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

**RSA-3555-1987 (O&M)
Date of decision : 01.02.2019**

Madan Mohan Lal (deceased) through LRs

... Appellant

Versus

Union of India and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant.

Ms. Ranjana Shahi, Advocate
for respondent No.1-Union of India.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree dated 30.07.1987 of the lower Appellate Court, whereby the appeal of the respondent-defendant-Union of India preferred against the judgment and decree dated 28.09.1982 of the trial Court, decreeing the suit, has been allowed, in essence, the suit has been dismissed.

The plaintiffs instituted the suit for declaration on 05.08.1975 alleging themselves to be owner in possession of bungalows No.96 and 96-A situated in Ambala Cantonment, by laying challenge to the notice dated 15.03.1975. It was alleged that the land measuring 8.56 acres belonged to the Union of India and was held by the plaintiff being 'Old Grant' on the terms contained in Governor General's Order dated 12.09.1836, Government had decided to resume the land and building etc.

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by offering a compensation of ₹21,968/- through cheque dated 15.03.1975 and further directed the plaintiffs to hand over the possession within a period of 30 days. The said notice was said to be illegal, unconstitutional, without jurisdiction, ultra-vires, much less, against the principles of natural justice.

The defendant-Union of India opposed the suit by challenging the jurisdiction of the Civil Court being barred under Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'the 1971 Act') and on merits, it was stated that the terms and conditions of the Governor General's Order, empowered the Department to issue resumption notice, therefore, there was no illegality or said to be without jurisdiction.

On the basis of the pleadings, the trial Court framed the following issues:-

- 1. Whether the notice served by the defendant on the plaintiffs alongwith a cheque for ₹21968/- is illegal, unconstitutional, without jurisdiction, ultra vires of the powers of the Deputy Director of Military Lands and Cantonments as given in para 4(i) to (ix)?*
- 2. Whether the notice of resumption has been served on all the owners of the property in dispute?*
- 3. Whether the plaintiff and other owners of the property in dispute were heard at that time of resumption and the fixation of compensation and whether any notice in relation thereto was served on them, if so, what is its effect?*
- 4. What is the market value of the property in dispute?*
- 5. Whether the defendant has got a right of resumption? If so, what is its effect?*
- 6. Whether the resumption is vitiated and is illegal for the*

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reasons given in para No.10 of the plaint?

7. Whether the plaintiffs are in unauthorized occupation of the public premises and the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, have been taken against the plaintiffs and if so, what is its effect?

8. Whether the jurisdiction of the civil court is barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971?

9. Relief.

In order to prove the allegations, the plaintiffs examined Bhupinder Parkash Mittal as PW1 besides the statement of one of the plaintiffs namely, Madan Mohan Lal as PW1, whereas the defendants examined Capt. A.S. Paddan as DW1, G.S. Sahni SDO as DW2, Manjjit Singh, Superintending Engineer as DW3 and Darshan Singh Ahluwalia, Superintendent as DW4.

The trial Court noticing the non-compliance of principles of natural justice, decreed the suit, but the lower Appellate Court, in appeal, reversed the findings of the trial Court.

Learned counsel for the appellant-plaintiff No.1 submitted that the judgment and decree of the lower Appellate Court in adhering to Regulation 6 of the Governor General's Order, cannot be construed to be a blanket power for seeking resumption of building without complying the provisions of principles of natural justice. In support of his contentions, reliance has been laid to the *ratio decidendi* culled out by the Division Bench of this Court in "Tek Chand and others V/s Union of India and another" 1980 AIR (Punjab) 339, 1981 Land. L.R. 158, to contend that

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this Court by noticing the provisions of the Government Grants Act, 1895, held that even if the Department is empowered to resume the building but the same cannot be done without principles of natural justice, but whenever the civil rights of person were involved or affected by the quasi-judicial and judicial authority. The plaintiffs were not accorded the ownership as it was a case of grant, but no person, who is in long and settled possession, cannot be dispossessed except in due course of law. Even no opportunity was given for the purpose of assessment of compensation, therefore, there was violation of the provisions of the Constitution of India, thus, urges this Court for setting aside the judgment and decree, under challenge.

Learned counsel for respondent No.1-defendant-Union of India supported the judgment and decree, under challenge, by submitting that the Grants Commission empowers the authority to resume the building without complying with the principles of natural justice, thus, there cannot be any violation of the provisions of Constitution of India or the 1895 Act. The Civil Court did not have jurisdiction in view of the provisions of Section 15 of 1971 Act, in fact, the plaintiffs were holders of occupancy rights of 'Old Grant' and rightly so, notice was served upon them, thus, urges this Court for dismissal of the present regular second appeal as there is no illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following substantial questions of law arises for determination:

- 1. Whether the provisions of 1971 Act enforced by the quasi-judicial and judicial authority, can do away the compliance of principles of natural justice.*

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2. Whether a person can be deprived of the possession without resorting to the procedure of law.

DW2-G.S. Sahni, SDO, in cross-examination, stated that they had been maintaining the register known as General Lands Register, wherein the properties with regard to the 'Old Grant', were reflected, but did not bring the said register, except only its extract. He could not explain the date of grant or execution of any deed. It was clarified that he was not asked to bring the grant register nor could define the term of occupancy tenants. The impugned notice, directed the plaintiff to hand over the possession within a period of 30 days and in lieu thereof, amount, as referred to above, was offered by way of enclosed cheque. The lower Appellate Court strictly construed the Regulation No.6 of the Governor General's Order, empowered the Department to resume the building, but did not comply the *ratio decidendi* culled out in ***Tek Chand's case*** (*supra*), wherein, in para 12, by noticing the aforementioned provisions and decision of this Court reported as **Union of India V/s Mrs. Hardarshan Sahi, AIR 1975 Punjab and Haryana 228**, held that as and when the civil rights of the parties were affected by the quasi-judicial and judicial authority, there cannot be any exclusion of principles of natural justice. For the sake of brevity, para 12 of the judgment reads as under:-

*"12. Now we examine the petitioners contention that before issuing the notice and before determining the quantum of compensation, they should have been afforded an opportunity of hearing. They sought support for this contention from a Division Bench decision of this Court reported as **Union of India v. Mrs. Har darshan Sahi, AIR 1975 Punj and Har 228**, and drew out pointed attention to the following observations*

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thereof:--

"The argument of Mr. Kuldip Singh to the effect that in the absence of a specific provision in the grant requiring an opportunity of hearing being given to the grantee before any part of her grant is resumed, no question of satisfying principles of natural justice can arise, is wholly without merit. Principles of natural justice will always step in where civil rights of a person are involved or where some quasi-judicial and judicial function has to be exercised unless the application of any of those Principles is expressly excluded by the relevant law or grant. There is no such exclusion of the principles of natural justice in this case. Those principles must, therefore, apply both to the question of resumption of a part of the grant, and also to the question of determination of the quantum of compensation to which the respondent is entitled."

A person, who is found to be in long and settled possession, cannot be dispossessed except in due course of law. Even if the property had been resumed, there is a procedure to take the possession by resorting to the provisions of law i.e. in the case of public premises, under 1971 Act or if a licensee, under Section 39 of the Specific Relief Act. All the facts have not been adhered to or noticed by the lower Appellate Court, therefore, in my view, the judgment and decree, under challenge, is wholly preposterous, illegal, much less, fallacious and cannot be sustained.

In view of what has been noticed above, the substantial questions of law, as noticed above, are answered in favour of the appellant-plaintiff No.1 and against the respondent-defendant-Union of India. Accordingly, the judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored, with a rider that if at all, the

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defendants wanted to take the possession by revocation of a grant, it has to be in accordance with law.

Resultantly, the present regular second appeal is allowed.

01.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**