

2024:PHHC:115483



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

CWP-15893-2024 (O&M)
Date of decision : 02.09.2024

UMRAO SINGH @ UMRAV SINGH

...Petitioner

Versus

COMMISSIONER, GURUGRAM DIVISION AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ajay Jain, Advocate
for the petitioner.

HARSH BUNGER, J.

Petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 29.08.2011 (Annexure P-3) passed by the learned Collector, Sub Division Mahendergarh; whereby the petitioner was ordered to be evicted from the suit land.

A further prayer has been made for setting aside the order dated 22.03.2024 (Annexure P-5) passed by the learned Commissioner, Gurgaon Division, Gurgaon; whereby the appeal filed by the petitioner against his eviction order dated 29.08.2011 (Annexure P-3) was dismissed.

2. Briefly, respondent No.3 filed an application under Section 5 read with Section 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (in short 'the 1973 Act') seeking eviction of the

petitioner from the land described in the site plan by letters 'ABC' and bounded as under :-

“East : Bucholi Road
West : Agriculture Land and Samadi Acharaya Jain
 Muni Moti Ramji Maharaj
North : Chhatri and House Raja Bahadar,
 Mahabir Prasad
South : Gali/Kacha Rasta
 situated at village Bucholi Road, Mahendergarh.”

2.1 The petitioner contested the afore-said eviction petition by submitting his reply, wherein the ownership of the suit land was admitted to be that of Municipal Committee, however, it was stated that the site plan produced by the Municipal Committee was wrong and against the existing position. It was further stated by the petitioner that he is in possession as tenant since the year 1963-64 and prior to him, his father was a tenant. It was next submitted that the rent of the afore-said property was being increased periodically by the Municipal Committee and lastly, the rent was Rs.150/- per year, which was being recovered by the Municipal Committee. It was also stated that the petitioner was ready to pay the due rent along with interest. Petitioner denied the claim of the Municipal Committee that he was in an un-authorized possession as he was using the property for residing and tethering animals. Few additional pleas were also taken and prayer for dismissal of the eviction petition was made.

2.2 The learned Collector, vide order dated 29.08.2011 (Annexure P-3) accepted the eviction petition filed by the Municipal Committee and ordered eviction of the petitioner from the afore-said suit property.

2.3 Being aggrieved against the order dated 29.08.2011 (Annexure P-3), the petitioner preferred an appeal under Section 9 of the

1973 Act, which came to be dismissed by the learned Divisional Commissioner, Gurgaon, vide order dated 22.03.2024 (Annexure P-5).

3. In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court for the relief as noticed here-in-above.

4. Learned counsel for the petitioner submits that the impugned orders are wholly arbitrary and cryptic; therefore, the same are unsustainable in law. It is contended that the authorities below have rightly concluded that there exists relationship of landlord and tenant between Municipal Committee and the petitioner, however, in the impugned order, the petitioner has wrongly been described as un-authorized occupant. It is submitted that the impugned orders are contrary to the judgment and decree dated 31.01.2014 passed by the learned Civil Judge (Junior Division), Mahendergarh (Annexures P-6 and P-7) and also against the judgment and decree dated 13.01.2016 passed by the learned Additional District Judge, Narnaul (Annexures P-8 and P-9). It is further submitted that the eviction of the petitioner has been ordered primarily on the ground of non-payment of rent, whereas the petitioner never refused to pay the rent and rather, he had stated that he was ready to pay the rent. It is also contended that the possession of the petitioner is permissive and legal, in capacity of a tenant and his tenancy had not been determined till date. Therefore, he cannot be evicted under the provisions of Sections 5 and 7 of the 1973 Act.

4.1 With the afore-said submissions, the petitioner prayed that the impugned orders be set aside.

5. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

6. Before considering the submissions made on behalf of the petitioner, it would be apposite to refer to few judicial pronouncements.

6.1 In *Ashok Marketing Ltd. v. Punjab National Bank*, 1990(2) *RCR (Rent)* 297; a larger bench of Hon'ble Supreme Court of India considered the following question: -

“The common question which arises for consideration in these appeals, by special leave, and the writ petition filed under Article 32 of the Constitution is, whether a person who was inducted as a tenant in premises, which are public premises for the purpose of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'Public Premises Act'), and whose tenancy has expired or has been terminated, can be evicted from the said premises as being a person in unauthorised occupation of the premises under the provisions of the Public Premises Act and whether such a person can invoke the protection of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Rent Control Act). In short, the question is, whether the provisions of the Public Premises Act would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments.”

6.2 After considering various provision under the Public Premises Act, the Rent Act alongwith the objects & reasons of the said enactments and upon noticing various judicial pronouncements, Hon'ble Supreme Court held as under:-

“69. It has been urged by the learned counsel for the petitioners that many of the corporations referred to in Section 2(e)(2)(ii) of the Public Premises Act, like the nationalised banks and the Life Insurance Corporation, are trading corporations and under the provisions of the enactments whereby they are constituted these

*corporations are required to carry on their business with a view to earn profit, and that there is nothing to preclude these corporations to buy property in possession of tenants at a low price and after buying such property evict the tenants after terminating the tenancy and thereafter sell the said property at a much higher value because the value of property in possession of tenants is much less as compared to vacant property. We are unable to cut down the scope of the provisions of the Public Premises Act on the basis of such an apprehension because as pointed out by this Court in **M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, 1989(3) SCC 293 :***

"Every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigour of the Rent Act must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords must be judged by that standard."

These observations were made in the context of the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 whereby exemption from the provisions of the Act has been granted to premises belonging to the Bombay Port Trust. The consequence of giving overriding effect to the provisions of the Public Premises Act is that premises belonging to companies and statutory bodies referred to in Clauses (2) and (3) of Section 2(e) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in Clauses (2) and (3) of S.2(e) of the Public Premises Act while dealing with their properties

under the Public Premises Act will, therefore, have to be judged by the same standard.

70. For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, by override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act...”

6.3 Further in ***M/s Nopany Investments (P) Ltd. v. Santokh Singh, 2008(1) RCR (Civil) 270***; Hon'ble Supreme Court observed as under:-

*“12.In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in **V. Dhanapal Chettiar v. Yesodai Ammal, 1979(2) RCR (Rent) 352 : [AIR 1979 Supreme Court 1745]** ...”*

6.4 In somewhat similar circumstances as involved in the present writ petition, a Division Bench of Hon'ble Delhi High Court, while placing reliance upon the above extracted judgments, in the case of ***Suresh Chand Gupta v. MCD, 2013(22) RCR (Civil) 626***; held as under:-

*“14. The Division Bench of this Court in judgment dated 11th May 2012 in LPA No. 9/2012 titled **Indian Institute of Public Opinion Pvt. Ltd. v. Life Insurance***

Corporation of India has held that the tenants of statutory corporations/local authorities, as the MCD is, are entitled to continue in the premises only if agreed to by such corporation/authority and the statutory corporation/authority cannot be compelled to continue with the tenants paying rents much below the market rent and which would amount to giving a benefit to a certain class of tenants at the cost of the public exchequer. Relying on **Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1** it was further held that distribution of state resources is to be guided by doctrine of equality, larger public good and rational, transparent procedures designed to fetch maximum value for enrichment of the public at large and to allow old tenants of statutory corporations/authorities to continue at old rates would amount to giving monetary benefit for all times to come to those who may on first-come basis have come into occupation of such properties and at the cost and prejudice of others. Mention may also be made of **Jiwan Dass v. Life Insurance Corporation of India (1994) Supp (3) SCC 694** laying down that Section 106 of the Transfer of Property Act having empowered the public authorities to act in public interest and determine the tenancy, it is not permissible to cut down the width of the power by reading into it the reasonable and justifiable grounds for initiating action of terminating the tenancy.

15. It is well settled law that the provisions of the PP Act supersede the provisions of the Rent Act (see **Ashoka Marketing v. Punjab National Bank (1990) 4 SCC 406**). The tenancy of the appellant even though at a rent of less than L 3500/- per month, is thus not protected. It is not the case of the appellant that there is any registered lease in his favour where under he is entitled to continue as a tenant in the premises. The tenancy of

the appellant was at best a month to month tenancy and there is no reason for the State, as the respondent MCD, to not terminate the said tenancy and to evict the appellant under the provisions of the PP Act and to earn maximum possible rent therefrom.

16. That brings us to the very first argument of the counsel for the appellant, that the termination of the lease is not proper. It is contended that the show cause notices do not terminate the lease and there is no termination of lease within the meaning of Section 106 of the Transfer of Property Act, 1882.

*17. We are afraid the aforesaid contention at this stage, after nearly 25 years of initiation of proceedings under the PP Act, cannot be entertained. Attention of the counsel during the hearing was invited to the judgment of the Division Bench of this Court in **Shriram Pistons & Rings v. C.B. Agarwal**, where, relying on **Nopany Investments (P) Ltd. v. Santokh Singh HUF (2008) 2 SCC 728**, it was held that filing of an eviction suit under general law is itself a notice to quit upon the tenant and that no notice to quit is necessary under Section 106 of the Transfer of Property Act in order to pass a decree for eviction.*

18. The appellant as aforesaid, has been contesting the proceedings for the last 25 years and cannot be said to have suffered any prejudice from the notice in the prescribed form having not been given to him, the purpose of which is only to notify a tenant of the intent of the landlord not to continue the relationship of landlord and tenant.

*19. The counsel for the appellant has also urged the aspect of opportunity of evidence having not been given. Reliance in this regard is placed on **New India Assurance Company Ltd. v. Nusli Neville Wadia (2008) 3 SCC 279**.*

20. Though, undoubtedly no evidence was recorded before the Estate Officer but it cannot be lost sight of that the appellant, for more than three years when the proceedings were pending before the Estate Officer, did not seek any opportunity to lead evidence and on the contrary continued to represent that there was a stay from the Civil Court of the proceedings before the Estate Officer and only when his said bluff was caught, sought an opportunity for leading evidence and which was denied by the Estate Officer in view of the report of inspection before him. The Appellate Authority also held that no prejudice was suffered by the appellant from non-grant of opportunity to lead evidence and the learned Single Judge refused to interfere with the said decision of the Appellant Authority.

21. In view of the aforesaid facts, we, in exercise of appellate jurisdiction under Article 226 of the Constitution of India, do not deem it appropriate to entertain the said argument. It cannot be lost sight of that the PP Act was enacted to provide summary eviction of unauthorized occupants of public premises and the Estate Officers appointed thereunder are not bound by the provisions of Civil Procedure Code, 1908 and the Evidence Act, 1872. It is also not as if there is no material whatsoever before the Estate Officer to come to the conclusion of the respondent MCD being justified in terminating the tenancy of the appellant for the reason of sub-letting and misuser. As far as sub-letting is concerned, the appellant also does not dispute that suit for possession was filed against the respondent No.4 herein. In fact, the respondent No.4 continued to pursue the proceedings till before the learned Single Judge also, asserting his own right in the premises and his brother respondent No.5 was present before us also. As far as the plea of misuser is concerned, plethora of documents on the record of the writ petition show the

appellant to be a resident of A-334, Derawal Nagar, Delhi and not of the subject premises. The appellant in the memo of parties in this appeal also has given his alternate address as that of Derawal Nagar, Delhi only. The counsel for the appellant also during the hearing could not deny the residence of the appellant at Derawal Nagar, Delhi. It is thus quite obvious that the appellant has no need of the subject premises for the purpose of his residence and we fail to see as to how a residential accommodation of the State can be allowed to be retained by a person who already has other residential accommodation and thus has no need therefor.

22. Moreover, the grounds of termination of tenancy are not even relevant as aforesaid. The MCD, as owner/landlord of the premises was/is entitled to terminate the tenancy, which as aforesaid, was a month to month, without even citing any ground/reason therefor and once the tenancy is determined and which can also be by initiation of eviction/ejection proceedings, the possession becomes unauthorized. The Estate Officer thus, cannot be said to have done any wrong in passing the order of eviction. The legislature has provided statutory remedy of one appeal only against the order of the Estate Officer and no further appeals have been provided. The jurisdiction under Article 226 of the Constitution of India cannot partake the character of a second appeal and is intended to only oversee that no injustice is committed. In this case as aforesaid, there is no justification for the appellant to continue in the premises, to the prejudice of the MCD, as MCD is being deprived of earning prevalent rent of the premises.

23. We therefore do not find any merit in this appeal, which is dismissed...”

7. Coming to the case in hand, concededly, there is no registered

lease deed in favour of the petitioner, whereunder he is entitled to continue as a tenant in the premises. Therefore, keeping in view the above referred position in law, there was no need for determination of tenancy of the petitioner before initiating proceedings under the Public Premises Act as the filing of eviction petition is itself a notice to quit upon the tenant.

8. Evidently, as per the own stand of the petitioner, he has continued in possession of the suit property w.e.f. 1963-64 i.e. for the last almost 60 years and that too @ Rs.150/- per year, which is too meagre. Further, a finding has been returned by the authorities under the Public Premises Act that the petitioner had not paid the rent and he was in arrears of rent and that unauthorized construction was raised by him.

9. It cannot be lost sight of that the Public Premises Act was enacted to prove summary eviction of un-authorized occupants of Public Premises.

10. Keeping in view the afore-mentioned facts and circumstances, there is no justification for the petitioner to continue in the premises/suit property to the prejudice of the Municipal Committee, Mahendergarh, as it would be deprived of earning prevalent rent of the suit property.

11. In view of the above discussion, there is no scope for any interference by this Court in the impugned orders, resultantly, the writ petition fails and the same is accordingly dismissed.

12. All pending application/s, if any, shall also stand closed.

September 02, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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