

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

**CM-10439-CWP-2021 in/and
CWP-37517-2019
Date of Decision: 19.08.2021**

Daulat Ram

....Petitioner

VS

Financial Commissioner, Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sudhanshu Makkar, Advocate
for the petitioner

SUDHIR MITTAL, J. (Oral)

CM-10439-CWP-2021

This application has been filed for placing on record Annexures P-6 and P-7 and for listing the main case.

Application is allowed as prayed for. Annexures P-6 and P-7 are taken on record. Main case is taken on Board.

CWP-37517-2019

The petitioner has challenged order dated 01.04.2019 passed by the learned Financial Commissioner, Haryana dismissing his revision petition filed against order dated 22.11.2016 passed by the Commissioner, Hisar Division.

Ramswaroop (respondent No.5) had filed an ejectment petition under Section 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred as the Act) in Form-L for eviction of Daulat Ram (petitioner) and his two brothers namely Ghanshyam Dass and Dharampal for failure to deposit *batai* for the crop *kharif* 1994 to *Rabi* 1997. Pursuant to issuance of notices, one Mr. Ishwar Singh Punia filed his memo of appearance on behalf of three brothers but did not appear later on nor did he file his power of attorney. Thereafter, proclamation was made but none appeared on behalf of three brothers and, thus, Daulat Ram and Ghanshyam Dass were proceeded against ex-parte on 26.05.2004. Dharampal had

already been 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, which was challenged by Daulat Ram and Ghanshyam Dass by way of appeal. The Collector dismissed the appeal on 12.02.2013 and the Commissioner dismissed the revision petition vide order dated 22.11.2016.

Learned counsel for the petitioner has submitted that the petitioner was illegally proceeded against ex-parte. The *batai* for the period in dispute was Rs.3562/- only and the petitioner was always willing to pay the same. Since, service was not effected, he could not appear. Thus, the impugned orders deserve to be set aside.

To submit that the petitioner had not been served, reliance has been placed upon service report dated 14.04.2002 endorsed behind summons dated 01.04.2002 (Annexure P-6). Reliance has also been placed on the *munadi* report dated 25.03.2004 (Annexure P-7). A perusal of the service report dated 14.04.2002 shows that Dharampal had been found at the spot but he refused to accept the summons. Ghanshyam Dass and Daulat Ram were not found at the spot. Admittedly, the three brothers are the joint tenants and, thus, service upon one co-tenant is service upon all. Thus, the submission that the petitioner was not served and was wrongly proceeded against ex-parte cannot be accepted. Further attempts made by the Assistant Collector, 1st Grade to serve the petitioner and his brothers through registered post and *munadi* was a mere surplusage. Service was completed on 17.04.2002 i.e. the date on which parties were suppose to appear pursuant to summons dated 01.04.2002 (Annexure P-6).

It has been next contended that Dharampal had already stood served earlier and was proceeded against ex-parte vide order dated 22.06.1999. Thereafter, notices were issued only to Daulat Ram and Ghanshyam Dass and, thus, their

personal service was essential in terms of Section 90 of the Punjab Tenancy Act, 1887. This argument also deserves to be rejected for the reason given in the preceding paragraph. Once Dharampal stood served and was proceeded against ex-parte, there is no requirement in law to issue fresh summons to Ghanshyam Dass and Daulat Ram. Section 90 of the Punjab Tenancy Act, 1887 also states that service can be effected through an adult member of the family. Dharampal cannot be said to be a minor and service upon him in the year 1999 would be deemed to be service upon all.

In view of the above, the writ petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

19.08.2021
Poonam Negi

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