of 1973, if any person is in unauthorized occupation of any public premises.

10. That being so and even the respondent in paragraph 3 of his own plaint having admitted that the land on which his kiosk stands belongs to the petitioner Nagar Council, in the opinion of this Court, the impugned order is wholly unsustainable, the question of title to the suit land on which the kiosk stands, not being in doubt at all.

The question only would be therefore as to whether the kiosk has been erected/constructed legally or illegally, because the respondents' stand is that he is regularly paying *Teh-bazari* fee to the petitioner Nagar Council.

That would be a matter which he would have to agitate before the Appellate Authority under the Act of 1973, who, as per Section 9 thereof, is the Commissioner as defined in Section 2(aa) of the Act.

11. Consequently, this petition is allowed, with the impugned order set aside and the civil court held to not have jurisdiction to entertain the suit instituted by the respondent-plaintiff.

The respondent-plaintiff naturally would be at liberty to file an appeal before the Commissioner in terms of Section 9 of the Act of 1973; and if the appeal is filed within 30 days from today, the Commissioner shall

not dismiss it on the ground of it having been filed beyond limitation, because it is not the case of the petitioner Nagar Council that the suit instituted challenging the order of the Collector dated 22.7.2014 was instituted beyond limitation to even file an appeal before the Commissioner.

12. Since the respondent-plaintiffs' specific averment is that he has been paying *Teh-bazari* fee to the Nagar Council, without making any comment on the correctness or otherwise of that averment, the respondent be not evicted for a period of 15 days from the date of the filing the appeal before the Commissioner.

The Commissioner would, within that period of 15 days, decide the question of whether the interim relief granted by this Court to the respondent-plaintiff is to be continued or not, in the circumstances of the case.

23.5.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No