204 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CWP-11837-2015 (O&M)
Date of Decision: 29.01.2026

Kanaya Ram ...Petitioner

Versus

Municipal Corporation, Chandigarh and Others ..Respondent(s)

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Promila Nain, Senior Advocate with
Mr. Abhishek Rawal, Advocate for the petitioner.

Mr. Ashish Rawal, Advocate for respondents No.1, 2 and 5.

Mr. J.S. Chandail, Additional Standing Counsel for respondents No.3 and 4.

****

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of memos whereby he has been called upon to deposit a sum of Rs.2,55,090/- along with interest @ 12% per annum.

2. The respondent No.6-Subhash Chand retired from the Office of Municipal Corporation, Chandigarh (for short 'MCC') on 31.03.2012. He submitted his papers and official respondents processed his case for pension and other benefits. The petitioner furnished surety bond with respect to payment of license fee (rent) of House No.17, Type III, Sector 39, Chandigarh which was occupied by Subhash Chand-respondent No.6. Subhash Chand retired on 31.03.2012, however, continued to occupy official accommodation till 06.07.2015. MCC released his retiral dues as well as pension. MCC did not try to collect rent from Subhash Chand. The respondent issued notice dated 17.03.2015 calling upon Subhash

Chand to deposit rent of Rs.2,21,078/- within 15 days. It was pointed out in the said notice that recovery would be made as arrears of land revenue if payment is not made within 15 days. Copy of said letter was served upon petitioner besides Subhash Chand. The respondent-MCC vide letter dated 30.07.2015 requested Accountant General (A&E), U.T., Chandigarh to deduct a sum of Rs.10,000/- per month from the pension of Subhash Chand. Letter dated 30.07.2015 reads as:

> *"From The Executive Engineer,*
> *Project P.H. Divn. No.3,*
> *Chandigarh.*
>
> *To*
> *The Accountant General,*
> *(A&E) U.T. Chandigarh*
>
> *The Treasury Officer,*
> *U.T. Chandigarh*
>
> *Memo. No. 12136-39*
> *Dated, Chd, the, 30/7/2015*
>
> *Subject:- Cancellation of allotment of house No. T-III/17 sector-39, Chandigarh of Sh. Subhash Chand, LOperator (Retd on 31.3.2012)*
>
> *In this connection, it is brought to your kind notice that Sh. Subhash Chand son of Sh. Chuni Lal was retired from this office on 31.3.2012 after attaining the age of superannuation. His pension has been sanctioned by your office and his PPO No. is 708551204389 and is drawing pension through State Bank of India A/C No.301969790866 sector-17, Chandigarh.*
>
> *During his service he was on occupant of Govt. house No.T-III/17 sector-39, Chandigarh. He has not vacated/handed over the possession of the house after his retirement till 6.7.2015. Accordingly the Asstt. Controller (F&A) Rents, Chd Admn has. issued a letter to the retiree*

> *for depositing a sum of Rs.2,21,078/- as panal (sic: penal) rate of licence fee for the period upto31.12.2014 but he failed to deposit the same till now.*
>
> *It is, therefore, requested that a sum of Rs.10,0,00/-per month may be got deducted from his pension as per rule if permissible and credited to the Asstt Controller(F&A) Rents, Chd. Admn, Chd till the arrear is not cleared."*

3. Office of Accountant General vide communication dated 17.08.2018 informed MCC that DCRG of the retiree (Subhash Chand) was finalized on receipt of No Dues Certificate and recovery cannot be effected from the pension of the retiree. On the basis of letter of Accountant General, the respondent decided to tighten the noose around the petitioner.

4. Learned counsel representing the petitioner submits that retiree (Subhash Chand) vide letter dated 18.06.2015 requested the respondent to recover a sum of Rs.7,000/- per month from his pension. The respondent did not recover its dues from the pension of retiree (Subhash Chand) and effected recovery from petitioner's gratuity. The petitioner has retired as Peon. The respondent could recover dues from respondent No.6 as per Land Revenue Act, 1887 still recovery was effected from the gratuity of the petitioner.

5. *Per contra*, learned counsel for MCC submits that as per communication of Accountant General, recovery could not be effected from gratuity of the retiree (Subhash Chand), thus, respondent was left with no other option except to effect recovery from petitioner which was made from his gratuity.

6. Heard the arguments and perused the record

7. On 08.05.2018, this Court observed that respondent No.6

had informed MCC that he is willing to pay arrears. A sum of Rs.7,000/- per month may be deducted from his pension. Order dated 08.05.2018 reads as:

> *"Challenge in this writ petition is to the demand raised against the petitioner on account of his having stood guarantee for respondent No.6 in respect of the government accommodation allotted to the said respondent.*
>
> *Reply has been filed by respondent No.6 along with which a document Annexure R-6/1 has been placed on record whereby he has informed the Executive Engineer that he is willing to pay the arrears due to him by deducting an amount of ₹7,000/- per month from his pension.*
>
> *Learned counsel appearing for respondents No.4 and 5 states that this proposal shall be examined.*
>
> *Learned counsel appearing for respondent No.1 has filed a calculation sheet in Court, according to which a sum of ₹ 4,58,222/- is payable by respondent No.6 upto August, 2022, in case deduction of ₹ 9000/- per month is made from his pension.*
>
> *Learned counsel for the Municipal Corporation as well as U.T., Chandigarh are directed to place on record the amount due as on date along with interest @ 12% per annum.*
>
> *Adjourned to 21.5.2018."*

8. During the pendency of instant petition, the respondent No.6 passed away. This Court in its order dated 18.09.2018 noticed that respondent No.6 made representations to respondent to recover outstanding dues from his pension, however, respondent did not take steps to recover outstanding rent from respondent No.6. The outstanding dues could very well be recovered from respondent No.6. The order dated 18.09.2018 reads as:

"Heard, counsel for the parties.

During the pendency of this petition, respondent No.6 has expired and his legal heirs have to repay the amount of House Rent plus Licence Fee, which is now sought to be recovered from the petitioner, who is a guarantor of respondent No.6.

Learned counsel for respondent No.6 has referred to the representation dated 18.06.2015 (Annexure R-6/1) to state that he (respondent No.6) was ready to make payment at the rate of Rs.7000/- per month from his monthly pension, which has not done till date.

There is no explanation by respondent No.3-Assistant Controller (F&A), Rents, as to why Executive Engineer-respondent No.4, in the interest of department, did not proceed with the representation (Annexure R-6/1) and why steps were not taken by him to deduct this amount from the pension of respondent No.6. Vide letter/notice dated 28.04.2015 (Annexure P-7), petitioner-Kanaya Ram was asked to deposit the dues of license fee amounting to Rs.2,55,090/- upto 30.04.2015 +interest @ 12% per annum with the office of Assistant Controller (F&A) Rents, Chandigarh Administration, Chandigarh. A copy of this letter was also sent to the Executive Engineer, Public Health Division No.3, Chandigarh with a request to impress upon Sh. Kanaya Ram (petitioner) being the surety of Sh. Subhash Chand, Ex-Operator, to arrange the payment of license fee amounting to Rs.2,55,090/-. Despite the said communication, no steps have been taken by the Executive Engineer, Public Health, to deduct the amount from the pension of respondent No.6. Hence, this Court is of the view that the petitioner as well as legal heirs of respondent No.6 are now being unnecessarily harassed on account of laxity on the part of the employees of respondent No.4. Despite making a representation dated 18.06.2015 (Annexure R-6/1) by Subhash Chand respondent No.6, no steps were taken by the Executive Engineer-respondent No.4 to deduct an amount of

> *Rs.7000/- per month from his pension. By not taking proper action, official respondents have caused loss to the Municipal Corporation. On the other hand, petitioner-guarantor and legal heirs of respondent No.6 are only facing harassment. Now, respondent No.6 has expired.*
>
> *Since, respondent No.6 had made a representation (Annexure R-6/1) in time, the amount due should not be recovered with any interest. Only an amount of Rs.2,55,090/- is to be recovered from the legal heirs of deceased-respondent No.6.*
>
> *Adjourned to 28.11.2018 to enable respondent No.1 to find out as to why no steps were taken by respondent No.4 to deduct the aforesaid amount from the pension of respondent No.6.*
>
> *On the next date of hearing, official respondents will inform this Court, as to who is liable for the above laxity."*

9. Concededly Subhash Chand retired on 31.03.2012. He remained in official accommodation till 06.07.2015. The respondent did not effect recovery from Subhash Chand. MCC wanted to recover outstanding amount from Subhash Chand. MCC specifically requested to Accountant General to deduct a particular amount from the pension of Subhash Chand. In the communication dated 30.07.2015, it was categorically mentioned that a sum of Rs.10,000/- per month may be deducted from the pension of retiree (Subhash Chand). Assistant Controller (F&A), Rents, Chandigarh Administration, Chandigarh vide letter dated 17.03.2015 asked Subhash Chand to deposit outstanding rent of Rs.2,21,078/-. In the said letter, it was pointed out that in the absence of payment, recovery would be effected as arears of land revenue. The respondent did not take any step to recover dues from Subhash Chand. The respondent continued to pay pension as well as other retiral dues from 2012-2015 to Subhash Chand, however, did not attempt to effect recovery from him. There was mere communication from one department

to another department but there was no effective step to recover dues from Subhash Chand. It is apt to notice here that Subhash Chand categorically requested respondent to deduct a sum of Rs.7,000/- per month from his pension, however, respondent did not take said course.

10. It is true that liability of guarantor is co-extensive with borrower, however, said principle cannot be mechanically applied in every case. In the present case, liability accrued after retirement of the employees. The respondent permitted him to retain official accommodation and did not effect recovery from his pension. The respondent even cleared his all retiral dues. The respondent on the basis of surety bond cannot recover dues outstanding against Subhash Chand who was available as well as willing to pay his dues. The respondent cannot make recovery from the petitioner on account of its own lapse. There is no explanation for the lapse on the part of the respondent.

11. In the wake of above discussion and findings, this Court is of the considered opinion that respondents had wrongly effected recovery from the petitioner. The petition deserves to be allowed and accordingly allowed. The respondents are hereby directed to release petitioner's gratuity within four weeks from today, failing which respondent would be liable to pay interest @ 6% per annum from the date of deduction of aforesaid amount from the petitioner's gratuity.

12. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

29.01.2026
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No