

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

(111)

LPA-1206-2022 (O&M)

Decided on: 11.01.2023

Shanti Devi and others

....Appellants

Versus

Financial Commissioner Haryana and others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. C.M. Munjal, Advocate for the appellants.

Mr. Abhilaksh Grover, Advocate
for the caveator/respondent No.5.

G.S. Sandhawalia, J. (Oral)

CM-2909-LPA-2022

Application for condonation of delay of 71 days in refileing the appeal is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 71 days in refileing the appeal is condoned.

CM stands disposed of.

CM-2911-LPA-2022

Application under Chapter 1-C, Rule 3, Volume-V of High Court Rules and Orders has been filed for impleading the legal representatives of deceased appellant Shanti Devi, who is stated to have expired on 15.05.2021 leaving behind the legal heirs as mentioned in paragraph No.2 of the application. It has been averred that there are no other legal heirs of the deceased Shanti Devi. Application is duly supported by affidavit of Dilbagh Singh son of deceased Shanti Devi.

Accordingly, in view of the averments made in the application, duly supported by the affidavit, the same is allowed and the legal representatives, as mentioned in paragraph No.2 of the application

are permitted to pursue the present litigation only. It is made clear that the present order will not be liable to be taken into consideration in any other set of proceedings.

CM stands disposed of.

LPA-1206-2022 (O&M)

Present Letters Patent Appeal is directed against the order of the learned Single Judge dated 28.07.2022 wherein **CWP No.712 of 2017** filed by the deceased Shanti Devi alongwith Smt. Bhag Devi and others, was dismissed. The only benefit granted was that they were entitled to retain possession of 12 kanals of land, which was purchased by them.

2. The learned Single Judge, thus, upheld the orders of ejectment passed by the Assistant Collector, First Grade, Hisar dated 30.03.2012 (Annexure P-3) which was further duly upheld by the Collector, Hisar on 04.12.2012 (Annexure P-4) and the revision was dismissed on 09.07.2013 (Annexure P-5) by the Commissioner, Hisar Division. The Financial Commissioner, Haryana had also dismissed the revision on 11.08.2016 (Annexure P-9) which were all subject matter of challenge before the learned Single Judge .

3. Counsel has restricted his argument only to the extent that on the basis of Section 70 of the Punjab Tenancy Act, 1887 (for short '1887 Act') the claim for compensation should have been mandatorily dealt with by the authorities below.

4. The learned Single Judge noticed that the argument had neither been raised before any of the authorities below nor a claim for compensation was raised at the time of filing the amended written statement, wherein the plea had been taken that the landowner was not a

small landowner, which was the ground for eviction. Apparently no such plea had been taken in the alternative.

5. Counsel has tried to convince us that it was the duty of the Court to direct the tenant to file the statement of his claim, if any, to compensation for improvements, disturbance or of the grounds thereof.

6. We have examined the provisions of 1887 Act, wherein Sections 63 to 69 which read as under provides improvements by tenants, whereas procedure for determining compensation is provided under Section 70 to 74. The provisions of Sections 63 to 69 read as under:-

“63. Title of occupancy tenant to make improvements- A tenant having a right of occupancy is entitled to make improvements on his tenancy.

64. Title of tenants not having right of occupancy to make improvements-

(1) A tenant not having a right of occupancy may make improvements on his tenancy with the assent of his landlord.

(2) If at any time the question arises whether or not the landlord assented to the making of an improvement by a tenant not having a right of occupancy the assent may be inferred from circumstances.

65. Improvements made before commencement of this Act- Improvement made by a tenant before the commencement of this Act shall be deemed to have been made in accordance with this Act, unless in the case of a tenant not having a right of occupancy it is shown that the improvement was made in contravention of a written agreement between him and his landlord.

66. Improvements begun in anticipation of ejectment- A tenant ejected in execution of a decree or in pursuance of a notice of a notice of ejectment shall not be entitled to compensation for any improvement begun by him, after the institution of the suit or service of the notice which resulted in his ejectment.

67. Tender of lease for twenty years to tenant to be a bar to right to compensation - If a landlord tenders to a tenant a lease of his tenancy for a term of not less than twenty years from the date of the tender at the rent then paid by the tenant or at such other rent as may be agreed on the tender if accepted by the tenant shall bar any claim by him to compensation in respect of improvements previously made on the tenancy.

68. Liability to pay compensation for improvements to tenants on ejectment or on enhancement of his rent - Subject to the foregoing provisions of this Chapter a tenant who has made an improvement on his tenancy in accordance with this Act shall not be ejected, and the rent payable by him shall not be enhanced, until he has received compensation for the improvement.

69. Compensation for disturbance of clearing tenants –

(1) A tenant who has cleared and brought under cultivation waste-land in which he has not a right of occupancy shall if ejected from that land be entitled to receive from the landlord as compensation for disturbance in addition to any compensation for improvements a sum to be determined by a Revenue Court or Revenue officer in accordance with the merits of the case but not exceeding five year's rent of the land.

Provided that a tenant who is a joint owner of land to which this section applies shall not be entitled to compensation for disturbance on ejectment from the land or any part thereof.

(2) If rent has been paid for the land by division or appraisement of the produce or by rates fixed with reference to the nature of the crops grown, or if not rent, or no rent other than the land-revenue of the land and the rates and cesses chargeable thereon, has been paid therefor, the compensation may be computed as if double the amount of the land-revenue of the land were the annual rent thereof.

[Provided that in any estate of which the assessment has been confirmed on or after the twenty-second day of February, 1929, the compensation may be computed as if four times the amount of the land were the annual rent thereof].”

7. Improvements as such would be a matter of factual aspect, which has to be necessarily mentioned and averred by the person who was in possession of land as to in which manner the land has been improved upon, whether in the form of being a tubewell or levelling the land and making it fertile by putting manure, etc. These are factual aspects and these pleas could have been taken in the second instance when the amended written statement was filed, but in the absence of specific averments pleaded and having failed to do so, it would not lie in the mouth of the appellants to say that it was the responsibility of the Court under Section 70 of the 1887 Act.

8. A perusal of paper-book would go on to show that the defence of the present appellants before the Assistant Collector 1st Grade was that they were cultivating the land in question since long from the time of their forefathers and it was unfit for agriculture when it was taken for cultivation and their forefathers had spent a lot for making it fertile. Relevant portion of the defence taken before the Assistant Collector 1st Grade reads as under:-

“6. That we the respondents are cultivating the land in question as (Gair Maurasi) since long from the time of our forefathers. This disputed land was banjer and was unfit for agriculture when it was taken for cultivation and our forefathers have spent a lot of money and have done very hard work to make it fertile and fit for cultivation purpose.”

9. Apparently the land in question remained in possession of the appellants as per their own pleadings for a period of over 20 years and in view of Section 67 as reproduced above there is a bar for claiming any compensation in respect of the improvements made on the tenancy, if the occupation is over a period of 20 years. Thus, in such circumstances even

the argument now raised is without any basis and, therefore, had never been followed up before the Courts below and was only raised for the first time before the Financial Commissioner on the strength of the below provisions.

10. Section 70 reads as under:-

“70.Determination of compensation by Revenue Courts-

(1) In every suit by a tenant to contest his liability to ejectment or by a landlord to eject a tenant or to enhance his rent the Court shall direct the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof.

(2) If the Court decrees the ejectment of the tenant or the enhancement of his rent it shall determine the amount of compensation if any, due to the tenant and shall stay execution of the decree until the landlord pays into Court that amount less any arrears of rent or costs proved to the satisfaction of the Court to be due to him from the tenant.”

11. Thus, it is apparent that the direction to a tenant to file the statement of claim, if any for compensation of improvement would be conditional as such, if the tenant wants to contest his liability and it is for the tenant to do so, on having put to notice on the service of the summons. Therefore, it was not for the Court to duly direct at that point of time. It is to be noticed that the Financial Commissioner had noticed that it was put to the counsel whether any statement of claim had been filed under Section 69 and 70 of 1887 Act and, therefore by noticing that on account of the willful lapse of the tenants themselves, who were the revisionist before the Financial Commissioner, they could not be granted the benefit and claim advantage on that account.

12. As noticed in view of provisions of Section 67 as reproduced

above and the fact that it was the case of the appellants themselves that

they were in possession since the time of their forefathers, it is a case of long tenancy and, therefore, the provisions of Act itself provided that there could be no compensation in such cases as the tenancy would have thus remade up for expenses incurred for reclamation or for improvement of the land by virtue of long enjoyment of tenancy.

13. A similar issue had come up before the learned Single Judge of this Court in **Shri Kartar Singh Vs. State of Haryana and another, 1977 PLJ 71**. The claim as such was that the land was *Banjar* and improved by spending a huge amount and, therefore, he was not liable to be evicted till duly compensated. The same was rejected by noticing that there was a bar to any claim, if there is a tender of lease for 20 years, since the length of time during which the tenant has had the benefit of occupation, would be sufficient to reimburse himself which he had incurred on the reclamation and improvement of the land.

14. We are in respectful agreement with the abovesaid view and we do not find any reason to take a different view on account of the statutory bar and, therefore, it does not lie in the mouth of the appellants now to contend that ejectment could be denied on that ground till the payment of compensation is made.

15. In such circumstances, we do not find any infirmity in the order of the learned Single Judge declining the said relief in a writ jurisdiction as the matter should have been raised at the earliest by the persons effected. Having failed to do so they are themselves estopped as such at a belated stage in revision which was sought to be raised before the Financial Commissioner for the first time. Accordingly, we do not find

any merit in the present Letters Patent Appeal and the same is hereby dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

11.01.2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes