

**CWP-18868-1995 (O&M)**

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

**CWP-18868-1995 (O&M)
Date of Decision : 02.09.2024**

Likhma

..... Petitioner

Versus

Sh. M.D. Asthana, Financial Commissioner, Haryana,
Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGERPresent: Mr. Suman Jain, Advocate
for the petitioner.Mr. Amit Jhanji, Senior Advocate assisted by
Dr. Eliza Gupta, Advocate
for respondents No.2 to 8.

HARSH BUNGER J.

1. Petitioner (Likhma) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India inter alia seeking setting aside of order dated 22.08.1986 (Annexure P-2) passed by learned Collector, Hisar and order dated 14.09.1995 (Annexure P-4) passed by learned Financial Commissioner, Haryana.

2. Briefly, the private respondents filed an application under Section 14-A (ii) of the Punjab Security of Land Tenures Act, 1953 (in short

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‘1953 Act’) against the petitioner seeking recovery of rent for the crops Kharif 1980 to Rabi 1983 before the Assistant Collector 2nd Grade, Hisar for an amount of Rs.1999/-.

2.1 The aforesaid application submitted by private respondents came to be dismissed by the learned Assistant Collector, vide order dated 24.01.1986 (Annexure P-1) by observing as under:-

“Therefore, in this case there are several intricate questions of law are involved and I am of this view that I cannot decide this case and I direct that either applicant file a regular suit in Civil Court so all questions be examined properly or may use any other remedy which he deems fit...”

2.2 Feeling aggrieved against the aforesaid order dated 24.01.1986 (Annexure P-1), the private respondents preferred an appeal before the learned Collector, Hisar, which came to be allowed vide order dated 22.08.1986 (Annexure P-2) whereby, the petitioner was directed to be dispossessed from the land in dispute.

2.3 Being dissatisfied with the Collector’s order (Annexure P-2), the petitioner preferred a further appeal before the learned Divisional Commissioner, Hisar which came to be allowed vide order dated 09.02.1987 (Annexure P-3) whereby the Collector’s order was set aside.

2.4 The private respondents challenged the Commissioner’s order by filing a Revision Petition under Section 24 of the 1953 Act which was allowed vide order dated 14.09.1995 (Annexure P-4) whereby the Collector’s order was maintained and the petitioner was ordered to be ejected.

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3. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court seeking reliefs, as noticed above.

4. Learned counsel for the petitioner submits that the impugned orders (Annexures P-2 and P-4) are wrong, illegal and arbitrary, accordingly liable to be set aside. It is submitted that Section 14-A (ii) of 1953 Act is designed primarily to enable the land owner to recover arrears of rent from a tenant but the tenant may be ordered to be evicted if after determination of rent, he does not pay the same within the time fixed by the Collector. It is submitted that the claim of the private respondents was regarding recovery of *batai* whereas the petitioner has already paid the same to the co-sharers. It is submitted that in the present case, there is a dispute as regards the relationship of landlord and tenant between the private respondents and the petitioner, which could not have been decided in summary proceedings under the 1953 Act. It is still further submitted that there is no finding returned by the Authorities below that there was a proper and legal service of Form- 'M' and 'N' upon the petitioner. With the aforesaid submissions, prayer was made by learned counsel for the petitioner for setting aside the impugned orders.

5. Per contra, learned senior counsel appearing for the private respondents has opposed the submissions made on behalf of the petitioner by submitting that the learned Financial Commissioner has passed a well reasoned and detailed order dealing with all the grounds raised by the petitioner, therefore there is no scope for any interference by this Court. It is submitted that there is sufficient evidence by way of revenue record to

prove the relationship of landlord and tenant between the parties and it is

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also proved on record that the rent/*batai* has not been paid by the petitioner at least in respect of four crops. It is next submitted that even a single default in the payment of rent/*batai* would render the tenant liable for eviction. Accordingly, prayer was made for dismissal of the Writ Petition.

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

7. Before considering the rival submissions on behalf of the parties it is apposite to refer to few judicial pronouncements.

7.1 In *Gurmej Singh v. Financial Commissioner, 1980 PLJ 603*; an Hon'ble Full Bench of this court was dealing with a writ petition against an order passed by the Financial Commissioner holding that the order of ejectment could not be passed without affording fresh opportunity to the tenants to make the payment of arrears of rent as the entire rent demanded by the landlord was not due though arrears of rent for some harvests were payable. The legality of the order passed by Financial Commissioner was strenuously challenged, inter-alia, on the following ground(s):-

(i) that if in pursuance of a notice under Form 'N' as prescribed in pursuance of an application under Section 14-A(ii) of the 1953 Act, by the landlord, arrears of rent are not paid by the tenants within one month from the date of the notice, the order of ejectment has to be passed by the Assistant Collector, who has no jurisdiction to give further opportunity for deposit of the arrears of rent. It was also urged that not only the Assistant Collector, Revenue, concerned even the higher authorities in appeal or revision have no jurisdiction to extend the statutory period as prescribed for payment of arrears of rent.



(ii) *that in case the demand of the landlord regarding the arrears of rent is objected to by the tenant as being excessive, it is the duty of the tenant to pay the part of the arrears of rent which may be admitted by him to be due and it is not open to him to withhold the payment even a part of rent so admitted only on the ground of excess demand having been made by the landlord.*

(iii) *that any payment by the tenant after the expiry of the statutory period as prescribed in the notice cannot save the tenant from ejectment.*

7.2 Hon'ble Full Bench of this court in **Gurmej Singh (supra)**, held as under:-

“27. The upshot of the above discussion is that the effect of the combined reading of section 14-A(ii) of the Act, Rule 22 of the Form 'N' prescribed therein is that the period of one month as prescribed in the said notice of demand as issued by the Assistant Collector, II Grade, during which the arrears of rent can be paid by the tenant, is statutory and no jurisdiction is vested in the Assistant Collector, II Grade, before whom the application for demand is made in the first instance, the appellate Authority, or the Revising Authority, as the case may be, to extend this statutory period under any circumstances, whether objection raised by the tenant in reply to the demand notice relates to the non-liability to pay the arrears in whole or in part. In view of this conclusion, there is no escape from holding that the decision in Balwant Singh's case (supra) that in case the demand of the landlord in the notice of demand was challenged by the tenant as being excessive, it was not obligatory on the tenant to make the payment of even a part of the demand about which he did not raise any dispute and that the Assistant Collector, II Grade has to grant a fresh opportunity to make payment after the final decision regarding



the objection of the tenant, was not correct and is set aside. Similarly, in the ratio of decision in Smt. Sham Kaur's case (supra) correct law was not laid down in holding, though indirectly, that the Assistant Collector, II Grade, had jurisdiction to extend time for payment of arrears of rent by the tenant though the period as prescribed in the notice of demand under Form 'N' has already expired.

28. In view of the above conclusion regarding the scope and ambit of section 14-A(ii) of the Act, it is held that the order of eviction by the Collector, dated 15th February, 1971 (Annexure F) without providing any fresh opportunity to the tenant to make payment of the arrears of rent as found due did not suffer from any infirmity..."

7.3 Further, in **Raj Kanta v. Financial Commissioner, Punjab, 1980 PLJ 346**; Hon'ble Supreme Court held as under:-

"8. On a consideration of the authorities mentioned above, it seems to us that the legislature clearly intended to use the word 'regularly' to mean payment of rent in a uniform and consistent manner without any breach or default. The legislature never contemplated that a single default could be condoned. This inference is fortified by the words "without sufficient cause". In other words, the legislature clearly provided that if the tenant had committed a default, whether one, two or more, the same could only be condoned if sufficient cause is shown and not otherwise. If, however, we accept the interpretation of the High Court, then the words "sufficient cause" becomes, absolutely redundant.

9. On an overall consideration of the matter, a correct interpretation of the plain language and the words and phrases used in clause (ii) of section 9(1) of the Act seems to us that the word 'regular' connotes a consistent course of conduct without any break or breach and the words 'regular payment of rent'



mean that the rent should be paid punctually without any default or laxity. Although the Act is heavily loaded in favour of the rights of the tenants so as to confer on them several important benefits and privileges yet as the Act is confiscatory in nature, so far as the landlord is concerned it should be strictly construed within the limited sphere inasmuch as the landlord is conferred limited grounds on which ejectment is permissible under section 9 of the Act which appears to be a safety valve for the limited rights that are left with the landlord under the Act. In order therefore to advance the object of the Act so as to assure the limited protection to the landlord, the language employed in the various clauses of section 9 has to be construed so as to give real benefit to the landlord within the limited range that the section operates. In the instant case, the words 'failure to pay rent regularly without sufficient cause' postulate the following conditions :-

- (1) there must be a failure on the part of the tenant to pay rent;*
- (2) such failure must be to pay rent regularly, that is to say, the rent should be paid punctually consistently without any break or breach;*
- (3) if there is any default ranging from one to several, the tenant has got to show sufficient cause if his case is to be taken out of the mischief of section 9(1)(ii).*

10. We might add at the risk of repetition that the use of the words 'without sufficient cause' clearly indicates that the intention of the legislature was that in order to escape ejectment, the tenant must at least be regular in payment of the rent and if he wants to get rid of the consequences of his default, he must prove sufficient cause. If, however, we construe the word 'regularly' as meaning at regular intervals so as to include a single default, then the term 'without sufficient cause' becomes absolutely redundant. For instance, even if a single default in the payment of the rent is committed



by the tenant, his case could be taken out of the ambit of clause (ii) of section 9(1) without insisting on the tenant to prove sufficient cause for this single default. That would, therefore, make the words 'sufficient cause' meaningless in such cases. It is well settled that the legislature does not waste words and every word that is used by it must be presumed to have some significance. The function of the Court, says Sir Francis Bacon, is "jus decere and not jus dare" (to interpret the law and not to make the law). The Court cannot, therefore, in order to promote its social philosophy turn and twist the plain and unambiguous language of the law so as to ascribe to it a meaning different from the one intended by the legislature. We are constrained to observe, with due respect, that this is what the High Court seems to have done in this case by adopting a puerile and pedantic process of reasoning. In these circumstances, reading the entire sentence, the cumulative effect thereof unmistakably is that the Act includes even a single default and that is why instead of using the word 'default' the word 'regularly' has been employed which is immediately followed by the words 'without sufficient cause'. Moreover, we might mention that in the various Rent Acts passed in the States, ejectment is permissible in some cases where there is a single default, in other cases where there is more than one default and so on. If the legislature intended that a single default would not entitle a landlord to eject the tenant under the Act, then it would have said so expressly either by way of an explanation or otherwise in clause (ii) of section 9(1) of the Act. Finally, we cannot lose sight of the explanation used for the various clauses of section 9(1) which runs thus :

"Explanation. - For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant



within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent."

11. While the explanation takes care to define as to when a tenant would be deemed to be in arrears and fixes a period of two months, indeed if the intention of the legislature was that a single default in payment of rent could be condoned, it should have included this incident also in the explanation. This provides, therefore, the most important intrinsic circumstance to support the interpretation which we have put on clause (ii) of section 9(1) of the Act and which invalidates the reasons given by the High Court.

12. For the reasons given above, we are satisfied that the High Court took an erroneous view of law in interpreting clause (ii) of section 9(1) of the Act as the tenants have been proved, in this case, to have committed default in the payment of rent for Kharif 1961, they must be held to have failed to pay the rent regularly without sufficient cause as envisaged by clause (ii) and are, therefore, legally entitled to ejectment..."

7.4 Following the aforesaid judgment in Raj Kant's case, a Division Bench of this court in **Surinder Singh v. Financial Commissioner, Punjab, 2000(4) RCR (Civil) 629**, held as under:-

"8. Equally lacking in merit is the contention that the petitioner had been paying rent and that the order of eviction could not have been passed for a single default. The authorities below have found that the petitioner had been committing repeated defaults. Reference in this regard may be made to the order of the Assistant Collector, referred to earlier. It has been found that vide order dated October 12, 1982 "the respondents (including the present petitioner) were ordered to make payment of rent of Rs. 1467.67. Similarly the rent for the crops Kharif 1976 to Rabi 1978 was ordered to be paid by the A.C.



*Ist Grade vide his orders dated 27.1.1982.Similarly the rent for the crops Kharif 1979 to Kharif 1981 was recovered.....according to orders dated 29.7.1983..... a copy of which is Ex.A-5." It is, thus, clear that there were continuous defaults. The petitioner had failed to pay rent regularly. The plea of single default is wholly untenable. Still further, even if it is assumed that there was a solitary default, the law does not condone it without sufficient cause being shown. Reference in this behalf may be made to the judgment of their Lordships of the Supreme Court in **Raj Kanta v. Financial Commissioner, Punjab and others, 1980 P.L.J. 346.** It was held by their Lordships that "if there is any default ranging from one to several, the tenant has got to show sufficient cause if his case is to be taken out of the mischief of Section 9(1)(ii)." Thus, even a single default cannot be condoned without a sufficient cause being established. In the present case there have been series of defaults without any cause..."*

8. Coming to the case in hand, the learned Collector allowed the claim of the private respondents by observing as under:-

"Counsel for the appellant while arguing contended that disputed land whose rent is pending is having total Rakba of 148 kanals. As per the production of the crop total batai for Kharif 1980 and Rabi 1983 comes to Rs.12,277/57 P. and its 1/3 amounts to Rs.4092/52P but applicant made a claim of only Rs.1990/-. Respondent was served form N as per law by the Lower Court on 23.1.1984 but respondent has not deposited the demanded amount in the treasury. He further informed that respondent is not in a habit to pay batai rent. While showing R-1 he contended that Ram Singh who has issued receipt for getting batai has not summoned in the Court to prove it and nor exhibit R-2 Oyrbe Ram who collect the



batai rent, written, writer has not been proved. Learned counsel for the appellant while continuing arguments further showed me 1965 PLJ page 4. In addition to it, he contended that as per revenue record girdawri of disputed land is in the name of respondent. While continuing his arguments he also referred 1969 PLJ page 194. He showed 1969 PUL page 338. 1970 PLJ 774 and as per these if tenant did not pay rent in time, he cannot give further time. And finally while concluding the arguments Ld. Counsel for appellant requested that Respondent has not deposited batai rent for disputed crops. Therefore, appellant be get batai rent and respondent be dispossessed.

In reply to this Ld. Counsel for the respondent contended that partition took place among appellants and they do not know who get the disputed property and neither they have been given notice in writing to give batai rent. Therefore, they were not in a position to know to whom batai rent be paid. Two other cultivator are there on disputed land. To prove it he referred 1978 PLJ 429. Finally while concluding the arguments ld. counsel for the respondent contended that appellant has been paid batai rent and therefore, appeal of the appellant be dismissed.

I have heard the arguments of ld. counsel for both the parties and have gone through the record carefully. After considering all the facts I reached to the conclusion that respondent as per law has been served respondent has not produced the receipt of challan after depositing Rs.1999/- in the treasury. Therefore, it is clear that respondent has not paid batai rent for the disputed crops. As per as exhibit R-2 & R-2 is concerned, it has not been proved. One who wrote the receipt and one who dictate were not produced in the Court to prove it. Otherwise also, it is not valid to give rent to any other person except land lord and specially when landlord has not given any



right to any person to collect the rent. Under these circumstances appeal of the appellant is accepted. Respondent is directed to dispossessed from the land in dispute.”

9. The aforesaid order passed by the learned Collector has been maintained by the learned Financial Commissioner by holding as under:-

“3. The next issue to be adjudicated is, whether the relationship of Land lord and Tenant exists between the parties. I agree with the contention of the Petitioner that a copy of the Jamabandi for the year 1981-82 (as Exp-X) and a copy of the Khasra Girdawari w.e.f. Kharif 1980 to Rabi 1983 (as Exp-2) showing the Petitioner as the exclusive owners of the land and Respondents as in cultivating possession thereof as a tenant on 1/3 batai-rent during the relevant period establishes beyond any shadow of doubt the relationship of Land lord and Tenant between the contending parties.

4. The next issue is regarding the payment of rent of crop in disputes. That they have not been paid has been testified oath by Yash Pal Advocate. I have also seen the Ex-R-1 and R-2, which purports to show that the rent of one Rabi crop was paid to Puran Ram, but the receipt has been thumb marked by one Ran Singh. Similarly, vide receipt Ex. R-2, rent of one Kharif crop is alleged to have been paid to one Puran Ram. These documents, however, have not been proved. They cannot accordingly be relied upon. It has been contended in the written arguments that the respondents have paid rent of two crops to one Puran stated to be a one time co-sharer. However, Puran has not been examined. An adverse reference, therefore, must be drawn against the respondents in this regard. It has to be held that his claim regarding the payment of rent is false. Even it were to taken to be correct, the said receipts relate to only two out of the six crops in dispute and no claim has been made regarding payment of the remaining 4 crops. The



respondents have never claimed that there was enough reason existing with them for non-payment of rent. The plea of the partition between the Land Lords and the ignorance of the respondent tenant regarding who was the land owner of the land in tenancy also does not hold any water. The Jamabandi Ex P-X of 1981-82, amply proves that the petitioner were the sole owner in this case.

5. In view of the findings in the foregoing paragraphs, I have no hesitation in holding that the orders of Collector dated 22.8.86 was well merited. It is accordingly upheld. The ejectment of the tenant will be subject to legal provisions regarding their re-settlement etc.

10. From a perusal of the above extracted order(s), the following facts emerge:-

- (i) The relationship of landlord and tenant between the parties is established from the copy of the jamabandi for the year 1981-82 and copy of khasra girdawari w.e.f. Kharif 1980 up to Rabi 1983 wherein private respondents are reflected as exclusive owners of the land and petitioner is shown in cultivating possession thereof as a tenant on 1/3 batai (rent)
- (ii) The private respondents made a claim of Rs.1990/- on account of *batai* for the crops Kharif 1980 to Rabi 1983.
- (iii) Form N was served upon the petitioner by the Court of Assistant Collector on 23.01.1984 but the petitioner did not deposit the demanded amount in the treasury as no receipt of challan after depositing of Rs.1999/- in the treasury was produced.
- (iv) The claim of the petitioner that he had made payment of rent of crops in dispute to one Puran Ram (who was a co-sharer at one point in time) vide two receipts, were not proved on record as the said Puran Ram was not examined.

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(v) The claim of the private respondents was in respect of six crops and even if the receipts claimed by the petitioner were to be accepted, even then the said receipts relate to only two crops and there is no evidence as regards the payment of *batai*/rent of the other four crops.

11. Upon considering the abovementioned undisputed facts in the light of the authoritative judicial pronouncements as referred above, it is apparent that there is a relationship of landlord and tenant between the private respondents and the petitioner and Form N was duly served upon the petitioner, however, he failed to pay the rent for the crops in question to the private respondents. Since the default in payment of rent is established consequently, the petitioner had to be ejected from the land in question.

12. Keeping in view the aforementioned facts and circumstances, I do not find any merit in the instant Writ Petition and the same is accordingly dismissed.

13. All pending application(s), if any, shall stand closed.

02.09.2024
Himani

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No