

2024:PHHC:091118



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

CWP-16674-2024 (O&M)

Date of Decision : 19.07.2024

SUBHASH CHANDER AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for setting aside letter dated 12.07.2024 (Annexure P-1); whereby the petitioners have been directed to vacate Bunglow No.19, Kachhari Road, Survey No.21, Cantonment, Amritsar, by 20.07.2024 (5:00 p.m.).

2. Briefly, the dispute relates to property bearing Bunglow No.19, Kachhari Road, Survey No.21, Cantonment, Amritsar (here-in-after referred to as 'the property'). It is the pleaded case of the petitioners that that the afore-said property was held by one Deewan Chand Peshawaria on "Old Grant Term" as contained in Governor General Order No.179 dated 12.09.1836 and certain servant quarters were built in the said property during the British times.

2.1 Concededly, the afore-said property was resumed by the State, vide an order dated 09.02.1972.

2.2 The afore-said resumption order came to be challenged by Deewan Chand Peshawaria, by way of a Civil Suit bearing No.511 of 15.12.1972 (Annexure P-2), which was decreed by the Civil Court vide judgment and decree dated 13.09.1977. A further appeal filed by the State/Union of India, was dismissed by the Appellate Court, vide judgment and decree dated 31.10.1980. Thereafter, the Union of India, filed Regular Second Appeal (RSA No.2279-1981) (Annexure P-3) before this Court, wherein the following questions were proposed :-

“i) Whether the Government of India has the power to resume old grant as per the terms contained in Government General order no.179 dated 12.09.1836?

ii) Whether the Government of India has the power to take possession of the property including super structure after expiry of the notice period of one month?

iii) Whether the resumption order becomes illegal only on the ground that the compensation of the super structure was not properly determined?

iv) Whether the Government can resume the land underneath the Bungalow only on payment of the value of such building?

v) Whether the refusal to receive summon by registered post amounts to valid service?

vi) Whether pasting of copy of summon on the dispute property is a valid substituted service?

vii) Whether an individual who is only occupier of the Govt. building can claim himself to be the owner and can claim decree of permanent injunction against the actual owner?

viii) Whether the payment of the value of the authorized building on land in question is a condition precedent to the order of resumption?”

2.3 It transpires that the afore-said ***RSA No.2279-1981*** came to be decided by this Court vide judgment/order dated 09.09.2009 (Annexure P-3), wherein the above extracted questions No.(i), (ii), (iii), (iv), (vii) and (viii), were held in favour of Union of India and questions No.(v) and (vi), were held in favour of the respondents in the appeal (***RSA No.2279-1981***) and on that basis, the afore-said ***RSA No.2279-1981***, was dismissed.

2.4 Being aggrieved against the aforesaid judgments, the Union of India filed Special Leave Petition before the Hon'ble Supreme Court of India, which came to be subsequently registered as ***Civil Appeal No.3208 of 2011***. Said ***Civil Appeal No.3208 of 2011*** was allowed by the Hon'ble Supreme Court of India, vide order dated 22.05.2019 (Annexure P-4), the relevant extract of which reads as under :-

“Since no other question has been raised, the finding has to be set aside. The appeal filed by the Union of India is allowed. The respondents are liable for vacating the premises in view of the findings recorded by the High Court on other issues.

It was conceded by learned counsel for the respondents that issue Nos. (i), (ii), (iv) & (vii) have to be decided in favour of the appellants and High Court has recorded the positive finding. Insofar as Issue nos.(iii) & (viii) also are in favour of the appellants in which we do not find any infirmity. The appeal is allowed.”

2.5 It further appears from para No.6 of the writ petition that even a Review Petition against order dated 22.05.2019 (Annexure P-4) was also dismissed.

3. The petitioners state that they and/or their predecessors came in possession of the afore-said property during the period of litigation between the State/Union of India and Deewan Chand Peshawaria. It is stated that the petitioners are residing in the said property for the last more than 50 years and they have been paying electricity and water charges etc. to the Amritsar Cantonment Board. It is also stated that the afore-said property basically consists of Servant Quarters constructed during the British times and the possession is sought to be recovered from them vide letter dated 13.10.2023 (Annexure P-7), whereupon the petitioners filed Writ Petition (**CWP No.25373 of 2023**) before this Court, which came to be disposed of vide order dated 08.11.2023 (Annexure P-8), granting liberty to the petitioners to the concerned authorities for the redressal of their grievance within seven days and it was further directed that *status quo* shall be maintained till the decision of the representation, if any, filed by the petitioners.

3.1 It appears that the petitioners submitted a representation (Annexure P-9) to the Office of Sub Divisional Magistrate-cum-Land Acquisition Collector, Amritsar-II, whereupon the said Sub Divisional Magistrate, called all the parties and after affording them due opportunity of hearing on their representation (Annexure P-9), the same was decided vide letter/order dated 12.07.2024 (Annexure P-1); wherein, it was concluded that no evidence of ownership was produced by the petitioners and above referred Deewan Chand Peshawaria or his family members are also not residing in said Bunglow No.19. It was further found that the petitioners were living in the said property in an un-authorized manner, accordingly, they were granted time till 20.07.2024 (5:00 p.m.) to vacate

the property on their own, failing which, the possession would be handed over to the Government.

4. In the backdrop of afore-said facts and circumstances, the petitioners have filed the instant writ petition, seeking setting aside of the letter/order dated 12.07.2024 (Annexure P-1).

5. Learned counsel for the petitioner, while reiterating the afore-mentioned facts has submitted that the petitioners have been residing in the afore-said property and paying electricity/water charges to the Amritsar Cantonment Board for the past many years, therefore, their possession cannot be termed as un-authorized. It is further submitted that even if the possession of the petitioners is taken as unauthorized, even then, they can be evicted by adopting new process of law.

6. On the other hand, learned State counsel, who has appeared in pursuance of advance copy of the petition having been served upon it, has opposed the submissions made on behalf of the petitioners and has submitted that the petitioners have no right/title or interest in the property, which has already been resumed by Union of India way back in the year 1972 and the civil litigation initiated by Deewan Chand Peshawaria, remained pending before the Civil Court(s) and ultimately, the Hon'ble Supreme Court of India vide its judgment dated 22.05.2019, allowed the Civil Appeal No.3208 of 2011, filed by Union of India, upholding the resumption order passed in the year 1972 and further observing that the respondents in the Civil Appeal are liable for vacating the premises. It is next submitted that despite the property having been resumed way back in the year 1972 and the said resumption having been upheld by the Hon'ble Supreme Court in May, 2022; still the State/Union of India, has not got possession of the said property and had rather sought assistance of this

Court in that regard by filing CWP No.12891 of 2021, which is stated to be pending. It is submitted that the petitioners are staying in the property gratuitously and therefore, they would not acquire any right or interest in the said property. Accordingly, they should be directed to handover the possession to the State/Union of India.

6.1 With the afore-said submission, dismissal of the writ petition has been prayed for.

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

8. During the course of the hearing, a pointed query was raised to the learned counsel for the petitioners as to under what circumstances, the petitioners have come in possession of the afore-said property and also as to whether the petitioners have any document by way of lease etc. in their favour. In response to the said query, learned counsel for the petitioners has fairly stated that they were put in possession by Deewan Chand Peshawaria and there was no document by way of lease etc. in their favour so as to show their rights in the property, in question.

9. Upon considering the rival contention of the parties and also considering the fact that the petitioners were put in possession of the property by Deewan Chand Peshawaria, without their being any document in their favour, it is concluded that the possession of the petitioners over the property is only gratuitous, who were permitted to stay in the property by Deewan Chand Peshawaria, gratuitously. Concededly, the property in possession of Deewan Chand Peshawaria, was resumed way back in the year 1972 and after a long battle spread over almost 50 years, the matter was finally decided by the Hon'ble Supreme Court of India, vide its

judgment dated 22.05.2019 (Annexure P-4), upholding the resumption and further observing that the property is liable to be vacated.

9.1 The issue pertaining to gratuitous occupants of a property was considered by the Hon'ble Supreme Court of India in ***Maria Margarida Sequeria Fernandes and others vs Erasmo Jack de Sequeria (Dead) through L.rs. and others, 2012(5) SCC 370***, wherein, it was concluded as under :-

“101. Principles of law which emerge in this case are crystallized as under :-

- 1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
- 2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
- 3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- 4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.*
- 5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”*

10. It is indeed appalling that despite the property having been resumed way back in the year 1972 in favour of State/Union of India, its

possession could not be taken on account of civil litigation initiated at the instance of its occupant namely, Deewan Chand Peshawaria, which was ultimately decided by the Hon'ble Supreme Court of India, vide its judgment dated 22.05.2019 (Annexure P-4) and despite lapse of more than five years, the State/Union of India, is still waiting for the possession of the property. Now the petitioners, who apparently have no right/title or interest in the property and are mere gratuitous occupants at the instance of Deewan Chand Peshawaria, are wanting to further prolong the taking over of possession; which cannot be permitted. In fact, such an attempt by the petitioners has to be stopped summarily so as to prevent the time of the Courts from being wasted.

11. Keeping in view the above discussion, I do not find any merit in this petition, resultantly, the writ petition fails.

12. In the peculiar facts and circumstances of the case, the petitioners and/or anyone claiming under or through them, are granted two months' time to vacate the property, in question. It is further directed that after the expiry of two months' period from today, the vacant and peaceful possession of the property be handed over to the State/Union of India, failing which, the State/Union of India, would be at liberty to get the possession of the property, in question by taking police help.

13. The writ petition is accordingly dismissed with the afore-said observations.

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

July 19, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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