
(1991) 05 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 326 of 1991

Amar Auto Store

APPELLANT

Vs

Municipal Committee, Kotkapura

RESPONDENT

Date of Decision : 10-05-1991

Acts Referred:

Citation : (1991) 2 CurLJ 186 : (1991) PLJ 633 : (1991) 2 PLR 293 : (1991) 2 RRR 495

Hon'ble Judges : V.K.Jhanji, J

Advocate : M.S. Sidhu, Advocate., Advocates for appearing Parties

Judgement

V.K. Jhanji, J.—The Deputy Director, Local Government, Ferozepur exercising the powers of Collector, Ferozepur Region, Ferozepur initiated proceedings under the Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the Act) for the ejectment of the petitioner from the shop in dispute and also for the recovery of Rs. 2,961.22 as arrears of rent, on the application made by the Municipal Committee, Kotkapura. On the said application, notices were issued by the Collector for service of the petitioner but despite service, the petitioner did not appear and was proceeded ex parte. The Collector, after recording the ex parte evidence, found that the petitioner was in unauthorised possession of shop No. 7, Municipal Market, Kotkapura and had not paid Rs. 2,961.22 as rent. Thus an order of ejectment was passed against the petitioner by the Collector.

2. Aggrieved of the order of the Collector, the petitioner filed appeal before the learned Commissioner, Ferozepur Division, Ferozepur.

3. The grievance of the petitioner before the learned Commissioner was that he had given power of attorney to Shri Ranjit Singh Brar, Advocate for contesting the case before the Collector but the Advocate did not appear and he came to know about ex parte order only on 8.12.1990 when some employee of the Municipal Committee came to his shop to inform him about the ex parte order. The learned Commissioner dismissed the appeal in limine holding that despite

notice issued by the Collector, the petitioner did not appear and in case he had appointed some Advocate to conduct his case on his behalf, then it was his responsibility to see that the case was properly conducted by the Advocate. With regard to payment of rent, the petitioner could not produce any receipt showing the payment of rent even before the learned Commissioner. The learned Commissioner thus maintained the order of the Collector. The petitioner has impugned the order of learned Commissioner by preferring the present civil revision.

4. The only contention of learned counsel for the petitioner is that the learned Commissioner was not competent to dismiss the appeal in limine without issuing notice to the Collector against whose order the appeal was preferred and without calling for or perusing the record produced before the Collector.

5. Rule 8 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Rules, 1974 (hereinafter referred to as the Rules) deals with the procedure in appeals and reads thus

"8. Procedure in appeals. An appeal preferred under section 9 of the Act, shall be in writing, shall set forth concisely the grounds of objection to the order appealed against, and shall be accompanied by a copy of such order.

(2) On receipt of the appeal and after calling for and perusing the record of the proceedings, before the Collector, the appellate officer shall fix a time and place for the hearing of the appeal and shall give notice thereof to the Collector against whose orders the appeal is preferred and to the appellant."

6. It is not disputed that the records of the proceedings before the Collector were never called nor any notice of the appeal was given to the Collector before the appeal was heard by the learned Commissioner. This being so, the appeal could not be dismissed on merits because of noncompliance of the said rule.

7. As a result thereof, the civil revision is allowed. The order of learned Commissioner dated 9.1.1991 is set aside and the case is sent back to the learned Commissioner, Ferozepur Division, Ferozepur for deciding the matter on merits in accordance with law. Parties through their counsel are directed to appear before the learned Commissioner, Ferozepur Division, Ferozepur, on 25.7.1991.