

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

(111)

CWP-7002-2023

Date of decision: - 18.04.2023

Harpal Singh

...Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.V.S. Chugh, Advocate,
for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, Punjab
for respondents No.1 to 3.

VIKAS BAHL, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 07.04.2022 (Annexure P-3) passed by respondent No.3, vide which, the petitioner has been ordered to be evicted from Shop No.14 of Nagar Panchayat Talwandi Sabo. Challenge is also to the order dated 22.09.2022 (Annexure P-5) passed by respondent No.2 vide which the appeal dated 02.06.2022 (Annexure P-4) filed by the petitioner has been dismissed.

2. Brief facts of the case are that the Nagar Panchayat Talwandi Sabo, Tehsil Talwandi, District Bathinda, through its Executive Officer, had filed an application for evicting the present petitioner from Shop No.14, Rori Road Market, Talwandi Sabo, measuring 15 feet x 38 feet,

under Sections 4, 5 and 7 of the Punjab Public Premises & Land (Eviction and Recovery) Act, 1973 (for short 'the Act of 1973') and the Punjab Public Premises and Land (Eviction and Rent Recovery) Rules, 1974 (for short 'the Rules of 1974'). A further prayer for recovery of rent amounting to Rs.4,74,611/- from July, 2015 to December, 2018 alongwith GST, future interest till its realization, had been made in the said eviction application. In the said application, it was averred that the Nagar Panchayat Talwandi Sabo was the owner of the shop in question and the same was given on rent to the petitioner on the basis of an agreement dated 15.03.2011 (Annexure P-1) and as per the terms of the said agreement, the rent was initially fixed at Rs.6500/- per month and an amount of Rs.7,50,000/- was to be deposited and half of the said amount would be taken as development charges, which was not refundable, whereas, the remaining half would be deposited with the Nagar Panchayat as security which was to be refunded in the circumstances enumerated in Clause 2. As per Clause 3 of the said agreement (P-1), it was specifically stipulated that the petitioner was to deposit rent of the shop with the Nagar Panchayat quarterly in advance, failing which, the Nagar Panchayat had a right to collect interest @ 18% per annum. The agreement further provided that in case of non-deposit of the rent for a period of one year, the tenancy would be terminated and the Nagar Panchayat would have the authority to confiscate the security amount. As per Clause 8 of the said agreement, the petitioner has to follow the instructions issued by the government and as per the government Rules, the rent would be increased by 10% every three years. It was the case of

the Nagar Panchayat that the petitioner had not paid rent from July, 2015 to December, 2018 and after the lapse of one year from July, 2015 i.e, in the year 2016, he was in unauthorized occupation of the premises in question. It was averred in para 6 of the application (Annexure P-2) that a notice dated 29.11.2018 was served by the Nagar Panchayat to the petitioner for payment of rent, interest and GST within three days from the receipt of the said notice and it was mentioned in the said notice that in case the respondent (i.e. the petitioner herein) fails to pay the above-said rent, the Nagar Panchayat Talwandi Sabo would be entitled to evict the respondent (present petitioner) from unauthorized possession and would also be entitled to receive damages. It was further averred in the said application that a resolution No.514 dated 30.01.2019 had been passed by the Nagar Panchayat for taking action against the respondent and a reference was made to a civil suit filed by the present petitioner against Nagar Panchayat and also to the order dated 06.10.2018 passed in the said civil suit, wherein, the present petitioner was directed to make payment regularly to the Nagar Panchayat and the Nagar Panchayat was granted liberty to get shop No.14 vacated from the possession of the petitioner in accordance with law and that the petitioner had not complied with the said order dated 06.10.2018 passed by the Civil Court. On the basis of the said averments, the application dated 22.02.2019 (P-2) under sub-section (1) of Section 4 of the Act of 1973 was filed.

3. The Sub-Divisional Magistrate, Talwandi Sabo after hearing both the parties, vide order dated 07.04.2022 (Annexure P-3), had allowed the said application and ordered the eviction of the present

petitioner. It was further ordered that the rent of the shop in question till date be assessed and the entire rent due was to be recovered and that the amount of rent due be adjusted against the security amount and in case the amount of recoverable rent surpasses the same, then, the same be recovered from the present petitioner in two equal installments within two months. While passing the said order, the terms of the agreement dated 15.03.2011 were taken into consideration and the Collector, Sub-Divisional Magistrate, Talwandi Sabo had found that the rent for the period in question had not been paid by the petitioner and thus, the application filed by the respondent-Nagar Panchayat was found to be meritorious. A reference was also made to the civil suit and the order dated 06.10.2018, as per which, a direction was given to the petitioner to pay the rent due, failing which, a right was conferred on the Nagar Panchayat to get the shop vacated in accordance with law and the said order was stated to not have been complied with by the petitioner, thus, further entitling the Nagar Panchayat to seek the eviction of the petitioner from the premises in question.

4. Appeal filed by the petitioner against the order dated 07.04.2022 was dismissed by the Collector-cum-Deputy Commissioner, Bathinda, vide order dated 22.09.2022 (Annexure P-5). A perusal of the said order would show that the provisions of the Act of 1973 as well as the Rules of 1974 were taken into consideration. It was observed that as per Section 2(e) of the Act of 1973, the property owned by the Nagar Panchayat would be covered by the definition of "Public Premises". It was also observed that as per Section 3 of the Punjab Rent Act, 1995,

premises belonging to a local authority would be exempted from the provision of the said Act and thus, the proceedings under the Act of 1973 were held to be legal and valid. It was also noticed that during the course of hearing, counsel for Nagar Panchayat Talwandi Sabo had asked the petitioner to regularize the tenancy of the shop, but the petitioner had stated that he was not ready to pay the rent. It was found that the petitioner had not paid the rent of the shop since 01.07.2015 and had been in unauthorized occupation of the shop in question and inspite of the notices, he had neither vacated the shop nor had paid the rent. It would be relevant to note that apart from the petitioner, even the Nagar Panchayat had filed an appeal on the plea that as per the terms of the agreement (P-1), the Nagar Panchayat was entitled to confiscate the security amount and further had a right to recover the rent and the order passed by the Collector, Sub Divisional Magistrate, Talwandi Sabo to the extent of adjusting the rent against the security amount was illegal. However, the Deputy Commissioner, dismissed the appeal of the Nagar Panchayat as well as the petitioner.

5. Learned counsel for the petitioner has submitted that the petitioner is ready to settle the matter.

6. A pointed query has been raised by this Court as to whether the petitioner is ready to now pay the entire amount due till date upfront or not. To the said query, learned counsel for the petitioner has submitted that even now the entire amount due cannot be paid by the petitioner upfront and the same can only be paid in installments and that too without interest.

7. This Court has heard learned counsel for the petitioner and has perused the paper-book.

8. It is not in dispute that the petitioner had taken a shop on rent from Nagar Panchayat Talwandi Sabo by offering the highest bid and regarding the same an agreement dated 15.03.2011 (Annexure P-1) was entered into. Clauses 1, 2, 3, 8 and 9 of the said agreement are reproduced herein below: -

“1. The rent of the shop will be 6500/- rupees per month as per bidding.

2. That I/we have got deposited a sum of rupees 7.50 lacs with the Nagar Panchayat as per conditions. Out of said amount, half of the amount shall include development charges which shall not be refundable in any case whereas the remaining half of the amount will remain deposited with the Nagar Panchayat as security which shall be refunded subject to the condition that (a) If the above-mentioned shops are got vacated from the tenants by the Nagar Panchayat, (b) If the tenant wants to vacate the shop, then he will have to pay sum equal of one year rent to Nagar Panchayat. Except the condition(s) mentioned above, the security shall not be refunded for the first three years. No interest shall be paid by the Nagar Panchayat on the amount of security.

3. That rent of the shop will have to be deposited in advance with the Nagar Panchayat by the first party quarterly by the 7th of the first month, thereafter, the Nagar Panchayat will have right to recover interest @ 18% PA. In case of non-deposit of rent for one year, the Nagar Panchayat shall have right to terminate the agreement and to confiscate the security amount. No bill shall be sent separately by the Nagar Panchayat for getting deposited rent and the rent shall be got deposited by the first party by the date specified at his/her own level.

xxx xxx xxx xxx xxx xxx xxx xxx

8. That the first party shall abide by the instructions issued by the government from time to time and every order issued by the Nagar Panchayat. An enhancement @10% shall be made in the rent

after every years as per government rules.

9. *If the Nagar Panchayat gets vacated the shop in public interest or as per government orders, then first party shall be bound to vacate within one month.”*

9. Both the authorities had concurrently found that the petitioner had not paid rent starting from July, 2015 till December, 2018 and that since the default was for a period of more than one year, the tenancy as per Clause 3 reproduced hereinabove stood terminated and the petitioner was in unauthorized occupation of the premises in question. The said findings of the authorities have not been challenged before this Court. Reference has been made by the authorities to a civil suit filed by the present petitioner and also to order dated 06.10.2018, vide which, a direction was given to the present petitioner to pay the rent of the shop which was due and also the fact that on account of non-payment of rent, it would be open to the Nagar Panchayat to get the shop vacated as per law and it had been further observed that the petitioner had not complied with the said order. Neither the said civil suit nor the said order dated 06.10.2018 has been annexed alongwith the present writ petition, nor the said observation has been rebutted or challenged. It has also been observed by the Deputy Commissioner, Bathinda in the order dated 22.09.2022 (Annexure P-5) that as per Section 2(e) of the Act of 1973, the premises belonging to the Nagar Panchayat, would fall within the definition of “Public Premises”. It has been further observed that in case any person is in unauthorized possession over the property of Nagar Panchayat, then, the Collector can get the public premises vacated from such unauthorized occupiers under the Act of 1973 and that the Punjab

Rent Act, 1995 would not be applicable as the property belongs to a local authority i.e., Nagar Panchayat. Even the said findings/observations have not been challenged before this Court. Thus, the orders passed by the Courts below are valid, legal and do not call for interference.

10. The argument of learned counsel for the petitioner to the effect that he is ready to settle the matter is not bonafide and has been apparently raised only to somehow prolong the proceedings and to hold on to the possession of the property. A perusal of the order dated 22.09.2022 (Annexure P-5), more so at page 54, would show that it was specifically put to the petitioner as to whether he was ready to regularize the tenancy of his shop by making the payment of rent due as per the terms and conditions of the agreement, but the petitioner had made a statement therein that he was not ready to pay the rent. Even before this Court, the petitioner is even now not ready to pay the amount due since 2015 upfront. A perusal of the impugned orders would show that the claim of the respondent Nagar Panchayat to the effect that the amount of Rs.4,74,611/- was due upto December, 2018 from the present petitioner was accepted. There is nothing on record to show that the amount due has been paid till date. A perusal of Clause 3 of the agreement (Annexure P-1) would show that in case of non-deposit of the rent due for a period of one year, the Nagar Panchayat has the right to confiscate the security amount. The impugned orders had already given every possible benefit to the petitioner, inasmuch as, the amount of rent had been ordered to be adjusted from the security amount, contrary to Clause 3 of the agreement and it is only the balance amount which is to be recovered from the

petitioner. The petitioner is also stated to be in possession of the shop in question till date and there is nothing on record to show that the petitioner has paid any amount even after the year 2018.

11. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the present writ petition is sans merits and misconceived and is accordingly, dismissed.

April 18, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes