

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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Date of decision: 29.04.2019

CWP-25363 of 2018

ANAND SWAROOP AND OTHERS

...PETITIONERS

VS.

THE FINANCIAL COMMISSIONER (APPEALS), PUNJAB AND OTHERS

...RESPONDENTS

CWP-25366 of 2018

BALWANT SINGH (SINCE DECEASED) THROUGH HIS LRS

...PETITIONERS

VS.

THE FINANCIAL COMMISSIONER (APPEALS), PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Goyal, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide two writ petitions i.e. CWP No. 25363 of 2018 titled as Anand Swaroop and others vs. The Financial Commissioner (Appeals), Punjab and others and CWP No. 25366 of 2018 titled as Balwant Singh (since deceased) through his LRs vs. The Financial Commissioner (Appeals), Punjab and others, as the orders under challenge are identical in these writ petitions i.e. order dated 17.05.2018 (Annexure P-4) passed by the Financial Commissioner (Appeals) Punjab-respondent No. 1, order dated 11.11.2016 (Annexure P-3) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No. 2 and order dated 19.10.2011

(Annexure P-2) passed by the Collector Hoshiarpur, District Hoshiarpur-respondent No. 3, whereby the application preferred by the private respondents has been accepted and ejectment of the petitioners from the land in question has been ordered for non-payment of rent.

Briefly, the facts of the case are that the private respondents filed ejectment suit against the petitioners situated in Village Pandori Tehsil Mukerian, District Hoshiarpur claiming the arrears of chakota land as the rent has not been paid by the petitioners for many years, however, recovery was claimed for the last three years as the earlier period had become time barred. The said petition was dismissed by the Sub-Divisional Magistrate-cum-Assistant Collector Ist Grade, Mukerian on 24.10.2008 (Annexure P-1), appeal against which preferred by the private respondents has been accepted by the Deputy Commissioner-cum-District Collector, Hoshiarpur on 19.10.2011 ordering ejectment of the petitioners for non-payment of rent, which orders have been upheld by the Commissioner, Jalandhar Division, Jalandhar, vide order dated 11.11.2016 (Annexure P-3) and by the Financial Commissioner (Appeals) Punjab vide order dated 17.05.2018 (Annexure P-4), which have been challenged in these writ petitions.

It is the contention of the learned counsel for the petitioners that the land in question was given on rent to the predecessors-in-interest of the petitioners by the respondents on the basis of a writing dated 24.12.1921, wherein the rent was ₹2 & 8 Annas, which was never varied and enhanced. There being no provision for enhancement of the rent, the same could not be enhanced, however, there were certain wrong entries made in the Jamabandi, on the basis of which, rent is stated to have been

enhanced to ₹50 per annum which is being made the basis for putting forth the claim. He contends that in the absence of any compromise entered into between the parties and there being no provision for enhancement of rent in the writing dated 24.12.1921, the rent continues to be ₹2 & 8 Annas, which would be ₹2.50 per annum. His further contention is that with the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (hereinafter referred to as '1953 Act'), petitioners acquired the ownership of the suit land and the rights of the private respondents extinguished in the suit land. The result of the coming into force of the 1953 Act would be that from 15.06.1953, the petitioners automatically became the owners in possession of the suit land. If that be so, with the operation of the Statute, petitioners having become the owners of the land in question were not required to pay any rent.

It is further contention of the learned counsel for the petitioners that notice in Form 'N', which is mandated under the Punjab Security of Land Tenures Act, has not been issued to the petitioners prior to initiating proceedings under Section 77 of the said Act and, therefore, the order of ejectment cannot sustain and deserves to be set aside. In support of this contention, he has placed reliance upon the judgments of this Court in **Subhash Chand vs. State of Haryana and others**, 2003 (1) RCR (Civil) 486, **Ajmer Singh and others vs. Financial Commissioner, Haryana and others**, 2007 (10) RCR (Civil) 938, **Shiv Charan vs. Financial Commissioner, Haryana and others**, 2004 (4) RCR (Civil) 543, **Kailash Wati through LR's vs. Financial Commissioner Haryana**, 2016 (4) RCR (Civil) 1015 and a judgment of the Supreme Court in **Bahadur Singh and others vs. Shangara Singh and others**, 1995 PLJ 256.

I have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the records of the case.

A perusal of the plaint filed by the private respondents would show that it has clearly been mentioned that the petitioners were tenants/chakotadars, who had not paid rent. Because of non-payment of rent for the years 2003-04, 2004-05 and 2005-06, arrears were claimed for the said period as the arrears beyond that were barred by limitation. It was asserted therein that the amount of arrears was also specified which the petitioners were liable to pay. The factum of arrears of rent has been disputed by the petitioners on the plea that with the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, petitioners have become owners of the said land and, therefore, are not liable to pay any rent as they are no more tenants. Therefore, serving of notice in Form 'N' would not serve any purpose. However, it is an admitted position that no rent has been deposited by the petitioners even after the order dated 19.10.2011 passed by the Deputy Commissioner-cum-Collector, Hoshiarpur, who has held that the petitioners were tenants over the suit property @50/- per year.

Thus, what would be the determinative factor is whether merely because of coming into force of the 1953 Act, petitioners would become the owners of the land on which they were tenants?

The said plea cannot be accepted as there is nothing which can be automatically said to take effect for operation of the Act. Firstly, the entries have to be made in the revenue record and if that being not the position, then the jurisdiction with regard to the issue would be that of the

Civil Court as per the Full Bench judgment of this Court in Shiv Charan's case (supra). Petitioners, admittedly, have not resorted to the said remedy.

The contention of the counsel for the petitioners that the rent could not be enhanced without the consent of the petitioners especially in the light of the fact that the writing dated 24.12.1921 did not mention such a thing, cannot be accepted in the light of the entries in the revenue records, which have been duly approved, wherein the rent has been clearly mentioned, which Jamabandis have not been challenged by the petitioners in any manner. Not only does the Jamabandis show the private respondents to be the owners of the said land but the petitioners are shown as tenants with the specified rent therein per annum, which, admittedly, petitioners have not paid.

If that be so, the impugned orders being in consonance with the revenue records and law do not call for any interference and, therefore, deserve dismissal.

The judgments, on which reliance has been placed by the counsel for the petitioners, would not be applicable to these cases and are distinguishable on facts as it was on different footing altogether. In Ajmer Singh's case (supra), the judgment was based upon assessment of the arrears of rent where the authorities had not granted any opportunity to the tenant to make the payment after assessment of the amount whereas the present case is one where the petitioners are claiming themselves to be the owners of the land in question and, therefore, the question of payment of rent does not arise.

As regards the judgment in Shiv Charan's case (supra) is concerned, petitioners have not availed of the remedy of approaching the

Civil Court for the purpose of declaration in the light of the fact that the revenue records depict the respondents to be the owners of the land even after coming into force of the 1953 Act. The judgment in Kailash Wati's case (supra) is based upon the judgment of Shiv Charan's case (supra) wherein the tenants were seeking occupancy right under the Punjab Tenancy Act, wherein this Court has held that it is only the Civil Court which has the jurisdiction. In the light of this judgment, the claim of the petitioners to the effect that they have become the owners of the land in question, cannot be accepted.

In view of the above, these writ petitions stand dismissed being devoid of merit.

April 29, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No