

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.201

CWP-9108-2015 (O&M)

Reserved on : 02.09.2022

Pronounced on: 21.09.2022

Paramjit and another

..... Petitioners

VERSUS

Commissioner, Hisar Division Hisar and others

..... Respondents

2.

CWP-13541-2015 (O&M)

Parbhati Ram

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

3.

CWP-4842-2015 (O&M)

Surender Kumar

..... Petitioner

VERSUS

Commissioner, Hisar Division and others

..... Respondents

4.

CWP-9109-2015 (O&M)

Raj Kumar and another

..... Petitioners

VERSUS

Commissioner, Hisar Division Hisar and others

..... Respondents

5.

CWP-9110-2015 (O&M)

Hawa Singh

..... Petitioner

VERSUS

Commissioner, Hisar Division Hisar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sanjiv Gupta, Advocate, for the petitioners
in CWP-9108, 9109 & 9110 of 2015.

Mr. Rajesh Sethi, Advocate with
Mr. Tushar Gera, Advocate, for the petitioner
in CWP-4842-2015.

Mr. Mohan Singh, Advocate for
Mr. Arpandeep Narual, Advocate for the petitioner
in CWP-13541-2015.

Mr. Samarth Sagar, Addl. AG, Haryana

Mr. Arvind Seth, Advocate, for respondent No.3.

SUDHIR MITTAL, J.

This judgment will decide the aforementioned writ petitions as similar orders have been impugned in all of them. The petitioners in all writ petitions have been ordered to be evicted in proceedings under the Haryana Public Premises and Land (Eviction & Rent Recovery) Act, 1972 (hereinafter referred to as the Act) and appeal against the order of eviction has been dismissed.

For ease of narration and writing of judgment, facts are being extracted from CWP-4842-2015 titled as Surender Kumar Vs. Commissioner, Hisar Division and others.

Shish Ram son of Tirkha Ram was the predecessor-in-interest of the petitioner. He had been in possession of certain land owned by the provincial Government as '*gair marusi*' even before Independence. Jamabandi for the year 1945-46 is on record as Annexure P-13 as

evidence of the same. On 29.06.1977, the Government of Haryana executed a lease deed in respect of the same land in his favour for a period of one year and a copy of lease deed is on record as Annexure P-14. A perusal of this lease deed shows that land was leased out for experimental purposes. The Department of Agriculture was devising ways and means of increasing yield of the land and cultivation was to be done strictly under the guidance of the department. Subsequently, vide lease deed dated 02.03.1988, the Government of Haryana leased a large chunk of land in favour of the Haryana Agriculture University (HAU) for a period of 99 years. Out of this land, lease of 183 acres was w.e.f. 24.06.1976 and lease of 110.5 acres was w.e.f. 11.04.1980. The land measuring 110.5 acres was under tenants and included the land in dispute. It appears that HAU initiated proceedings for eviction of Des Raj son of Shish Ram under the Act which resulted in passing of order of eviction dated 26.03.1991. Appeal of the tenants, however, succeeded and thus, HAU filed CWP-14027-1991 which was allowed by a learned Single Judge vide judgment dated 28.11.1991. Meanwhile, Des Raj had filed a civil suit in the year 1981 against the State of Haryana and the HAU seeking a declaration that he is a tenant on the land in dispute on payment of 1/3rd batai and cannot be dis-posessed forcibly. The suit was decreed vide judgment and decree dated 08.10.1994 and a declaration was granted that Des Raj son of Shish Ram (represented by legal representatives) was tenant at will on payment of 1/3rd batai and could not be dis-posessed illegally and forcibly. It may be noted that in the written statement filed on behalf of HAU, it was pleaded that yearly lease deeds were executed in

favour of Des Raj son of Shish Ram in Kharif 1980 and Rabi 1989. Appeal against this judgment and decree was dismissed vide judgment and decree dated 04.09.1997 passed by the Court of Additional District Judge, Sirsa. Prior to this decision, judgment dated 28.11.1991 passed in CWP-14027-1991 was challenged in LPA-248-1994 & other connected cases. The same was allowed vide judgment dated 05.12.1997 by returning a finding that the petitioner herein and other similarly situated persons possessed the status of 'tenant at will' by virtue of Civil Court decree. Thus, the finding of the learned Single Judge that they were in unauthorized possession was not sustainable in law. It was, accordingly, set aside and liberty was granted to the HAU to terminate the tenancy in accordance with law and then initiate fresh proceedings. It may also be noted at this stage that Regular Second Appeal filed against the judgment and decree passed by the Additional District Judge has been dismissed vide judgment dated 26.11.2007 and the finding of 'tenancy at will' has become final.

The HAU then issued notice dated 21.09.2001 under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the TP Act) terminating the tenancy and filed fresh petition for eviction under the Act. Eviction was ordered vide order dated 04.08.2004 passed by the Collector on the ground that tenancy stood terminated by virtue of notice dated 21.09.2001. In the same year, the Government of Haryana transferred the lease in favour of Chaudhary Devi Lal University, Sirsa-Respondent No.3. The petitioner and other similarly situated tenants challenged the order of eviction by way of appeal and the

respondents therein were State of Haryana and HAU. The appeal was allowed vide order dated 27.07.2006 on the ground that the High Court while passing judgment dated 28.11.1991 in CWP-14027-1991 had specifically held that the TP Act was not applicable and therefore, notice under Section 106 of the TP Act was no notice in the eyes of law. This order was challenged by respondent No.3 vide CWP-9534-2008 which was allowed because the tenant consented to the matter being remitted to the Collector for a fresh decision. The Collector has again ordered eviction vide order dated 08.11.2011 holding that the tenancy was for one year only and had thus, come to an end long back. He also relied upon notice dated 21.09.2001 issued under the TP Act. Appeal filed by the petitioner has been dismissed vide order dated 10.06.2014 upholding the finding of determination of lease. It has also been held that petition under the Act was maintainable as property owned by the University was covered under the definition of 'public premises' given in the Act and that the petitioner was not a tenant holding over. Thus, the present writ petition has been filed.

In reply filed on behalf of respondent No.3, reliance has been placed upon notice dated 27.11.2001 issued under the TP Act. Execution of lease on yearly basis from the year 1977 onwards has been admitted and it has been stated that the land was leased for conduct of research. This purpose has been defeated on account of endless litigation. Other facts have not been denied and maintainability of eviction petition under the Act has been stressed upon. It has also been pleaded that transfer in favour of respondent No.3 was done by virtue of Notification dated

16.04.2004 issued by the Government of Haryana. The land undoubtedly belongs to the State of Haryana and it has the liberty to transfer it to any department or entity.

Reply filed on behalf of the State of Haryana is similar to the reply filed on behalf of respondent No.3.

Learned counsel for the petitioners has argued that transfer in favour of respondent No.3 was made by virtue of memo dated 16.04.2004. The said memo was signed on behalf of the Financial Commissioner & Principal Secretary to Government of Haryana, Agricultural Department. According to the Standing Order No.28 of the Financial Commissioner, transfer can be made only by the Financial Commissioner (Revenue) and thus, the transfer order is without jurisdiction. No transfer took place in favour of Respondent No.3 and the said respondent was not competent to file the petition under the Act. Moreover, the Financial Commissioner (Revenue) can only transfer land from one Government department to another Government department and respondent No.3 is not a Government department. For this reason also, the transfer was invalid. It has been next contended that by virtue of Civil Court decree dated 08.10.1994, the predecessors-in-interest of the petitioners were declared tenants at will. The status has been upheld by a Division Bench of this Court vide judgment dated 05.12.1997 passed in LPA-248-1994 and other connected cases. That being so, the tenancy could not have been determined by issuing a notice under Section 106 of the TP Act. The land is agricultural in nature and a tenant at will can only be evicted in accordance with the procedure prescribed under the Punjab

Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Act). Proceedings under the Act were without jurisdiction as the said Act is not applicable to agricultural leases. Moreover, the TP Act is not applicable in Haryana and on this ground also, the notice under Section 106 of the TP Act was no notice in the eyes of law. Reliance has been placed upon **Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass, 2016 (7) SCC 572** as well as **The National Textile Corporation Limited Vs. Nareshkumar Badrikumar Jagad and others, 2012 AIR (SC) 264.**

Learned counsel representing respondent No.3 has argued that the lease stood terminated by issuance of notice under Section 106 of the TP Act. Thereafter, the possession of the tenant became unauthorized. Premises belonging to a University is covered by the definition of 'public premises' as mentioned in the Act and thus, the argument that the eviction petition was not maintainable, is baseless. Regarding the argument of illegality of transfer in favour of University, it has been submitted that no such objection was taken when CWP-9534-2008 filed by the University was allowed. In fact, the writ petition was allowed because the petitioners consented to the passing of the order and no objection was taken regarding the title of the University. Thus, the petitioners are estopped from raising this issue in the present writ petition. The direction given by the Division Bench in judgment dated 05.12.1997 passed in LPA-248-1994 and other connected cases, has been fully complied with and the impugned orders do not suffer from any infirmity. Thus, the writ petition deserves to be dismissed.

First and foremost, the issue regarding transfer in favour of respondent No.3 is being taken up for consideration. A perusal of order dated 24.12.2010 (Annexure P-9) passed in CWP-9534-2008 shows that learned counsel representing the tenants in the said case had consented to the matter being remitted to the Collector, Sirsa for a fresh decision, in accordance with law. No objection, whatsoever, was raised regarding the title of the University. That was the first opportunity available to the petitioners to raise an objection regarding title as earlier the proceedings were being conducted in the name of HAU despite transfer in favour of the University on 16.04.2004 HAU was made a party-respondent in the appeal filed by the tenants as is evident from order dated 27.07.2006 (Annexure P-8) passed by the Commissioner, Rohtak Division. A legal right can always be waived and no objection having been raised by the petitioners at the time of decision of CWP-9534-2008, waiver can be inferred by conduct. Thus, the petitioners are estopped from raising such an objection in this writ petition or even, in the grounds of appeal filed before the Commissioner, Hisar Division.

The next argument being taken up for consideration is regarding the applicability of the TP Act in the State of Haryana. Section 117 of the said Act exempts leases for agricultural purpose from the provisions of the Chapter i.e. Chapter-V, except insofar as the State Government may by notification declare. The State of Punjab of which Haryana formed a part at the relevant time issued a Notification dated 26.03.1955 published in the Punjab Government Gazette dated 01.04.1955 that provisions of Sections 54, 107 and 123 of the TP Act had

been extended to the entire State w.e.f. 01.04.1955. It is thus, apparent that Section 106 of the Act was not made applicable and notice issued thereunder was no notice in the eyes of law. Resultantly, it can be safely held that notice dated 27.09.2001 did not result in termination of the status of tenant at will of the petitioners. That being so, the land in dispute did not vest in the University and could not be said to be covered by definition of 'public premises' within the meaning of the Act. Section 3 (b) of the Act provides that a person would be deemed to be in unauthorized occupation of a premises when the allotment, lease or grant in his favour had been determined or cancelled. Rights under the lease having not been determined, the proceedings under the Act have to be held to be without jurisdiction.

No further argument needs to be taken into consideration for decision of the writ petition, however, since parties have argued at length on the proper mode of termination of the tenancy of the petitioners and for their eviction from the land in dispute, I deem it appropriate to deal with the same.

The petitioners have been held to be tenants at will. In Haryana, tenancy of agricultural land is governed by provisions of the Punjab Act as well as the Punjab Tenancy Act, 1887 (hereafter referred to as the Tenancy Act). The Punjab Act only refers to continuing tenancy and does not envisage ejectment of persons whose tenancy has been terminated. Section 41 of the Tenancy Act provides for ejectment of tenant from year to year. The petitioners are such tenants as the lease in their favour was for one year only. It was renewed from time to time and

the last such renewal on record is of Rabi-1989 as pleaded by the HAU in the written statement filed in the civil suit. In terms of Section 41 of the Tenancy Act, such a tenant may be ejected at the end of any agricultural year. Section 4 (17) and Section 41 of the Tenancy Act being relevant are reproduced below:-

‘Section 4 (17):- ‘agricultural year’ means the year commencing on the sixteenth day of June or on such other date as the State Government may by notification appoint for any local area.’

‘Section 41:- Ejectment of tenant from year to year
A tenant who has not a right of occupancy and does not hold for a fixed term under a contract or a decree or order of competent authority, may be ejected at the end of any agricultural year.’

From the above definition, it is clear that a tenant from year to year can be ejected after fifteenth day of June of any year. The procedure for such ejectment of a tenant is provided in Sections 42 & 45 of the Tenancy Act, which are also reproduced below:-

‘42. Restriction on ejectment:- A tenant shall not be ejected otherwise than in execution of a decree, except in the following cases, namely:-

- (a) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied;
- (b) when the tenant has not a right of occupancy and does not hold for a fixed term under a contract or a decree or order of competent authority.

45. Ejectment of tenant from year to year by notice-

- (1) On receiving the application of the landlord in any such case as is mentioned in clause (b) of section 42, the

Revenue Officer shall, if the application is in order and not open to objection on the face of it, cause a notice of ejectment to be served on the tenant.

(2) A notice under sub-section (1) shall not be served after the fifteenth day of November in any [agricultural] year.

(3) The notice shall specify the name of the landlord on whose application it is issued and describe the land to which it relates, and shall inform the tenant that he must vacate the land before the first day of May next following, or that if he intends to contest his liability to ejectment, he must institute a suit for that purpose in a Revenue Court within two months from the date of the service of the notice.

(4) The notice shall also inform the tenant that if he does not intend to contest his liability to be ejected and he has any claim for compensation on ejectment, he should within two months from the date of the service of the notice prefer his claim to the Revenue Officer having authority under the next following sub-section to order his ejectment in the circumstances described in that sub section.

(5) If within two months from the date of the service of the notice the tenant does not institute a suit to contest his liability to be ejected a Revenue Officer, on the application of the landlord shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejectment of the tenant :

Provided that the Revenue Officer shall not make the order until he is satisfied that the notice was duly served on the tenant.

(6) If within those two months the tenant institutes a suit to contest his liability to be ejected and fails in the suit, the Court by which the suit is determined shall by its decree direct the ejectment of the tenant.'

The above provisions clarify that notice of eviction thereunder shall not be served after the fifteenth day of November and that it shall inform the tenant that he must vacate the land before first day of May next following. He must also be notified that in case, he contests his liability to ejectment, he must file a suit for this purpose within the two months from the date of notice and if, he does not contest the liability to be ejected within two months, he can claim compensation for ejectment within the said period. If, the tenant neither files a suit to contest his liability to be ejected nor seeks compensation, a Revenue Officer can eject him, thereafter. The matter of ejectment from agricultural land was extensively examined by the Supreme Court in **Shyam Lal (supra)**. In that case, a suit for permanent injunction had been filed by the plaintiff-tenant restraining the defendant-landlord from dis-possessing him except in due course of law. The tenancy was created in his favour by Ram Dass Chela Garib Dass who subsequently sold the land to the defendant. In the suit, the defendant-landlord filed a counter claim seeking possession and payment of mesne profit for unauthorized occupation on the ground of the lease having come to an end by efflux of time, the lease being for a fix period, the last of which was from 29.05.1996 to 28.05.2005. The trial Court dismissed the suit and allowed the counter claim. In the first appeal filed by the plaintiff, the defendant filed cross objections seeking higher mesne profit. Both the appeal and cross-objections were dismissed by the First Appellate Court. Thereafter, the plaintiff filed a Regular Second Appeal which was allowed vide judgment dated 28.06.2010 reported in 2010 (4) RCR (Civil) 508. It was held that the lease period having come

to an end by efflux of time, Section 9 of the Punjab Act could not be invoked as it governed a subsisting tenancy. Accordingly, a civil suit seeking possession was maintainable. It was also held that on account of Section 117 of the TP Act, the said Act would not be applicable and the lease deed in favour of the plaintiff-tenant was admissible in evidence to examine, whether, the period of lease had come to an end. Accordingly, the Regular Second Appeal was dismissed. Aggrieved, the plaintiff preferred a Special Leave Petition which was decided vide judgment dated 27.02.2015 reported in 2015 (2) RCR (Civil) 198. A Bench of two Judges found itself in disagreement with another two Judges' Bench judgment in SLP (Civil) No.18654 of 2008 titled as **Sukhdev Singh (D) Thr. LRs. and others Vs. Puran and others**, which held that the provisions of the Punjab Act would have no applicability after the expiry of fixed term tenancy. Thus, the case was referred to a Larger Bench and the Larger Bench decision has been rendered in **Shyam Lal (supra)**. It has been held that Section 107 of the TP Act applied in view of the Notification dated 26.03.1995 issued by the Punjab Government and a lease can only be created through a registered document. An unregistered document is not admissible in evidence. Thus, the lease was deemed to be a lease from year to year and that the tenant remained in possession with the implied consent of the landlord. However, the consent ceased to exist upon filing of cross-objections in the injunction suit and accordingly, he acquired the status of a tenant at will. Such a tenant is entitled to protection under the Punjab Act.

The distinguishing feature between this case and **Shyam Lal (supra)** is that the petitioners have themselves placed on record lease deed dated 29.06.1977 which is for a period of one year commencing Kharif-1977. The HAU has also pleaded an yearly lease in the written statement filed in the civil suit. Thus, it would be safe to conclude that the lease in favour of the petitioners and their predecessors-in-interest were executed on an yearly basis. The finding of the Civil Court has to be interpreted accordingly. There was never any fixed term lease in favour of the petitioners and thus, inference of yearly lease need not be drawn as has been done in **Shyam Lal (supra)**. A tenant from year to year can be ejected in accordance with the procedure prescribed in Sections 41 to 45 of the Tenancy Act as has been discussed in the foregoing paragraphs.

With the aforementioned observations, the writ petitions are allowed and impugned orders of eviction are set aside.

A photocopy of this order be placed on the files of the other connected cases.

(SUDHIR MITTAL)
JUDGE

21.09.2022

Ramandeep Singh

Whether speaking / reasoned

Yes

Whether Reportable

Yes