

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1079-2025 (O/M)

Date of decision : 17.01.2025

Government Medical College and Hospital, Chandigarh Petitioner

Versus

The Additional District Judge, Chandigarh and another Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Aman Pal, Mr. Rakesh Sobti, Advocates
for the petitioner.

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HARSH BUNGER, J. (ORAL)

1. The instant civil writ petition has been filed under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 14.08.2024 (Annexure P-23), passed by learned Additional District Judge, Chandigarh, whereby the order dated 15.03.2018 (Annexure P-18), passed by the Estate Officer, Chandigarh, directing recovery of Rs. 3,17,827/- (Rs. 2,81,547/- wrongly typed in head note of the petition) on account of penal rent and interest from respondent No. 2 (Naveen Sharma), has been set aside.

2. Briefly, respondent No. 2 (Naveen Sharma) was appointed as a Law Officer on contract basis in legal cell of Government Medical College and Hospital, Sector 32, Chandigarh, vide appointment order dated 04.08.2005 (Annexure P-1). As per the terms of his employment, respondent No. 2 was entitled for Government accommodation subject to availability. It appears that respondent No. 2 was allotted Government

accommodation i.e. House No. 9/732, Sector 7-B, Chandigarh, vide allotment order dated 06.06.2007 (Annexure P-2) and possession letter dated 07.06.2007 (Annexure P-3).

2.1 It transpires that respondent No. 2 resigned from the aforesaid post w.e.f. 01.05.2008, whereupon he was directed, vide various letters dated 16.07.2008, 26.08.2008, 24.09.2008, 24.10.2008, 01.01.2009 and 04.02.2009 to vacate the house and for depositing the outstanding license fee. It appears that respondent No. 2 deposited the license fee of Rs. 696/- only. Thereafter, letters dated 17.03.2009 and 30.04.2009 were also issued to respondent No. 2 to vacate the house and also to deposit the license fee, whereupon respondent No. 2 deposited the license fee of Rs. 35,670/-, vide receipt dated 14.07.2009 (Annexure P-9), but he did not vacate the house, despite issuance of further letters dated 13.10.2009 and 03.11.2009 (Annexure P-10, Colly.).

2.2 It further appears that notice dated 31.12.2009 (Annexure P-11) under Section 4 (1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short '1971 Act'), was issued to respondent No. 2.

2.3 Apparently, respondent No. 2 vacated the Government accommodation and handed over the vacant possession of the same to the petitioner on 09.03.2010 (Annexure P-12). It is the case of the petitioner that despite issuance of various letters, respondent No. 2 did not deposit the amount due from him, consequently, the petitioner preferred Rent Recovery Case No. 180/2013 against respondent No. 2 for recovery of an amount of Rs. 2,10,906/- with interest.

2.4 It transpires that respondent No. 2 appeared in the rent recovery proceedings and submitted his reply, inter alia, raising objection regarding maintainability, jurisdiction as well as limitation. The Estate Officer passed an order dated 15.03.2018 (Annexure P-18) calling upon respondent No. 2 to pay a sum of Rs. 3,17,827/-.

2.5 Respondent No. 2 challenged the order dated 15.03.2018 (Annexure P-18) by filing an appeal before learned Additional District Judge, Chandigarh, which came to be allowed, vide judgment dated 14.08.2024 (Annexure P-23), by holding the claim of the petitioner to be time barred.

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

4. Heard.

5. In the present case, the learned Additional District Judge, Chandigarh has allowed the appeal filed by respondent No. 2 and has set aside the order dated 15.03.2018 (Annexure P-18), passed by the Estate Officer, Chandigarh under the 1971 Act, directing recovery of Rs. 3,17,827/- by observing as under :-

“13. Now, the question for determination before this Court are :-

Whether or not the recovery proceedings initiated by Additional Director(Admn) Govt. Medical College and Hospital Sector 32, Chandigarh is time barred?

14. Section 7 of Public Premises Act is reproduced for facilitate reference:

Power to recover rent or damages in respect of public premises as arrears of land revenue.

7(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorized occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalment as may be specified in the order:

Provided that no such order shall be made until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made and until his objections, if any and any evidence he may produce in support of the same, have been considered by the estate officer.

(3) If any person refuses or fails to pay the arrears of rent or any instalments thereof payable under sub-section (1) or the damages or any instalment thereof payable under sub section(2) within the time specified in the order relating thereto the Estate Officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.”

15. A perusal of aforesaid extract reveals that Section 7 of Pubic Premises Act provides the same procedure for recovery of arrears of rent and damages. No time period has been given in this section for recovery of arrears of rent.

16. Now, the question arises whether or not Section 7 of Public Premises Act creates a right to realise the arrears of rent without any limitation of period ?

17. The answer to this question has been given by Hon'ble Apex Court in case titled *New Delhi Municipal Committee vs Kalu Ram and Anr* AIR 1976 SC 1637. The relevant portion of the aforesaid judgment is reproduced for facilitate reference:

Under Order 7 the Estate Officer may order any person who is in arrears of rent 'payable' in respect of any public premises to pay the same within such time and in such instalments as he may specify the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and if he raised any objections, the Estate Officer must consider the same and evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is 'payable'. The word 'payable' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. 'Payable' generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred. Construing the expression " Any money due" in Section 186 of the Indian Companies Act, 1913 the Privy Council held in *Hans Raj Gupta and others Vs Official*

Liquidators of the Dehradun Mussorie Electric Tramway Company Ltd.(1) that this meant moneys due and recoverable in suit by the company, and observed” it is a section which creates a special procedure for obtaining payment of money: it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights. “ We are clear that the word “payable” in Section 7, in the context in which it occurs, means “legally recoverable”.

18. In this case admittedly, the recovery proceedings have been initiated in September, 2013 for recovery of due upto 09.03.2010. The time for filing a suit for recovery is three years from the date of accrual of cause of action. In this case cause of action accrued when the money has become payable. In this case, the money was payable upto 9.3.2010 and recovery proceedings have been initiated in September, 2013 which is hopelessly time barred. A suit for recovery of arrears of rent/damages is time barred, so the amount in question is irrecoverable. So, the order dated 15.03.2018 is liable to be set aside on the ground of time barred claim. In these circumstances, the question no.1 posed before this court stands answered accordingly.

19. Though learned counsel for the appellant has argued on the ground of rate of interest, retrospective operation of amended laws etc but in the opinion of this court when the initial proceedings were time barred, there is no need to give finding on other points.

20. Resultantly, in view of the above-said discussion and for the foregoing reasons, the present appeal stands allowed with no order as to costs and the impugned order dated 15.3.2018 passed by the Estate Officer under Public Premises Act is aside.”

6. Learned counsel for petitioner is unable to dislodge the findings/observations made by learned Additional District Judge,

Chandigarh, by referring to any material whatsoever. It is not disputed before this Court that respondent No. 2 had vacated the house in question on 09.03.2010 and the proceedings for recovery of outstanding rent were initiated by the petitioner against respondent No. 2, vide Claim Petition dated 26.11.2013 (Annexure P-13), which is clearly beyond the period of three years. It is well settled that the time period prescribed for filing a recovery suit is three years from the date of accrual of cause of action. Since the recovery suit for claiming arrears of rent/damages upto the date of handing over of possession of the house by respondent No. 2 i.e. 09.03.2010 was filed beyond the period of three years, accordingly, the same was clearly time barred.

7. In this view of the matter, I find no merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

17.01.2025
sjks

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