

(Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 771 of 2021 (O&M)
In CWP No. 37517 of 2019

Daulat Ram

...Appellant

Versus

Financial Commissioner, Haryana and others

... Respondents

Date of Decision: 06.09.2021

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Sudhanshu Makkar, Advocate
for the appellant.

ASHOK KUMAR VERMA, J.

1. This LPA arises out of the order dated 19.08.2021 passed by the learned Single Judge of this Court dismissing the writ petition filed by the petitioners challenging the order dated 01.04.2019 passed by the learned Financial Commissioner, Haryana whereby the revision filed by the petitioner, appellant herein, has been dismissed.

2. Brief facts as culled out from the paper book are that respondent No. 5-Ram Swaroop had filed an ejectment petition under Section 9 (i) (ii) of the Punjab Security of Land Tenures Act, 1953 in Form-L for eviction of appellant-Daulat Ram and his two brothers namely Dharampal-proforma respondent no.6 and Ghanshyam Dass-proforma respondent no.7 due to failure to deposit rent/*batai* for the crop *kharif* 1994 to *Rabi* 1997. Ejectment proceedings were initiated by the contesting respondent/landlord for recovery of rent of Rs. 3,562/- qua rented land measuring 8 Kanal 0 Marla. The appellant and his two brothers were proceeded against ex-parte on 22.06.1999. Thereafter, order of eviction dated 03.12.2009 was passed by the Assistant Collector, 1st Grade, Bhiwani directing eviction of the appellant and his two brothers from the disputed land comprised in Murabba No.383, Killa No.16 (8-0) total measuring 8 Kanal 0 Marla. The said order was challenged by appellant-Daulat Ram and proforma respondent-Ghanshyam Dass by way of an appeal. The said appeal has been dismissed vide order dated 12.02.2013 by the Collector and the revision filed against the aforesaid order has also been dismissed by the Commissioner vide order dated 22.11.2016. The aforesaid orders were impugned in the writ petition filed by the appellant which has also been dismissed vide order dated 19.08.2021 passed by the learned Single Judge of this Court. Thus, this LPA has been filed against the said order of the learned Single Judge of this Court.

3. Learned counsel for the appellant vehemently contends that the order passed by the learned Single Judge is bad in the eyes of law. The learned Single Judge as also the Revenue Courts below have

failed to appreciate the fact that the appellant was never served in the ejectment proceedings as per the provisions of Section 90 of the Punjab Tenancy Act, 1887 (for short “the Act”). Thus, the learned counsel submits that the impugned orders are illegal and deserve to be quashed.

4. We have heard the learned counsel for the appellant and have gone through the paper-book.

5. From the perusal of the record, it appears that the appellant and his two brothers, namely, Dharampal and Ghanshyam Dass who were having joint tenancy over the land in question, were not paying the rent of Rs.3562/- as *Batai Tehai* for the Kharif 1994 to Rabi 1997. Thus, ejectment petition was filed against them on 20.05.1998 before the Assistant Collector on the ground of non-payment of rent regularly. A perusal of the record shows that number of attempts were made to serve the tenants but they deliberately avoided and evaded the service. Summons were sent on 14.6.1998 when service was effected on the son of Ghanshyam Dass, proforma respondent No. 7 herein who clearly stated that he would intimate his father and uncle to appear. However, after service nobody appeared. The Assistant Collector tried to serve again. Service was completed when proforma respondent-Dharampal, brother of the appellant refused to sign and receive the summons which is apparent from the order dated 22.06.1999 passed by the Assistant Collector. Furthermore, a perusal of the summons dated 14.04.2002 (Annexure P-6) received in the Court of Assistant Collector shows that one of brother of the appellant Dharampal refused to take summons and as

such, it would be deemed to be a proper service as per Section 90 (1) (c) of Act which provides that service can be effected upon adult member of his family who is residing with him and it is not disputed that tenant-Dharmapal is not adult. Thus, once tenant-Dharmpal has been duly served in the year 1999, it would be deemed to be service upon all, in view of Section 90 (3) of the Act. A perusal of the zimni order dated 17.04.2002 (Annexure P-6) passed by the Assistant Collector shows that summons have been duly served. One copy has been affixed on the house of appellant-tenant and the other respondents-tenants, but none of them appeared and as such the Assistant Collector also complied with the provisions of Section 90 (2) which provides that summons may be served by pasting a copy at the residence of the person to whom it is addressed whereby summons were affixed at the residence of the tenants.

Even one Advocate-Ishwar Singh Punia also appeared on behalf of all the three brothers and filed memo of appearance on 17.11.1998 before the Assistant Collector but thereafter he neither filed Power of Attorney nor appeared. In compliance with the procedure laid down under Section 92 of the Act, munadi was also conducted in this case which is apparent from the orders dated 10.3.2004 and 26.3.2004 passed by the Assistant Collector. Thereafter, Assistant Collector proceeded ex-parte against the tenants after making effort for six continuous years to serve the appellant-tenant and his brothers and after about 11 years, the ejectment order dated 3.12.2009 was passed by him.

6. From the aforesaid conduct of the appellant, it appears that he tried to adopt dilatory tactics in order to avoid and evade service and prolong the proceedings of eviction on one pretext or the other. He cannot be permitted to take advantage of that evasion. Avoiding service of process entails fatal consequences. In the present case, service has been duly effected as per the provisions of the Act. We see no reason to interfere with the orders passed by the Revenue Courts as also the learned Single Judge of this Court.

7. In view of the above, we find no merit in this appeal which is accordingly dismissed. Consequent upon the dismissal of the LPA, Miscellaneous Application for stay i.e CM No. 1886-LPA-2021 shall stand disposed of accordingly.

(ASHOK KUMAR VERMA)	(AUGUSTINE GEORGE MASIH)
JUDGE	JUDGE

06.09.2021
MFK

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>