

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

**CWP-7563-2020
Decided on : 21.07.2020**

Harjeet Kaur

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Nikhil Chopra, Advocate,
for the petitioner(s).

Mr. Sumit Gupta, Addl. AG, Haryana.

Mr. Pankaj Bali, Advocate
for respondents No. 7 & 8.

MANJARI NEHRU KAUL, J. (Oral)

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The petitioner has approached this Court under Articles 226/227 of the Constitution of India, seeking a writ of *Certiorari*, for quashing of the impugned order dated 16th May, 2020 (Annexure P-15), whereby, respondent No.3 had ordered the ejectment of the petitioner from House No. 325, Sector 14, Urban Estate Karnal. Further, petitioner has also prayed for a writ of *Mandamus*, for directing the respondents to restore the possession of the petitioner over the house in question. Besides above, certain other prayers have also been made.

The case of the petitioner in a nutshell is that she is a 53 years old widow. She had been residing in House No. 325, Sector 14, Urban Estate, Karnal (hereinafter referred to as 'house in question'), as a tenant since the year 2005-06, after taking the house in question on rent from Smt.

Bhago Devi, mother of Bishambar Dass (respondent No.7), for which she

had been regularly paying rent to the respondent landlord. After the death of her husband in a motor vehicular accident in the year 1995, she was compelled to sell off her husband's house due to financial constraints and she also filed a claim before the Motor Accident Claims Tribunal, for which she was awarded and received compensation of ₹ 25.00 lakhs in the year 2016. Her son, who is based in U.K. has also been financially supporting the petitioner. Respondent No.7 - landlord was well aware of the above facts and hence he offered to sell the house in question to the petitioner by telling her that she could make the payment towards purchase of the house as per her convenience. The petitioner accepted the offer to purchase the house in question and started gradually making payment to respondent No.7. Over a period of time, she paid ₹ 40.00 lakhs and requested the respondent landlord to transfer the house in her name as already settled between them. However, respondent No.7 refused to do the needful. Rather, an application was moved against her by respondent No.7 alleging therein that she had not been paying the rent to them and went ahead and got the electricity disconnected in the house in question. Respondent No.7 thereafter tried to forcibly dispossess the petitioner from the house in question with the help of unknown persons. In this background, left with no other choice, the petitioner filed a civil suit for permanent injunction against respondents No. 7 & 8 (Annexure P-2). Respondents No.7 & 8 filed their written statement in the said suit (Annexure P-4). Liberty was granted to the petitioner by the Civil Court concerned to apply for a new electricity connection in her name as a tenant of the suit property. In the meanwhile, respondent No.7 also filed a petition under Sections 12 & 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (Annexure P-5), for the ejectment of the

petitioner from the house in question. The petitioner appeared before the Rent Controller in the aforementioned petition and filed her written statement (Annexure P-6). Despite the civil proceedings pending between the parties, the respondents continued to extend threats to the petitioner to vacate the house in question or else face dire consequences, for which she repeatedly made representations to respondent No.5 - Superintendent of Police, Karnal, for the protection of her life and liberty and for taking action against the landlord-respondents, but in vain. On 05.03.2020 an attempt to dispossess the petitioner from the house in question was made by the private respondents, wherein, the petitioner was manhandled and threatened to be killed. Even though the police authorities were duly informed about the occurrence, instead of coming to the rescue of the petitioner, they started pressurizing her to compromise the matter with the private respondents and vacate the premises. As if that was not enough, on 09.03.2020, the private respondents along with some persons again forcibly entered the house in question, where she had been residing all alone, after breaking the lock and threatened her that in case she refused to vacate the premises, she would be killed (In support of her allegations, photographs Annexures P-10 & P-11 have been annexed with the instant petition). The petitioner yet again approached the police authorities for taking appropriate action against the private respondents and others for trespassing into the house, but the police again pressurized her to enter into a compromise with the private respondents. Left with no other choice, the petitioner filed CRM-M-10848-2020 in this Court for the protection of her life and liberty. This Court vide order dated 19th March, 2020 (Annexure P-12), directed the respondent State to look into the alleged threat and thereafter, the case was adjourned to

31.03.2020. However, due to the lockdown imposed on account of outbreak of pandemic COVID-19, the case was adjourned to 01.07.2020. Meanwhile, the respondent landlord submitted a complaint to respondent No.2 – Deputy Commissioner, Karnal (Annexure P-13), to register a case against the petitioner for being in unauthorized possession of his house and not paying the rent to him regularly. Respondent No.2 – Deputy Commissioner, Karnal, directed the SDO(C) to conduct an inquiry into the matter and to submit his report within three days. The petitioner was called by the SDO(C) and she filed a detailed reply (Annexure P-14), wherein, she mentioned about the pendency of civil and rent proceedings between the parties. However, despite the petitioner having brought all these facts to the notice of SDO(C), respondent No.2 – Deputy Commissioner, Karnal passed the impugned order dated 16.05.2020 (Annexure P-15), vide which respondent No.3 – Tehsildar, was directed in his capacity as Duty Magistrate to get the house in question vacated from the petitioner.

Learned counsel for the petitioner has vehemently contended that the impugned order has been passed in utter violation of the principle of natural justice. Neither was any notice nor any intimation given to the petitioner prior to the action taken pursuant to the impugned order dated 16.05.2020 (Annexure P-15), which on the face of it, is patently illegal. The *mala fides* on the part of the official respondents is writ large as the impugned order was passed and also executed on a Saturday, which was a holiday. The belongings and other articles of the petitioner were thrown out of her house, as a result of which she had to take shelter in a relative's house. Moreover, she could not even resort to any legal remedy, on account of the conditions prevailing due to COVID-19. Learned counsel while

making his submissions, has referred to some of the photographs annexed with the present petition as Annexure P-16, which reflect the inhuman behaviour of the respondents, wherein, all the personal belongings along with other articles of the petitioner are shown strewn in the open on the roadside. The learned counsel while drawing the attention of this Court to the complaint (Annexure P-13) made to respondent No.2 - Deputy Commissioner, Karnal, has submitted that respondent No.2 - Deputy Commissioner, Karnal, went much beyond his jurisdiction and power, as in the said complaint only a request had been made to respondent No.2 to register a case against the petitioner, however, respondent No.2 - Deputy Commissioner, Karnal, instead ordered her eviction from the house in question despite the fact that it was well within his knowledge that the matter was subjudice before a Civil Court and there were litigations pending between the parties. The learned counsel has further urged that the *mala fides* on the part of respondent No.2 - Deputy Commissioner, Karnal, are clearly discernible from the fact that it was he himself, who had passed an order dated 31st March, 2020 (Annexure P-18), wherein, it had been directed that as per the directions issued by Chairperson, National Executive Committee, Govt. of India, Ministry of Home Affairs, New Delhi, no landlord would forcibly evict his tenant during the lockdown period. Hence, the impugned order was not only, illegal, but also violative of the order dated 31.03.2020 (Annexure P-18), in which punishment of 2 years of imprisonment was prescribed for its violation under the National Disaster Management Act.

A short reply by way of an affidavit of respondent No.2 – Deputy Commissioner, Karnal, on behalf of respondents No.1 to 3 was

filed. It would be apposite to reproduce para Nos. 4, 5 & 6 of the said reply:-

"4. That it is submitted that since respondents No.7 & 8 are retired from a dignified Govt. Services, their only son has been died and they were struggling for getting possession of their own house for last one year in such an old age of 80 years. Therefore, they got social support from the public in this respect and agitations were being carried out by them with social elements from the day they moved application (Annexure P/13) before the deponent for taking possession fo the house in question. Due to such agitations, situation of law & order were being faced by the administration during Covid-19 and routine work of Civil Courts was also suspended from the last two months. Therefore, to maintain law and order situation and to contain the possibility of spreading of infection of Covid-19 among the people, and considering the fact came in the report of Sub Divisional Officer (C), Karnal that petitioner wants to occupy the house in question melefidely, deponent passed the orders dated 16.05.2020 (annexure P-15) in the interest of justice bonafidely. Photographs of agitation are annexed herewith as Annexure R-2 to R-4 for kind perusal of this Hon'ble Court.

5. That it is pertinent to mention here that there was no

malafide intention on the part of the deponent while passing the impugned order and the same has not been passed under the Senior Citizen Act but purely in administrative capacity therefore, the authority relied upon by the counsel for the petitioner is not applicable to the facts of the present case.

6. *That the present petition is misconceived of facts and liable to be dismissed because there is no lapse on the part of the deponent which could be presumed as biased, arbitrary, illegal or violation of fundamental/legal rights of the petitioner, rather the deponent has discharged his official duty with due diligence. Therefore, present petition is liable to be dismissed on this score alone."*

I have heard learned counsel for the parties and perused the material on record.

In the affidavit filed by respondent No.2 - Deputy Commissioner, Karnal, it has been unabashedly stated that there was no lapse on his part, which could be termed or presumed as being arbitrary, illegal or violative of the fundamental and legal rights of the petitioner. Neither the affidavit filed by respondent No.2 nor the impugned order disclose under what provisions of law it had been passed and the learned State counsel too has not been able to refer to any provisions of law under which the impugned order was passed.

The learned State counsel has urged that the impugned order

was not passed with any *mala fide* intent, much less, any bias, however, he

has miserably failed to satisfy this Court *qua* the legality of the impugned order passed by respondent No.2 - Deputy Commissioner, Karnal. On a query put to the learned State counsel, he has conceded that once the Civil Court and the Rent Controller were seized of the matter, an application for eviction before respondent No.2 – Deputy Commissioner, Karnal, was not maintainable and respondent No.2 - Deputy Commissioner, Karnal, could not have ordered the eviction of the petitioner.

Moreover, in the case in hand, strangely the respondent landlord approached respondent No.2 – Deputy Commissioner, Karnal, only with a complaint to register a case against the petitioner for being in unauthorized possession of the house in question and irregular payment of rent. However, the latter in his over enthusiasm and presumably in an effort to please the private respondents, who as per his affidavit is a retiree from a "dignified Government service" ordered an inquiry and thereafter, in a tearing hurry ordered the eviction as well, of the petitioner from the house in question, despite being well aware and conscious that civil as well as rent proceedings between the parties were pending before the courts concerned. The action of respondent No.2 - Deputy Commissioner, Karnal, is illegal *void ab initio*. I am afraid and also constrained to observe that respondent No.2 – Deputy Commissioner, Karnal, has exhibited total immaturity and ignorance of the basic provisions of law while passing the impugned order. Respondent No.2 - Deputy Commissioner, Karnal, had no business to enter into a landlord – tenant dispute, which was subjudice before the Civil Court. Respondent No.2 - Deputy Commissioner, Karnal, would be well advised to be more circumspect in future.

Accordingly, the impugned order dated 16.05.2020 (Annexure

P-15) is set aside and it is ordered that the possession of the house in question i.e. House No. 325, Sector 14, Urban Estate, Karnal, be restored to the petitioner forthwith on or before 01.08.2020. Respondent No.5 – Superintendent of Police, Karnal, is directed to ensure that the process of handing back the possession of the house in question to the petitioner is smooth and without any hurdle. Respondent No.5 – Superintendent of Police, Karnal, shall be free to use such reasonable force as may be warranted under the circumstances.

Coming to the prayer for compensating the petitioner for the losses incurred, she is at liberty to avail of any legal remedy as may be available to her.

Before parting with the matter, it must be emphasized that rule of law is alive in this country and official machinery cannot be permitted to be used for oppression. However, whatever has been observed hereinabove would not be construed as an expression of opinion on the merits of the cases pending between the parties before the Civil Court and the Rent Controller.

A copy of this order be communicated without any delay to the authorities concerned including respondent No.5 – Superintendent of Police, Karnal, for immediate and necessary compliance.

Disposed off in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

July 21, 2020

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No