
(2006) 01 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10982 of 1999

Amar Singh and Others

APPELLANT

Vs

F.C. Haryana and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10
East Punjab Urban Rent Restriction Act, 1949 — Section 13(2)
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13(2)
Land Acquisition Act, 1894 — Section 30, 4
Punjab Security of Land Tenures Act, 1953 — Section 10(2), 10(3), 14A, 9, 9(1)

Citation : (2006) 144 PLR 152 : (2006) 3 RCR(Civil) 245

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Advocate : B.L. Gulati, for the Appellant; S.C. Kapoor and Ashish Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Nirmal Yadav, J.—Respondents Nos. 5 and 6, the landowners, moved an application before the Assistant Collector, 1st Grade, Hisar Under Sections 9(I)(ii) and 14A(i) of the Punjab Security of Land Tenures Act, 1953, hereinafter to be referred as "the Act", seeking eviction of the petitioners, who were the tenants on land measuring 144 kanals 8 marlas, situated within the revenue estate of Saat Road, Hisar. It was alleged that the petitioners, who were Gair Mumkin tenants on 1/3rd Batai, neither made the payment nor gave the share of Batai inspite of demand made by the landowners several times, for the crops from Rabi, 1987 to Rabi, 1992. As per the landowners, a sum of Rs. 96,221.86 was due towards the petitioners as rent/Batai. It was further pleaded that since the tenants have defaulted in making payment of rent/Batai, they be ejected as per the provisions of Section 9(1)(ii) of the Act. The Assistant Collector vide his order dated 2.2.1993 ordered ejection of the petitioners on the ground that the tenants had not tendered the rent/Batai which was due from them. The Assistant

Collector while passing order of ejectment, ignored the proviso to Section 14-A(i) of the Act which was incorporated by amending Act No. 5 of 1991.

2. The petitioners challenged the order of Assistant Collector before the Collector. The learned Collector accepted the appeal mainly on the (ground) that it was the legal duty of the Assistant Collector to inform the tenants, after calculating the arrears of rent and interest at the rate of 8% per annum on the arrears together with the costs, if any, so that the amount could be paid by the tenants either on the first date of hearing or within 15 days from the date of such hearing. The matter was remanded back to the Assistant Collector with the direction that the Assistant Collector should calculate arrears of amount and the interest accrued thereon and would provide an opportunity to the tenants to make the payment within specified period. In case the calculated amount was not paid by the tenants within the prescribed period, then the ejectment order was to become operative with immediate effect. Thereafter the tenants admittedly tendered the rent for different crops before the Assistant Collector and made statement Annexures P-3 to P-8.

3. Both the landowners as well as the tenants filed cross-appeals against the order of the Collector before the Commissioner. The Commissioner upheld the order of the Collector vide order dated 18.4.1994 Annexure P-9. The landowners filed revision petition against the order of the Commissioner before the Financial Commissioner, who set aside the orders passed by the Commissioner as well as the Collector mainly on the ground that the tenants had never moved any application or request, whatsoever, for the calculation of the interest etc. before the Assistant Collector and even if the Assistant Collector had defaulted by not calculating the interest, the landowners cannot be penalised especially when the amount of rent/Batai was known to the tenants. Even the review filed against the said order was rejected vide order dated 29.12.1998 by the Financial Commissioner. It may be mentioned that the Financial Commissioner, of course, stayed the operation of the order dated 28.2.1997.

4. Aggrieved, petitioners have challenged the orders Annexures P/10 and P/12 passed by the Financial Commissioner being violative of statutory provisions of the Act. The proviso to Section 14-A(i) having been added in the Statute with effect from 22.4.1991 was fully applicable to the facts of the present case. It is also stated that the tenants had tendered the rent, which the landowners accepted and made statements Annexures P/3 to P/8 before the Assistant Collector. Thus, it being valid tender, they were not liable to be ejected. The Financial Commissioner being the revisional authority, committed a grave mistake and illegality by reversing the order of the Commissioner and Collector. It is further pleaded that the land in question has been acquired and in a reference made u/s 30 of the Land Acquisition Act, 1894, the tenants have been ordered to be paid compensation to the extent of 3/4th share by the learned District Judge, Hisar. Therefore, the sole aim of filing the ejectment application by the landowners was to deprive the tenants of the share in the compensation

amount.

5. In the written statement filed by respondents Nos. 5 and 6 it is pleaded that the petitioners are guilty of willful concealment of facts. The petitioners were granted 16 opportunities for filing the written statement before the Assistant Collector, but when they failed to do so, the Assistant Collector had no option but to strike off their defence and the said order has not been challenged by the petitioners. It is further pleaded that no offer for payment of rent was ever made. There was, thus, no occasion for the Assistant Collector to assess the rent, interest and costs. Accordingly, the provisions of proviso to Section 14-A(i) of the Act are not attracted. These provisions would be applicable in the event of an offer of payment of rent having made and only then the Assistant Collector was required to assess the interest and costs. The petitioners have taken the plea that they had already paid the rent under receipt but they failed to produce the receipt before the Assistant Collector. In such circumstances the filing of writ petition is an abuse of process of law. It is further pleaded that for three crops, no payment of rent/Batai had been made even upto 10.1.1994 and the payment made on 10.1.1994 cannot be considered to be a valid tender. The petitioners were required to make the payment on the first date of hearing or within 15 days thereof. As such the petitioners have not complied with the requirements laid down in proviso to Section 14-A(i) of the Act. It is further submitted that issuance of notice u/s 4 of the Land Acquisition Act, ten days prior to the filing of the eviction petition does not, in any manner, adversely affect the rights of the landowners. Their title subsists on the date when application of eviction was filed and the rights of the parties have to be determined as existed on the institution of lis.

6. I have heard learned Counsel for the parties and have gone through the records.

7. Learned Counsel for the petitioners argued that the proviso as added to Section 14A(i) of the Act is para materia similar to the proviso to Clause (i) of Sub-section (2) of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and the East Punjab Urban Rent Restriction Act, 1949. The Apex Court in the case of Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors. 2002-2 131 P.L.R. 370 has held that the proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of; (i) arrears of rent, (ii) the interest of such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order, the amount which the tenant must pay or tender on the first date of hearing after the passing of such order of "assessment" by the Controller so as to satisfy the requirement of the proviso. It was further observed that since the Controller did not assess the interest etc., the order of eviction was vitiated and was to be set aside. The matter was sent back to the Controller for passing a provisional order as per the proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949, after affording opportunity to the parties and to

afford the tenant an opportunity of making the payment or tender and then proceed to decide the case afresh as per the provisions of the Act.

8. It is further argued that after the order of assessment of arrears was made by the Assistant Collector, if the tenants had failed to comply with his orders, the order of eviction could follow but as the tenants had made the compliance, the inquiry continued for final adjudication with regard to the dispute as to the arrears of rent in the light of the pleas raised by the landowners before the Assistant Collector. The learned Counsel - argued that after the matter was remanded by the Collector, the petitioners had tendered the rent before the Assistant Collector and the rent so paid was accepted by the landowners. Since the landowners had already accepted the rent/Batai, it did not lie in their mouth to challenge the non-payment of rent before the Collector.

9. On the other hand, learned Counsel for the respondents-landowners argued that the landowners had moved application for ejectment u/s 9 of the Act. Under the provisions of the Act, the landowner is not to prove as to how much total amount of rent/Batai is due. He is simply to show that the tenants had failed to pay rent regularly without sufficient cause. The learned Counsel referred to the provisions of Section 9(1)(ii) of the Act, which is reproduced as under:

9. LIABILITY OF TENANT TO BE EJECTED: (1) Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject a tenant except when such tenant (i) xx xx xx (ii) fails to pay rent regularly without sufficient cause; or xx xx xxx.

He has further argued that Sub-clause (ii) of Section 9(1) of the Act has been considered by the Supreme Court in the case of *Mrs. Raj Kanta v. The Financial Commissioner, Punjab* and *Anr. 1980 2 P.L.J. 346* and observed as under:

While interpreting the word "regularly" the High Court seems to have overlooked two important circumstances. In the first place, the word "regularly" has been used immediately after the phrase "fails to pay rent" and is followed by the words "without sufficient cause". Secondly, there is nothing in the section to indicate that the legislature intended to exclude one single default. The High Court attempted to supply words to the section which are not there. In doing so, it has failed to consider that if once the Court was to lay down a particular line of demarcating by extending the connotation of the word "regularly" to exclude one default, it is difficult to explain why the legislature contemplated only one default and not two or three for the matter.

In order to construe the plain language of Section 9(1)(ii) which admits of no ambiguity, it may be necessary to look to the object and the purposes of the Act. In the case of *Bhagirath Ram Chand Vs. State of Punjab and Others*, , a Full Bench of the Punjab and Haryana High Court held that the preamble of the Act stated that it was intended to provide for the security of land tenure and other incidental matters. It is no doubt true that the main thrust of the provisions of the Act are directed towards preventing the landlords from ejecting their tenants

except on the grounds mentioned in Section 9, but at the same time, it cannot be denied that the legislature undoubtedly provided some protection to the landlords by conferring on them a limited right to eject their tenants and within this limited sphere, the right was absolute and could not be curtailed by interpreting clause (ii) of Section 9(1) of the Act through a process of twisting the law and doing violence to the language of the section. To begin with, the word "regular" is derived from the word regular which means "rule" and its first and legitimate signification, according to Webster, is "conformable to a rule, or agreeable to an established rule, law, or principle, to a prescribed mode". In Words and Phrases (Vol.36A, p.241) the word "regular" has been defined as "steady or uniform in course, practice or occurrence, etc. and implies conformity to a rule, standard, or pattern;. It is further stated in the said book that "regular" means steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation. The word "regular" means in a regular manner, methodically, in due order. Similarly, Webster's New World Dictionary defines "regular" as " consistent or habitual inaction, not changing, uniform, conforming to a standard or to a generally accepted rule or mode of conduct." In the case of Arab Bank Ltd v. Ross 1952 2 Q.B.D. 216, while construing the words complete and regular", Romer L.J. observed as follows:

It would accordingly follow, in my judgment, in the present case that the omission of the word, "company" from the endorsement would reasonably give rise to a doubt whether in point of personality the payees and the endorsers were necessarily the same; and if so the bills cannot, as I think, be said to be "1 complete and regular" on their face.

The view of the Judge clearly indicates that the word "regular" postulates a state of symmetry, consistency and uniformity. In Hammond v. London Country Council 1931 Chancery 540, while construing the term "regularly employed", Farewell J. observed as follows:

It is of course a question of fact in each case whether a man was regularly employed or not, but in this particular case I think that the plaintiff, who was employed for the five years and paid his wages day in and day out during that period as servant or officer of the defendants' predecessors, was "regularly employed" during that period."

This interpretation also supports our view that the word "regular" means a consistent course of conduct without any break or breach.

On a consideration of the authorities mentioned above, it seems to us that the legislature clearly intended to use the word "regularly" to mean payment of rent in a uniform and consistent manner without any breach or default. The legislature never contemplated that a single default could be condoned. This inference is fortified by the words "without sufficient cause". In other words, the legislature clearly provided that if the tenant had committed default, whether one, two or more, the same could only be condoned if sufficient cause is shown and not

otherwise. If, however, we accept the interpretation of the High Court, then the words "sufficient cause" become absolutely redundant.

The learned Counsel, therefore, argued that in the present case, the land owners have to show that the tenants had failed to pay the rent regularly without any sufficient cause, and is not to prove as to how much amount of rent/Batai is due. Rather it has been admitted by the tenants before the Collector as well as before the Commissioner that they were ready to pay the Batai which was due to them. In such a situation, the finding of the Collector to the effect that it was the duty of the Assistant Collector to calculate the interest and expenses of the arrears of rent due so that the amount could have been deposited/paid by the tenants to the landowner is totally perverse and illegal. The learned Counsel further argued that the landowners moved application for ejectment on 29.5.1992 after issuing notice of the said application. The tenants came present before the Assistant Collector on 16.7.1992 and the case was fixed for 31.7.1992 for filing reply. From 31.7.1992 till 2.2.1993 the petitioner-tenants were given several opportunities for filing the reply. Since no reply was filed, the tenants are deemed to have admitted the claim of the landowners in view of the provisions of Order 8, Rule 10 of CPC and, therefore, the Assistant Collector had no option but to accept the application for ejectment. Neither the tenants tendered the rent/Batai nor raised any argument with regard to the calculation of arrears of rent along with interest and costs. It is, therefore, clearly proved that the tenants knew the exact amount of arrears of rent to be paid and they failed to tender the same before the Court of Assistant Collector. Even before the Collector, the tenants had taken a plea that they had paid the entire rent and could produce the receipt. However, they failed to produce the receipt(s) or any evidence to prove that rent/Batai had been paid by them.

10. On careful consideration of rival submissions and the facts on record, I am of the view that the petitioners' case is fully covered by the ratio of the Supreme Court judgment in the case of Rakesh Wadhawan (supra). The land owners moved an application for ejectment under the provisions of Section 9(I)(ii) of the Act on the ground that the tenants had failed to pay rent regularly without sufficient cause. The procedure for the ejectment and recovery of arrears of rent is provided in Section 14-A of the Act, which reads as under:

14-A. PROCEDURE FOR EJECTMENT AND RECOVERY OF ARREARS OF RENTS ETC.- Notwithstanding anything to the contrary constrained in any other law for the time being in force, and subject to the provisions of Section 9-A.

(i) a landowner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in Sub section (2) of Section 10 of this Act, and the provisions of Sub-section (3) of the said section shall also apply in relation to such application, provided that the tenant's rights to compensation and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (XVI of 1887) shall not be affected;

(ii) a land owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, have jurisdiction, who shall thereupon send a notice in the form prescribed, to the tenant either to deposit the rent or value thereof if payable in kind or give proof of having paid it to or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in Sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii) (a) if a landowner refuses to accept rent from his tenant or demands rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact;

(b) on receiving such application the Assistant Collector shall by a written notice require the landlord to accept rent payable in accordance with this Act, or give a receipt the case may be, or both, within 60 days of the receipt of the notice.

Proviso to Section 14-A(i) of the Act was added by the Amending Act No. 5 of 1991, which reads as under:

Provided that if the tenant makes payment of arrears and interest to be calculated by the Assistant Collector, Ist Grade, at eight per centum per annum on such arrears with such costs of the application, if any, as may be a the Assistant Collector, Ist Grade, either on the day first hearing or within 15 days from the date of such hearing, he shall not be evicted.

The proviso to Section 14-A(i) of the Act is para-materia similar to the proviso added to Section 13(2) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 as well as to Section 13(2) of the East Punjab Urban Rent Restriction Act. The proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act has been considered by the Apex Court in Rakesh Wadhawan 's case (supra) and summarised as follows:

2a. The result of the discussion may be summarized. Under proviso to Section 13(2)(i) the Controller having discharged his obligation of passing an order under the proviso, either suo motu or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as determined finally is: (i) the same as was found to be due and payable under the provisional order, (ii) is

less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case, it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (1967) 69 P.L.R. 248 (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression. "The Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to be landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller.

To sum up our conclusions are:

- (1) In Section 13(2)(i) proviso, the words "assessed by the Controller qualify not merely the words "the cost of application" but the entire preceding part of the sentence i.e. the arrears of rent and interest at six percent per annum on such arrears together with the cost of application,
- (2) The proviso to Section 13(2)(i) of East Punjab Urban Rent Restriction Act, 1949 casts an obligation on the Controller to make an assessment of: (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or, tender on the "first date of hearing" after the passing of such order of "assessment" by the Controller so as to satisfy the requirement of the proviso.
- (3) Of necessity, the date of first hearing of the application would mean the date falling after the date of such order by Controller.
- (4) On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the

Controller.

(5) If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount falling which alone he shall be liable to be evicted. Compliance shall save him from eviction.

(6) While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.

The Apex Court thereby set aside the order of the Rent Controller and the other authorities and remanded the matter to the Controller and directed the Controller to pass a provisional order under proviso to Section 13(2)(i) of the Act and afford the tenant an opportunity of making the payment or tender and then proceed to decide the case afresh. In the instant case, the Collector vide its order dated 21.10.1993 remanded the matter to the Assistant Collector observing that it was the legal duty of the Court below to calculate the arrears of rent/Batai, interest and expenses on the amount due, within a specific period so that the amount could have been paid to the landowners by the tenant. By not doing so, the lower Court had committed a legal mistake and on this basis an opportunity was granted to the tenants for payment of balance amount of rent/Batai within a specific period. If inspite of the opportunity so granted, the calculated amount was not paid by the tenant, then the ejectment order was to be operative with immediate effect. The order of the Collector is totally in conformity with the law laid down by us the Supreme Court in Rakesh Wad-hawan "s case (supra).

11. The order of the Financial Commissioner reversing the finding of the Collector appears to be against the law laid down by the Apex Court. It appears that the Financial Commissioner is persuaded by the mere fact that the respondents had taken different pleas at different stages to explain the non-payment and that they had failed to produce a receipt before the Collector and changed their stand. It is true that the tenants could not produce any receipt though they had taken a specific plea that the rent had been paid, but this fact alone would not affect the rights of the tenants in view of the proviso to Section 14-A(i) of the Act wherein it has been clearly provided that the Assistant Collector has to calculate the arrears of rent together with interest and the costs which has to be paid within 15 days from the date of such hearing. Provisions of Section 14-A provide the procedure for the ejectment of the tenant while provisions of Section 9 lay down the ground(s) on which ejectment can be sought by the landowner. The

landowner moved the application u/s 9 on the ground that the tenant had failed to make the payment of rent regularly without sufficient cause, but further procedure has to be followed for the ejectment u/s 14-A of the Act. The Collector passed the order of remand in view of the proviso to Section 14-A(i) of the Act.

12. There is no dispute with regard to the argument raised by the learned Counsel for the landowners that the tenants had failed to submit their written statement, therefore, their plea was deemed to be accepted by the Assistant Collector. However, the Court has to follow the procedure laid down as per the provisions of Section 14-A of the Act. The Assistant Collector was duty bound to assess the arrears of rent and the interest as well as the costs of application and then to quantify by way of interim or provisional order the amount which the tenant had to pay or tender on the first date of hearing after passing such order of assessment or within 15 days from the date of such hearing in order to satisfy the requirement of the proviso to Section 14-A(i) of the Act.

13. In view of the above discussion, the writ petition is allowed. The impugned orders Annexure P/I dated 2.2.1993 passed by the Assistant Collector and Annexure P/10 dated 28.2.1997 and P-12 dated 29.12.1998 passed by the Financial Commissioner are set aside whereas the orders passed by Collector and Commissioner Ex.P/2 dated 21.10.1993 and Ex.P/9 dated 18.4.1994 respectively are upheld. Consequently, the petitioners are held to be the tenants under respondents Nos. 5 and 6 for all intents and purposes. However, there will be no order as to costs.