

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3280-1987 (O/M)
Reserved on : 06.08.2024
Date of decision : 04.11.2024

Niranjan Singh

..... Petitioner(s)

Versus

Gram Panchayat Village Jangirana, Tehsil and District Bathinda and
another Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Akshat Dalal, Advocate
for the petitioner.

Mr. Inderjit Sharma, Advocate
for respondent No. 1.

Mr. Navneet Singh, Senior DAG Punjab
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Niranjan Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 10.06.1985 (Annexure P-3), passed by learned Collector-cum-DDPO, Bathinda (in short 'Collector') and order dated 13.04.1987 (Annexure P-4), passed by learned Commissioner, Ferozepur Division, Ferozepur, (in short 'Divisional Commissioner').

2. Briefly, respondent No. 1-Gram Panchayat Jangirana, Tehsil and District Bathinda, filed an application for ejectment against the petitioner and one Midha Singh, under the Punjab Public Premises and

Land (Eviction and Recovery) Act, 1973 (in short '1973 Act'); in respect of land comprised in Khasra No. 13 (48-12), 657 (14-10) and 160/2 (2-2), as per Jamabandi for year 1979-80.

2.1 The respondent No. 1-Gram Panchayat sought eviction of the petitioner on the plea that the petitioner was in unauthorized occupation of land in question as he has not paid the lease amount from 1982-83 to 1984-85 and also that the lease had been terminated by the Panchayat vide its resolution. A further prayer was made regarding recovery of lease amount from 1982-83 upto date.

2.2 The present petitioner appeared in the aforesaid eviction petition and contested the same by submitting his written statement, wherein he stated that he was in possession of land comprised in Khasra No. 13 (48-12) only and he was not in possession of remaining land. The petitioner stated that he was in possession of land in question as a tenant for the last 20 years and has been paying the lease (chakota) regularly, therefore, he is not in unauthorized possession of land in question.

2.3 The learned Collector, after considering the pleadings as well as documents/evidence available on record, came to the conclusion that the land in dispute was owned by the Gram Panchayat and the petitioner was in unauthorized possession as he had not paid the rent for the last three years, accordingly, learned Collector, vide order dated 10.06.1985 (Annexure P-3), ordered ejectment of the petitioner from the land in question. A further direction was issued to the petitioner to deposit an amount equivalent to Rs. 2,250/- per year from 1982-83, for use and occupation of the property.

2.4 Feeling aggrieved against order dated 10.06.1985 (Annexure P-3), the petitioner preferred an appeal before learned Divisional Commissioner, which came to be partly allowed, vide order dated 13.04.1987 (Annexure P-4), to the effect that the ejectment of the petitioner was maintained, however, the direction as regards recovery of arrears from the petitioner was set aside as no notice under Section 7 of 1973 Act was issued to the petitioner. However, liberty was granted to the Gram Panchayat to lodge a fresh claim for recovery of arrears for use and occupation of the land in question.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioner, while reiterating the aforementioned facts, submits that the petitioner was a tenant under the Gram Panchayat on fixed chakota of Rs. 2,250/- and the land in question was leased out to the petitioner for an unlimited period. It is submitted that prior to the petitioner; his predecessors-in-interest were also cultivating the land on 'fixed chakota'. It is further submitted that the Gram Panchayat had intentionally withheld the pattanamas executed by the petitioner in favour of the Gram Panchayat, which would show that the lease in favour of the petitioner was a perpetual lease and not on year to year basis. Accordingly, it is submitted that the petitioner could only be ejected under the provisions of Section 9 of the Punjab Security of Land Tenures Act, 1953 (in short 'the 1953 Act'). It is contended that under the 1973 Act, there is no provision, on the basis of which a person can be said to be in unauthorized possession, if he does not pay arrears of

rent. It is further contended that there is nothing on record to show that the lease of the petitioner was ever determined or cancelled and in the absence of same, the possession of the petitioner would not become unauthorized. It is also contended that the Gram Panchayat has failed to establish that the land in question was given for a fixed period and after the expiry of that period, the petitioner's possession was unauthorized. It is, therefore, submitted that the ejectment order passed against the petitioner was illegal, arbitrary and perverse. Reliance is placed upon judgments in case of *Shyam Lal Versus Deepa Dass Chela Ram Chela Garib Dass, 2016 (3) RCR (Civil) 812*, and *Paramjit and another Versus Commissioner, Hisar Division Hisar, 2023 (3) RCR (Civil) 175*. With the aforesaid submissions, prayer has been made for setting aside the impugned orders (Annexure P-3 and Annexure P-4).

5. Per contra, learned counsel for respondent No. 1-Gram Panchayat has opposed the submissions made on behalf of petitioner by submitting that the instant civil writ petition is not maintainable as the relationship of landlord and tenant between the petitioner and Gram Panchayat has been denied by the petitioner in the civil suit filed by him and, therefore, petitioner has lost the right of tenancy and he is in unauthorized possession. It is further submitted that the possession of land in question has been taken by Gram Panchayat in execution of impugned orders, vide Rapat Roznamacha dated 06.03.1987. It is next submitted that the petitioner has withheld the material facts regarding filing of civil suit and his dispossession, therefore, he is not entitled to seek relief from this Court. It is contended that the Gram Panchayat

cannot grant unlimited lease as the same is prohibited in law. It is next submitted that no pattanamas were executed, as claimed by the petitioner. It is stated that the petitioner has been rightly evicted from the land in question as he was in unauthorized possession thereof on account of non payment of lease from 1982-83 upto 1984-85 and also that the lease was terminated by the panchayat. It is urged that the provisions of the 1953 Act are not attracted to the case in hand and there is no jurisdictional error in initiating eviction proceedings against the petitioner under the 1973 Act. With the aforesaid submissions, learned counsel for respondent No. 1-Gram Panchayat, has prayed for dismissal of the instant civil writ petition.

6. I have heard learned counsel for the parties and have perused the paperbook with their able assistance.

7. Upon considering the matter, it is found that in the eviction proceedings before the authorities below, the petitioner conceded that he was a tenant under the respondent No. 1-Gram Panchayat; however, the only stand taken by petitioner was that he is a tenant under Gram Panchayat on fixed rent for unlimited period. It is the contention of the petitioner that the provisions of the 1973 Act are not applicable and he can be evicted only under Section 9 of the 1953 Act.

7. The appellate authority below upon consideration of the matter, came to the following conclusions :-

- (i) the petitioner had been occupying land in question on yearly lease from 1982-83;

- (ii) the petitioner stopped paying lease money to Gram Panchayat;
- (iii) the lease has not been extended in favour of petitioner;
- (iv) there is no material on record to show that the petitioner is occupying land in question on lease exceeding one year at a time;
- (v) the Gram Panchayat is not competent to lease the land for a period exceeding five years;
- (vi) upon failure of the petitioner to pay the lease money to the Gram Panchayat from 1982-83, the petitioner had become unauthorized occupant;
- (vii) termination of lease by a resolution of gram panchayat was a measure of abundant caution;
- (viii) the petitioner has taken inconsistent pleas before the Collector and Civil Court inasmuch as that before the Civil Court, the petitioner had pleaded that he has become owner of the land comprising in khasra No. 13 (48-12) by virtue of adverse possession, whereas in the proceedings under the Public Premises Act, the petitioner has claimed that he has been a lessee of the land for many years.

On the basis of aforesaid findings, the eviction of petitioner from land in question has been upheld.

8. Learned counsel for the petitioner has failed to dislodge the aforesaid findings returned by the Appellate Authority below by referring

to any material whatsoever.

9. Further, in ***Punjab State Electricity Board v. State of Punjab, 2003(1) RCR (Civil) 48***; a Division Bench of this court culled out the following propositions :-

“17. From the above noted decisions of the Supreme Court and the Full Benches of this Court, the following propositions can be culled out :

(i) Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant which necessarily postulates positive consent of the landlord except when, in view of a special law, the consent of the landlord is not necessary.

(ii) Litigious possession cannot be equated with lawful possession.

(iii) A tenant of the public premises, who retains possession after expiration of the term of lease without the consent of the landlord, is a tenant-at- sufferance and he is liable to be evicted by adopting summary procedure.

(iv) The deposit of an amount equivalent to monthly rent by the erstwhile tenant/lessee after expiration of the term of lease represents damages for unauthorised use and occupation of public premises and acceptance thereof by the owner during the pendency of proceedings in a Court of law or before an authority constituted under the Act or otherwise cannot give rise to a presumption that the owner has agreed to revive the lease or create a new one in favour of the erstwhile tenant/lessee and the Court cannot protect such unauthorised possession of public premises...”

10. Therefore, once the petitioner was occupying the land in question on yearly lease and there is no document to show that the lease in favour of petitioner was ever extended by respondent-Gram Panchayat

and after the expiry of lease period, the petitioner did not hand over possession of the land to the Gram Panchayat, accordingly, his possession after the expiry of lease period should be deemed to be unauthorised and illegal.

11. As regards the contention raised on behalf of the petitioner that the provisions of the 1973 Act are not applicable to the case in hand and that the petitioner can be evicted only under section 9 of the 1953 Act; it is observed that sub-section (1) of section 21 of the 1953 Act expressly excludes the land owned by the Government or local bodies in the State, from the application of the provisions of the 1953 Act.

Section 21(1) of 1953 Act reads thus :-

"21.(1) Nothing contained in this Act shall affect any land held by a tenant or lessee under Government, or local bodies in the State, or any unallotted evacuee land..."

12. The above extracted provision was considered by Hon'ble Supreme Court in ***Gram Panchayat of village Bhagal v. Bachna, 1988(2) Recent Revenue Reports 260*** and it was held as under:-

"Special leave granted. Heard both the sides.

*2. Respondent No. 1 Bachna, was inducted as a tenant for a limited period of five years in 1963. Upon the expiry of the term of the tenancy he had no authority to continue in occupation of the common land belonging to the appellant Gram Panchayat. He, upon the expiry of the five years term had thus become an unauthorised occupant. He could therefore be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964. **The protection of the Punjab Security of Land Tenures***

Act, 1953 will not be available to the appellant have regard to the provision contained in Section 21 which provides that nothing contained in the said Act shall affect any land held by a tenant or lessee under Government, or Local bodies in the State, or any unallotted evacuee land. The appellant-Panchayat is a local body. Under the circumstances, respondent No. 1 cannot claim protection under the Punjab Security of Land Tenures Act. Respondent No. 1 has reminded as an unauthorised occupant for nearly 18 years. He cannot be allowed to continue any longer. The appeal is, therefore, allowed. The order passed by the High Court is set aside and the order of eviction passed by the competent authority is restored. The possession will be taken from respondents only after respondent No. 1 removes the crops standing on the land in question today, if any, or on the expiry of three months whichever is earlier and on condition that respondent No. 1 files an undertaking within four weeks from today that he will hand over peaceful possession of the land voluntarily and willingly as soon as the crops standing on the land are removed or within three months whichever is earlier. In case no such undertaking is filed within four weeks, appellant can proceed to take possession immediately thereafter. Order accordingly... ”

[emphasis supplied]

13. As regards the reliance placed by learned counsel for petitioner upon the judgments in case of *Shyam Lal (supra)* and *Paramjit (supra)*, it is observed that the said judgments are distinguishable on facts and neither the applicability of Section 21 of the 1953 Act was involved therein.

14. Keeping in view the aforementioned facts and circumstances, I find no illegality in the findings recorded by the authorities below to the

effect that the petitioner is an unauthorised occupant and is liable to be ejected.

15. No other argument was raised.

16. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

17. It is further directed that the petitioner or anyone claiming under or through him, shall hand over the vacant physical possession of the land in question to the respondent-Gram Panchayat after removing the crops standing on the land in question today (if any) or on the expiry of four months from today; whichever is earlier and on condition that petitioner or anyone claiming under or through him; files an undertaking before the concerned Collector under the 1973 Act, within four weeks from today that he will hand over peaceful possession of the land voluntarily and willingly as soon as the crops standing on the land are removed or within four months from today, whichever is earlier. In case no such undertaking is filed within four weeks from today; respondent-Gram Panchayat can proceed to take possession immediately thereafter and if required, take police help as well.

18. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

04.11.2024
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No