

2024:PHHC:149790



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30926-2024 (O&M)
Date of decision : 18.11.2024

RAJ KUMAR AND OTHERS ...Petitioners

Versus

STATE OF HARYANA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Akshay Jain, Advocate
for the petitioner.
[through Video Conferencing]

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *mandamus* for directing the respondent-State to consider the case of the petitioners under the Policy for Sale of Shops/Houses by Municipal Bodies notified by the Department of Urban Local Bodies, Government of Haryana vide notification No.08/04/2021-ICI dated 01.06.2021 (Annexure P-3) for conveying the title in their favour.

2. Briefly, the petitioners are aggrieved by non-consideration of their cases by the respondents for sale of Kiosks situated at Old Bus Stand, Ellenabad, District Sirsa, in terms of the policy dated 01.06.2021 (Annexure P-3) issued by the Government of Haryana, Department of Urban Local Bodies.

3. As per Clause 2 of the afore-said policy dated 01.06.2021 (Annexure P-3), the same is applicable to the following

properties/persons :-

“2. Categories of properties/persons to whom this Policy apply:-

(1) Save as otherwise provided by or under this Policy or, as the case may be, directed by the Government from time to time, this Policy shall apply to the following properties:-

(a) On the land leased out on Tehbajari/shops/houses for which the corresponding rent/lease money/license fee/Tehbajari fee is due/receivable to the Municipal Bodies as on 31.12.2020 and which are in the possession of persons/entities other than Municipal Bodies or, as the case maybe, it's predecessor bodies for a period of 20 years and above.

Note: It is possible that even after granting such rights, the properties might have been transferred to Municipal Bodies (either its ownership or management) from other bodies (such as Panchayat, Improvement Trust, Mandi Township, etc.). In such cases, for the purpose of working out 'duration of possession', the period for which it remained in the ownership/management of such predecessor bodies will also be included while working out eligibility.

(b) Any other class or category of persons/properties on which the Government may, by order, specifically direct this Policy to be made applicable, either wholly or in parts.”

4. During the course of hearing, it is not disputed by the learned counsel for the petitioners that with regard to the Kiosks in question, the Municipal Committee, Ellenabad had initiated eviction proceedings against the petitioners and/or their predecessors-in-interest, under the provisions of Sections 4, 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short 'the 1972 Act'), wherein their eviction

was ordered and penalty was also imposed upon them. Even the writ petition (*CWP-11573-1993*) and other connected matters filed by petitioners, were dismissed by this Court vide common order dated 31.03.2011 (Annexure P-1). Further, the intra-court appeals (LPAs) preferred by the petitioners and/or their predecessors-in-interest, were also dismissed vide common order dated 02.11.2012 (Annexure P-2) by observing as under :-

“A perusal of Resolution No.1 dated 1.1.1978, passed by Gram Panchayat, Ellenabad (Annexure P-3/1), would show that the said resolution does not contain the names of persons who submitted applications to the Gram Panchayat, and were allowed, by the Gram Panchayat, to install kiosks (khokhas) on payment of monthly rent. The names of the appellants are absent from the resolution passed by the Gram Panchayat. The appellants have not produced any document to show that they submitted applications to the Gram Panchayat. We, therefore, find it difficult to accept the plea that appellants were inducted as tenants by the Gram Panchayat or were allowed by the Gram Panchayat to install their khokhas on the land, in dispute.

Section 3 of the Act provides for eviction of unauthorized occupants of public premises, which, reads as follows :-

“For the purposes of this Act, a person shall be deemed to be in unauthorized occupation of any public premises-

(a) Where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) XXX XXX XXX

(c) XXX XXX

(d) *Explanation:- For the purposes of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.”*

A reading of clause (a) of Section 3 of the Act would show that a person shall be deemed to be in unauthorized occupation of public premises unless he is in possession thereof, in pursuance of any allotment, lease or grant. Admittedly, the claim of the appellants in respect of their tenancy, is not supported by any allotment, lease or grant. Even if we accept the plea of the appellants, that they had paid rent to the Municipal Committee evidenced by way of receipts, the mere payment of rent will not confer the status of allottee, lessee or grantee in view of explanation appended to Section 3 of the Act. The appellants have raised a plea that they have been described as tenants of the land, whose rental value is less than Rs.100/-, in Resolution No.2 dated 28.11.1996. This resolution is not sufficient to create a relationship of landlord and tenant between the parties. It appears to us that the person who drafted this resolution used the aforesaid words casually without any intention much less to create tenancy in favour of the appellants. We would like to record that the documents, Annexure A-1 to A-3, were neither produced before authorities under the Act nor placed on record in the writ petition but as the respondent has not denied the correctness of these documents, the same have been considered for the limited purpose of appreciating the contentions of counsel for the appellants. In the light of Section 3 of the Act reproduced above, we find it difficult to accept the contention of the appellants that they are tenants under the Municipal Committee, Ellenabad, in the premises in dispute. Otherwise also, as the Municipal Committee had already initiated proceedings for ejectment of the appellants, on the plea of their being

unauthorized occupants, there was no occasion for the Municipal Committee to accept them as tenants in resolution dated 28.11.1996. In this view of the matter, there is no merit in the contention of the appellants that they were tenants in the premises in dispute, or they could not be treated as unauthorized occupants of public premises.

For the reasons recorded hereinabove, there is no error or infirmity in the order passed by the learned Single Judge. The appeals are hereby, dismissed with no order as to costs.”

5. Considering the findings returned by the Division Bench of this Court in order dated 02.11.2012 (Annexure P-2), I am of the view that the case of the petitioners would not be covered within the afore-said policy dated 01.06.2021 (Annexure P-3) as their stand that they were the tenants in the premises in dispute, had been negative. Rather they had been treated as un-authorized occupants of the public premises, way back in the year-2012.

6. That apart, learned counsel for the petitioners has further failed to refer to any material, which may call for consideration in terms of Clause 2(1)(b) of the afore-said policy dated 01.06.2021 (Annexure P-3).

7. In view of the afore-mentioned facts and circumstances, I do not find any merit in the instant writ petition and the same is, hereby, dismissed.

8. All pending applications (if any) shall also stand closed.

November 18, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No