

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

CR-1861-2021
Date of decision: 13.12.2021

Surender KumarPetitioner

versus

Municipal Corporation, PanipatRespondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Partap Singh, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for the respondent.

FATEH DEEP SINGH, J.

The petitioner-Surinder Kumar has invoked the jurisdiction of this Court in terms of Article 227 of the Constitution of India seeking prayer for setting aside of judgment/order dated 23.08.2021 passed in Civil Appeal bearing No. 18 of 2021 (CMA-38 of 2021) by the Court of the learned Additional District Judge (Annexure P-1) and also dismissing the appeal of the petitioner against order dated 15.07.2021 (Annexure P-4). In the civil suit of the petitioner, whereby, the application for stay was moved under Order 39

Rule 1 and 2 CPC read with Section 151 CPC and was dismissed is claimed to be against the law and is, thus, illegal and inoperative.

Heard learned counsel of both the sides and perused the records.

The brief history and background of this litigation is that premises of Municipal Corporation, Panipat situated near Quilla, Panipat popularly known as Hafiza Badi Ram Natak Club, Panipat (in short 'the Club') has been let out to the Club which has further given the premises to the petitioner at a rent of Rs.6,000/- per month besides payment of electricity bills. The petitioner had opened his laundry workshop therein since the year 2007 and has also installed a tubewell connection. That one Vinod Kumar had threatened to throw out the petitioner and the plaintiff was forced to file a suit for permanent injunction and the suit stood dismissed vide judgment/decreed dated 20.09.2017, against which, he had preferred an appeal before the learned First Appellate Court. It is, thereafter, the officials of the Municipal Corporation threatened the petitioner with eviction, who too, filed another suit for permanent injunction. During the course of events, the club filed eviction petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the Act') and the learned Rent Controller assessed rent with interest amounting to Rs.3 lakhs

with costs which was paid by the plaintiff on 20.01.2020. A letter bearing No.1641 dated 31.05.2021 was issued by the then defendant, now respondent-Municipal Corporation, Panipat to the present petitioner to pay arrears of rent @ Rs.6000/- per month for the period of 01.01.2020 to May, 2021 amounting to Rs.1,35,023/- which the petitioner paid and another demand of rent was raised by the respondent, which too, stood paid on 01.06.2021 amounting to Rs.1,44,263/-. It is, subsequently, order dated 28.06.2021 was passed by the respondent sealing the property without affording the petitioner any show cause notice or hearing him. It is, as a consequence of this, in the suit for permanent injunction, the petitioner moved an application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC for de-sealing the suit property. The Court of learned Civil Judge (Junior Division), Panipat, vide order dated 15.07.2021 dismissed the application. In the meanwhile, the Municipal Corporation filed a petition under Section 408 A (b) of Haryana Municipal Corporation Act, 1994 before the Joint Commissioner, Municipal Corporation, Panipat and who vide order dated 28.03.2014 passed an order of eviction against the club as well as payment of Rs.6,000/- per annum to the Corporation for in illegal possession and for usage of the property from the date of its possession. The document (Annexure P-6) is a letter from Commissioner to the petitioner

to pay rent at the rate of Rs.6,000/- per month and for the period with effect from 01.01.2020 to May, 2021 and had sought arrears of rent amounting to Rs.1,35,023/- and which as per the receipt (Annexure P-7) is shown to have been deposited in the account of the Urban Local Bodies Haryana and what dismays this Court is that letter bearing No.638 dated 18.08.2021 (Annexure P-8) has been issued by the Corporation to the petitioner regarding return of amount of the rent, wherein, it finds mention that earlier letter No.1641 dated 31.05.2021 has been wrongly issued and, thus, reverting from their previous stand, admitting tenancy with the petitioner and denying the same subsequently in this letter and has asked the petitioner for getting back his paid amount. The contention that is sought to be raised by the counsel for the two sides, is over the very provisions enshrined under Section 408 A of the Act and sub-section 1 Clause (a) (i) which provides that the competent authority, only if satisfied, that any person in authorized occupation of the premises had not paid rent lawfully due to him for two months or above, can be evicted under this provision. Since, as per the own stand of the Corporation, it has admitted in its letter No.1641 dated 31.05.2021 accepting the tenancy of the petitioner and asking the petitioner to deposit the rent, which he has deposited and which was accepted by the Department and now, they cannot revert back from their stand

by resort to this provision under the Act. Rather to the mind of this Court, in view of the own admission by the respondent-authorities, as to relationship of landlord and tenant, between the petitioner and the respondent, necessitates that in case, the Corporation intends to get the premises vacated from the petitioner, they had to resort to the statutory provisions enshrined in the Haryana Urban (Control of Rent and Eviction) Act, 1973 and cannot, by mere use of provisions of Section 408 A (b) of the Corporation Act, throw out the tenant. Thus, in light of what has come about, the orders dated 15.07.2021 (Annexure P-4) are illegal without jurisdiction and needs to be set aside. Since, by the own admission of the Corporation, petitioner is in occupation of the premises and, thus, cannot be evicted except by due course of law.

In light of the above discussions, the present petition stands partly allowed and disposed off accordingly.

13.12.2021*Neha***(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No