
(1966) 02 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1302 of 1964

Ashok Kumar and Others

APPELLANT

Vs

The Financial Commissioner Revenue, Punjab and Another

RESPONDENT

Date of Decision : 17-02-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) 02 P&H CK 0032

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : D.N. Aggarwal and B.N. Aggarwal, for the Appellant; H.L. Sarin with Miss Asha Kohli, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This petition under Article 226 of the Constitution has been filed by Ashok Kumar and eight others, challenging the legality of the order, dated 30th of May, 1964, passed by the Financial Commissioner (Revenue) Punjab, Chandigarh, respondent No. 1.

2. According to the petitioners, they owned 31 bighas of land at Hissar and the same had been given on lease to Kaura Ram, respondent No. 2 on an annual rent of Rs. 400/-. Since respondent No. 2 failed to pay rent for the years 1959-60 and 1960-61 (kharif 1959 to rabi 1961), they filed an application against him on 19th of September, 1961 before the Assistant Collector, First Grade, Hissar, u/s 14-A (ii) of the Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), hereinafter referred to as the Act, for the recovery of Rs. 800/- as arrears of rent. Pursuant to this application the Assistant Collector sent a notice in form "N", which is prescribed under the rules, and the same was served on respondent No. 2 on 12th of October, 1981. By this notice respondent No. 2 was required within a month of the receipt thereof to deposit the rent in the Court of the Assistant Collector or give proof of having paid it or of the fact that he was not liable to pay the whole or part of the rent or of the fact of the landlords"

refusal to receive the same or to give receipt for it. If he failed to comply with the notice, he would be ejected summarily from the land and the landlords would be put in possession thereof. On 1st of November, 1981 respondent No. 2 filed a reply to this notice, in which it was stated that he was not liable to pay this rent, because he had already spent Rs. 2,275/- in making improvements on the land by levelling it and by constructing a kotha thereon with the permission of the landlords. The rent could be adjusted out of this amount and the balance paid to him. It was also mentioned in the reply that 41 bighas and 10 biswas, and not 31 bighas as alleged by the petitioners, were under lease with him and Rs. 400/- was the lease-money for the entire land. The petitioners had not included certain khasra numbers measuring 9 bighas and 12 biswas and had illegally claimed rent at the rate of Rs. 400/- per annum for the land measuring 31 bighas only. In the meantime, on 25th of September, 1961, respondent No. 2 also filed an application before the Assistant Collector, Second Grade, Hissar, u/s 14-A (iii) of the Act, saying that the landlords were refusing to accept rent from him in order to create a false ground for his ejection and seeking permission to deposit the arrears of rent. In pursuance of this application, notice in form "P", prescribed under the rules, was served on the landlords on 5th of October, 1961, in which it was mentioned that the landlords had refused to accept the rent from the tenant and give a receipt therefor and they should, therefore, accept the same and give a receipt for it within sixty days of the receipt of the notice. On 31st of August, 1962 the Assistant Collector found that a sura of Rs. 800/- as arrears of rent was due to the landlords from the tenant and, therefore, he should pay the same by 1st of October, 1962. If he failed to do so, he would be ejected from the land. As regards the compensation claimed by him, it was found that the tenant should ask for the same by taking separate proceedings. Meanwhile on 9th of June, 1962 another application was filed by respondent No. 2 u/s 14-A (iii) before the Assistant Collector to the effect that the landlords be directed to receive the rent (Rs. 400/-) from kharif 1961 to rabi 1962 and give a receipt therefor, Since they were not prepared to accept the same from him. It appears that the Assistant Collector by his order, dated 23rd of January, 1932, consolidated the proceedings that were being taken in the application dated 19th of September, 1961 filed by the landlords and in the application, dated 25th of September, 1961, put in by the tenant. It is not quite clear as to whether or not the proceedings in the second application, dated 9th of June, 1962, made by the tenant, were also subsequently consolidated along with the aforesaid applications. However, it appears that on 5th of September, 1962 the Assistant Collector recorded the statements of respondent No. 2 and Mohan Lal landlord, whose legal representatives are petitioners Nos. 1 to 8 and whose brother is Dev Raj petitioner No. 9. These statements were translated by the learned Financial Commissioner and have been reproduced in the impugned order as follows:

Statement of Kaura Ram tenant:

I will pay by 20th of September, 1962 Rs. 1,200/- which is the amount due for three years up to 15th of June, 1962 and which the landowner has not so far

received. I will in future pay the rent regularly. The landowner may be directed to receive the rent regularly and to give receipts and not evade acceptance of the rent.

Statement of Mohan Lal landlord:

I will accept on 20th of September, 1962 Rs. 1,200/- as the rent due to me for three years and give a receipt. I have no objection.

The amount of Rs. 1,200/- was then deposited by the tenant on 11th of September, 1962. On 21st of September, 1962 respondent No. 2 and Dev Raj petitioner No. 9 appeared before the Assistant Collector and their statements were then recorded. Respondent No. 2 stated that he had deposited Rs. 400/- as directed by the Court and the application may be consigned to the record-room. Dev Raj said that Rs. 400/- had been correctly deposited. He had no objection and would withdraw the amount. On that very day the Assistant Collector passed an order to the effect that according to the statements of the parties, no further action was called for and the file be consigned to the record-room. Against the order, dated 31st of August, 1962, passed by the Assistant Collector, the landlords filed an appeal before the Collector. Later on, the tenant also instituted a cross appeal and both these appeals were disposed of by him on 28th of February, 1963. He allowed the appeal of the landlords, but dismissed that of the tenant. He found that the evidence regarding improvements by the tenant was too vague to merit any serious consideration. The tenant was, therefore, not entitled to any amount on account of compensation for improvements. It was further found that he could not be given any time beyond one month mentioned in the notice in form "N" for making payment of the arrears of rent. The Collector consequently ordered the ejectment of respondent No. 2 from the land in dispute. Against this order, the tenant filed an appeal before the Additional Commissioner, who treating it as a revision petition dismissed it on 12th of September 1964. He agreed with the Collector that the Assistant Collector had no authority to allow the tenant to pay the arrears of rent within one month from the date of his order. This payment had to be made within one month of the service of the notice in form "N". Since this notice was served on the tenant on 12th of October 1961, the payment of the arrears of rent could have been valid only if it had been made on or before 12th of November 1961. He also came to the conclusion that by agreeing to recover Rs. 1,200 as the arrears of rent, the landlords had not relinquished their claim for the ejectment of the tenant. The application, dated 9th of June 1962, was filed by the tenant when the landlords' application u/s 14-A(ii) was already pending before the Assistant Collector, and the payment of the arrears of rent after 12th of November 1961 did not in any way affect the merits of their application. Respondent No. 2 then filed a revision petition before respondent No. 1. By the impugned order, he accepted the same and set aside the orders of the Additional Commissioner and the Collector, ordering the ejectment of the tenant. He agreed with the view taken by the Additional Commissioner and the Collector as regards unwarranted extension in

time given by the Assistant Collector and also observed that there was no dispute so far as the non-payment of rent by the tenant was concerned. He was, however, of the opinion that both these officers had overlooked the statements made by the parties before the Assistant Collector on 5th September, 1962. According to him those statements clearly showed that the landlords had given up the idea of ejecting the tenant. They not only agreed to accept the rent due for the two years mentioned in their application, but also for the third year and further they accepted the tenant's offer to make future payments regularly. Moreover, according to him, the statements of respondent No. 2 and petitioner No. 9 made on 21st of September, 1962 proved that the landlords had accepted payment of arrears as well as the rent due for the third year and had also agreed to let respondent No. 2 continue as a tenant, on his assurance that the rent would in future be paid promptly. In view of these statements, in his view, it was not proper for the Collector or the Additional Commissioner to order the tenant's ejectment. This led to the filing of the present writ petition on 25th of June, 1964.

3. Learned counsel for the petitioners submitted that the arrears of rent having not been paid within the period of one month of the service of the notice in form "N", the tenant had become liable to be evicted and his tenancy rights stood automatically extinguished. There was no question of the revival of those rights by paying the arrears on any subsequent date. No authority could extend the period of one month within which they said arrears had to be paid in accordance with law. On the expiry of one month the tenant became liable to be evicted forthwith. When the tenant deposited Rs. 1,200 this amount had become due from him as arrears of rent. There was, therefore, no objection in the landlords' accepting the same. It was absolutely wrong to suggest that the landlords ever agreed that respondent No. 2 should continue to hold the land as a tenant after his tenancy rights had come to an end. The learned Financial Commissioner had misconstrued the statements of the parties recorded on 5th of September 1962. According to the learned counsel, a reading of these statements would show that there was no question of respondent No. 2's tenancy being continued. It was an arrangement for the payment of the arrears of rent pure and simple and nothing more. These statements could not be interpreted to be a new agreement of tenancy. Counsel also contended that the learned Financial Commissioner had erred in law in holding that a compromise had been effected between the parties. The statements, dated 5th of September 1962, were recorded in the second application, dated 9th of June 1962, filed by the tenant and not in the application made by the landlords on 19th of September 1961. This compromise was not mentioned by the tenant before the Collector and there was nothing in the statement of Mohan Lal which could suggest that he was giving up the rights which had accrued to the landlords for ejecting respondent No. 2.

4. The main question for determination in this case is whether the learned Financial Commissioner was right in holding that a compromise had been effected between the parties. If this finding is correct, then obviously no other question would arise. The learned Financial Commissioner was of the view that

the Additional Commissioner and the Collector had overlooked the statements made by the parties before the Assistant Collector on 5th of September, 1962. Those statements have been reproduced above. He also considered the statements made by the parties before the Assistant Collector on 21st of September, 1962. On the basis of the statements made on these two dates, he came to the conclusion that a compromise had been effected between the parties on which the landlords had given up the idea of ejecting the tenant. He (Mohan Lal landlord) not only agreed to accept the rent due for the two years 1959-60 and 1960-61, but also for the third year 1961-62. He further accepted the tenant's offer to make future payments of rent regularly. He agreed to let the tenant continue as a tenant on his assurance that the rent would in future be paid promptly. The finding that a compromise had been effected between the parties is essentially one of fact. In the instant case it has been based on evidence namely, the statements of both the parties made on 5th and 21st of September, 1962. This finding cannot, therefore, be interfered with by this Court in proceedings under Article 226 of the Constitution. It has been laid down by the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, -

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording that said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court.

It has not been shown in the present case that the finding of fact recorded by the learned Financial Commissioner was either based on no evidence or some material and admissible evidence had erroneously been refused to be admitted, or some inadmissible evidence had been erroneously admitted which had influenced the impugned finding. That being so, the same cannot be interfered with in these proceedings. It is also pertinent to mention that it has not been specifically stated in the writ petition that no compromise had been effected

between the parties and the learned Financial Commissioner had erroneously given that finding.

5. Even on the law point, namely whether the Assistant Collector could extend the time for the payment of the arrears of rent and whether by non-payment thereof within the period of one month of the service of notice in form "N" the tenancy rights stood automatically extinguished, the contention of the learned counsel for the petitioners is not correct. As already mentioned above, a dispute had been raised by the tenant in the instant case and the Assistant Collector after its summary determination, as provided for in section 10(2) of the Act, had found by his order, dated 31st of August, 1962, that Rs. 800/- were due from the tenant and he was directed to pay that amount by 1st of October, 1962. It was further ordered that if he failed to do so, he would be ejected from the land in question. The said amount was admittedly deposited on the 11th of September, 1962. Under these circumstances he was not liable to ejectment u/s 14-A(ii) of the Act. While dealing with the scope of clause (ii) of section 14-A of the Act the Supreme Court in Kapur Chand Jain Vs. B.S. Grewal and Others, observed-

The second clause is designed primarily to enable the landowners to recover arrears of rent from a tenant, but the tenant may be ordered to be evicted if after the determination of the rent he does not pay it within the time fixed by the Collector. ***** Clause (ii) deals with eviction as punishment for non compliance with the orders of the Court. Clause (i) deals with evictions for any of the reasons given in section 9 (1). ***** Eviction under the second clause is for failure to carry out the orders to deposit arrears of rent within the time fixed for payment and eviction under the first clause is a penalty for not paying the rent regularly without sufficient cause. The clauses are on different footing and as the scheme of the Act itself shows different Tribunals determine the two issues

In the present case, as already mentioned above, the tenant had paid the rent within the time fixed by the Assistant Collector after the same had been determined by him. There is also a Bench decision of this Court in Balwant Singh v. Sodhi Lal Singh 68 P.L.R. 380 : 1966 Curr. L.J. (P&H.) 163, where it was held by Falshaw C.J. and D.K. Mahajan, J.-

The words in section 14-A (ii) "or give proof that he is not liable to pay the whole or part of the rent," and the similar words as appear in the demand notice, clearly mean that where the amount demanded by the landlord is in excess of the amount due, there is no obligation on the tenant to pay the amount which he admits to be due before the matter has been determined by the Assistant Collector.

In this authority the amount demanded by the landlord was Rs. 900 and in reply to the notice of the demand in form "N", which was served on the tenant on 6th of November, 1960, the tenant, within thirty days of the receipt of the notice by him, disputed the correctness of the amount demanded and claimed that only a

sum of Rs. 605 was due. The Assistant Collector after enquiry held on 30th of December, 1980 that the rent due was in fact Rs. 605 and on that very day this amount was tendered by the tenant. The landlord did not accept the tender and the amount was consequently deposited in the treasury on 2nd of January, 1981, which was the next working day, the two intervening days being holidays. Under these circumstances, the Division Bench held that the tenant could not be ejected. This authority also supports the contention of the tenant that even though the arrears of rent had not been paid by him within the period of one month of the service of the notice in form "N", he did not become liable to ejectment and his tenancy rights did not automatically extinguish.

There is another reason also why I would not like to interfere with the impugned order. In the return filed by the tenant it has been stated in the additional pleas taken by him that after the passing of the impugned order he had remitted by money order the rent for the year 1962-63, but the same was not mala fide accepted by the landlords and the money order was returned as "refused." Subsequently, the landlords filed an application u/s 14-A (ii) of the Act claiming Rs. 800 as rent for the years 1962-63 and 1963-64 and the same was duly deposited by the tenant within the prescribed time after the receipt of the notice in form "N": These facts had not been challenged by the landlords by filing any replication and they show that the landlords were still treating respondent No. 2 as their tenant.

In view of what I have said above, this writ petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.