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

CWP-444-2023

Date of decision : 09.03.2023

Jatinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. N.P.S. Mann, Advocate for the petitioners.

Mr. Ferry Sofat, Addl. A.G. Punjab.

Mr. Saurabh Arora, Advocate for respondent No.8.

Mr. Sandeep Bansal, Advocate for Jagdish Kumar.

VIKAS BAHL, J. (ORAL)

This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned warrants of possession i.e. dated 10.03.2011 [Annexure P-5(A) to P-5(D)], dated 18.03.2011 [Annexure P-5(E)] and dated 21.03.2011 [Annexure P-5(F)] issued by respondent No.3 with regard to the shops of the petitioners and also the impugned notice of eviction dated 07.10.2022 (Annexure P-9) issued by respondent No.8 on the ground that the same have been issued without giving an opportunity of hearing to the petitioners.

On 16.02.2023, this Court had passed the following order:-

“Learned State counsel has pointed out that in the present case, the eviction order has been passed against several petitioners in the year 2010 and even against the remaining petitioners, the eviction order was passed against their predecessor-in-interest / relatives.

Learned State counsel is directed to file a short affidavit giving the details of the order passed against each of the petitioners or their predecessor-in-interest. Learned State counsel will also keep handy the said orders passed. The affidavit would also state as to whether the petitioners have filed any appeal and in case any such appeal was filed, the decision in the same.

Adjourned to 09.03.2023.

Interim order to continue till the next date of hearing.”

In pursuance of the abovesaid order, learned State Counsel has submitted that against each of the petitioners, orders under Section 5 Sub Section (1) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter to be referred as “the Act of 1973”), have been passed and a copy of some of the orders has been handed over to this Court which is taken on record and marked as Mark “A”.

Learned State Counsel as well as learned counsel appearing on behalf of Jagdish Kumar have submitted that an appeal against the said orders lies under Section 9 of the Act of 1973 and thus, the present writ petition is misconceived.

Learned counsel for the petitioners, in rebuttal, has submitted that the petitioners were never served with the order of eviction and even a perusal of the orders of eviction would show that no reason has been given

in the same. It is further submitted that even the notice to be issued under Section 4 was never served upon the petitioners. It is, however, stated that since, the order of eviction has been brought on record by the State Counsel today, thus, learned counsel for the petitioners seeks permission of this Court to withdraw the present Civil Writ Petition with liberty to file an appeal under Section 9 of the 1973 Act.

Learned counsel for the petitioners has also submitted that since, the petitioners were not aware of the said proceedings, thus, the delay in entertaining the appeal be condoned as only a period of 30 days is provided for filing the appeal under Section 9(2) of the Act of 1973.

Learned State Counsel along with learned counsel appearing on behalf of Jagdish Kumar have submitted that some of the petitioners were served with the said orders and in some cases, predecessors-in-interest of the petitioners were served.

After considering the abovesaid aspects, the present Civil Writ Petition is disposed of with the following directions:-

- 1) It would be open to the petitioners to file an appeal against the orders of eviction passed under Section 5 of the 1973 Act either against the petitioners or their predecessor-in-interest or the shops of which they are in possession, within a period of one month from today.
- 2) Interim order (regarding status quo of possession) granted by this Court on 16.01.2023 shall continue till the time the application for stay is decided by the Appellate Authority.
- 3) It is made clear that the order of status quo would only enure to the benefit of the petitioners in case they file an appeal within a period of

one month from today under Section 9 of the 1973 Act.

- 4) The Appellate Authority would consider the case of each of the petitioners independently after considering the merits of each case and also after taking into consideration as to whether the order under Section 5 was served upon the petitioners or their predecessor-in-interest or not. In case, the authority comes to the conclusion that the order under Section 5 was not served upon the petitioners or their predecessor-in-interest then, the appeal filed by the petitioners would be considered on merits and it would be open to all the parties to raise all their pleas on merits, as are available to them.
- 5) In case, the authority comes to the conclusion that the petitioners or their predecessor-in-interest were served with the order under Section 5, then it would be open to the authority to dismiss the claim of the petitioners on the ground of delay.
- 6) The Appellate Authority would make every endeavour to decide the individual appeals filed by the petitioners as expeditiously as possible.

It is made clear that this Court has not opined on the merits of the case and the same would be considered independently by the Appellate Authority, in accordance with law.

09.03.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**