
(1995) 05 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2614 of 1995

Bant Singh and Others

APPELLANT

Vs

Financial Commissioner, Revenue and Others

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 7A

Citation : (1995) 110 PLR 524

Hon'ble Judges : K.K. Srivastava, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.L. Garg, for the Appellant; M.C. Berry, DAG for Respondent Nos. 1 to 4. and P.N. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Petitioners' battle against ejectment from the land in dispute having failed before the revenue officers they have approached this Court through the present writ petition. A few facts may be noticed.

2. Surjan Singh was cultivating the land of one Smt. Nihal Kaur as a tenant. He died in 1963. The petitioners are his successors. Respondent Nos. 5 and 6 purchased land measuring 31 Bighas 13 Biswas which was under cultivation of the petitioners from Smt. Nihal Kaur in the year 1976. The said respondents instituted three cases in the Court of Assistant Collector 1st Grade, Khanna. The first case was a suit for the recovery of rent for the period from Rabi 1976 to Kharif 1978. The second case was an application u/s 7A of the Pepsu Tenancy & Agricultural Lands Act, 1955 for the ejectment of Bant Singh etc., the petitioners. The third case was an application under S.7- These cases were heard together. Vide order dated December 29,1981 the Assistant Collector 1st Grade, Khanna decreed the rent suit and ordered the ejectment of Bant Singh etc. from the land in dispute. They filed three appeals against this order. Vide order dated April 27,1982, the appeal against the decree in the rent suit was dismissed. However, with regard to the other two appeals, it was ordered that the petitioners could

not be ejected till the expiry of a period of six months from the date of the order of the Collector, viz. December 29, 1981. The orders of the Collector were challenged before the commissioner by filing three revision petitions. These were dismissed on March 13, 1994. Bant Singh etc. then approached the Financial Commissioner (Appeals) through three separate revision petitions. Vide order dated September 30, 1986, the Financial Commissioner dismissed the revision petition against the decree in the rent suit. The petitions against the order of ejectment were, however, accepted and the case was remanded to the Assistant Collector "for rendering a finding on the relationship between the parties." Thus the second round of litigation commenced. On remand, the Assistant Collector 1st Grade again considered the matter. Vide his order dated August 12, 1987, a copy of which has been produced as Annexure P.4 with the writ petition, he held that the "relationship of landlord and tenant exists between the parties." He, thus, ordered that Bant Singh etc. "be ejected from the land in dispute after the expiry of six months from the date of order, in case the latter do not pay the rent to the applicants by that date." He further held that the petitioners had not averred that they were "eligible to the allotment of surplus land to the extent of 5 standard acres individually or jointly. In the absence of any such evidence it can be implied that they are not eligible for it." Bant Singh etc. filed an appeal before the Collector which was dismissed vide his order dated August 1, 1988. The order was upheld by the Commissioner vide his order dated December 22, 1993. Copies of these orders are at Annexures p. 2 and p. 3. The petitioners then filed a revision petition before the Financial Commissioner (Revenue), Punjab. Vide order dated October 25, 1994, the learned Financial Commissioner dismissed it. A copy of this order has been appended as Annexure p.1 with the writ petition. Aggrieved by the orders passed by the various revenue authorities, the petitioners have approached this Court through the present writ petition. The orders at Annexures p. 1 to p.4 have been challenged primarily on the ground that the revenue courts could not determine the relationship between the parties and that the petitioners cannot be evicted from the land until alternative land measuring 5 standard acres was allotted to each one of them. It has also been claimed that the petitioners have become owners by adverse possession and that they are not liable to be evicted in view of the provisions of Section 7-A of the Pepsu Tenancy and Agricultural Lands Act, 1955.

3. In response to the notice of motion issued by this Court, a written statement has been filed on behalf of Respondent Nos. 5 and 6. By way of preliminary objection it has been averred that a concurrent finding of fact having been recorded by the revenue courts that the petitioners are tenants under Respondent Nos. 5 & 6, who are small land-owners, they are liable to be ejected, as they have failed to pay rent from Rabi 1976 to Kharif 1978. It has been further pointed out that the relationship between the parties (of tenant and landlord) was admitted by the learned counsel for the petitioners before the Collector, Ludhiana, and was not disputed later on either before the Commissioner or the Financial Commissioner (Revenue). Still further, reference

has been made to a civil suit instituted by the petitioners or their predecessors in interest on January 31, 1976 before the Senior Subordinate Judge, Ludhiana, in which the petitioners had inter-alia averred that they "are in actual cultivating possession of the land in dispute as tenants at will in respect of land.. " Reference has also been made to a suit instituted by the petitioners or their predecessors-in-interest on June 8, 1988 before the Civil Court at Ludhiana in which a prayer for issue of a declaration that they were the owners in possession of the suit property by adverse possession was made. This suit was contested by the present respondents. This Civil Court found that the petitioners were tenants and had not become owners of the suit property by adverse possession. The decree passed by the learned Subordinate Judge was affirmed by the Appellate Court vide its judgment and decree dated January 23, 1995. The second appeal against this judgment viz. R.S.A. No. 698 of 1995 was dismissed by the learned Single Judge on April 5, 1995. It was found that the plea raised by the appellants (the present petitioners or their predecessors-in-interest) "is nothing but an attempt to ward off the effect of order of ejectment passed by the revenue court under the relevant tenancy Act. Both the Courts rightly came to the conclusion that there exists relationship of landlord and tenant between the parties." In view of these facts, it has been submitted that the petitioners are estopped from denying their possession on the land in question as tenants under the respondents. The claim made by the petitioners has also been controverted on merits. It has been further pointed out that the documentary evidence produced before the Assistant Collector 1st Grade, Khanna, clearly shows that the petitioners own more than 14 standard acres while the land in dispute is admittedly less than three standard acres. The respondents being small land-owners, the petitioners are not entitled to the allotment of any land and that they were rightly ejected from the land in dispute.

4. The petitioners have filed a replication, in which besides reiterating the claim made in the writ petition, it has been averred that the impugned orders have been passed without determining the amount of rent which was due from the petitioners. Certain other additional grounds have also been raised.

5. We have heard Mr. HariChand Garg, learned counsel for the petitioners and Mr. Prem Nath Aggarwal for Respondent Nos. 5 and 6. Garg has made the following submissions:-

- i) The impugned orders are wholly without jurisdiction as these are based on the finding that a relationship of landlord and tenant exists between the parties. Since the Revenue Courts had no jurisdiction to determine the relationship between the parties, the impugned orders are vitiated;
- ii) The amount of rent due from the petitioners having not been specifically determined by the Courts, the orders of their ejectment cannot be sustained;
- iii) The petitioners cannot be evicted from the land unless alternative land of equivalent value in standard acres is allotted to each one of them.

6. The claim made on behalf of the petitioners has been controverted by the learned counsel for the respondents.

Regarding (i):

7. Mr. Garg has vehemently contended that the Revenue Courts were not competent to determine the relationship between the parties. In the Jamabandies of the years 1979-80 and 1984-85, it is clearly recorded that the possession of the petitioners was "Bila Lagan Najayaz Kabza" i.e. without rent-unauthorised possession. In view of this position, the counsel submitted that the petitioners are, in fact, the owners of the land in dispute and were not liable to be ejected on the ground of non-payment of rent. The counsel submitted that the Revenue Courts wrongly assumed jurisdiction to determine the relationship and on this ground alone, the impugned orders are vitiated.

8. This contention cannot be accepted. As already noticed, the petitioners had instituted a suit on Jan.31, 1976. A copy of the plaint filed by the petitioners or their predecessors-in interest has been produced as Ann. R. 1 with the written statement. A perusal of the plaint shows that they had made the following prayer:-

"That the plaintiffs pray that a decree for the grant of a perpetual injunction restraining the defendants from dispossessing the plaintiffs who are in actual cultivating possession of the land in dispute as tenants at Will in respect of land measuring 33 Bighas, 12 Biswas, fully described in para No. 1 of the plaint forcibly and illegally in any manner except by the due process of law may be passed in favour of the plaintiffs against the defendants with costs."

9. Thus the petitioners or their predecessors-in-interest clearly acknowledged the fact that they were tenants on the land in dispute. This suit was dismissed. An appeal was filed. A copy of the grounds of appeal has been produced as Annexure R.2 with the written statement. The first ground reads as under:-

" That it is conclusively proved on the record by the most convincing oral and documentary evidence that the appellants are actually in cultivating possession of the land in dispute from the last about 37 years as tenants at will and are in actual possession of the same upto this day. The appellants are proved to be in possession of the land in dispute at the time of the institution of the present suit and even afterwards."

10. It is thus clear that even at this stage it was conceded that the relationship between the parties was that of landlord and tenant. Thereafter, it appears that applications for correction of entries in the khasra girdawaries were made. As a result of that, even the entry in the jamabandi was changed. However, on June 8, 1988, a suit for declaration and permanent injunction was filed by the petitioners or their predecessors-in interest. It was claimed that they had become owners of the land in dispute by adverse possession. The Civil Court framed a specified issue which reads as under:-

"Whether the plaintiffs Nos. 1 to 6 are owners in possession by adverse possession of the land in dispute. OPP."

11. The issue was decided against the petitioners. It was held that their possession was not "in derogation of (the) ownership of true owner..." The appeal against this judgment was dismissed by the additional District Judge. These decisions were affirmed by this Court. It is, thus, clear that the relationship between the parties had been really determined by the Civil Court. Still further, even the counsel for the petitioners appears to have conceded before the collector that the relationship was that of landlord and tenant. A perusal of the order dated August 1, 1988, Annexure p.3, shows that the "learned counsel for the appellants (the present petitioners) stated at the bar that they do not dispute the factum of relationship." This statement has not been disputed before either the Commissioner or the Financial Commissioner. In fact, even in the writ petition, it has not been averred that the observation made by the Collector was not correct. Accordingly, the contention raised by Mr. Garg is wholly devoid of merit and cannot be accepted.

12. Before parting with this aspect of the case it must be observed that in the writ petition the petitioners have not disclosed the fact that they had instituted a civil suit on January 31, 1976 or thereafter in the year 1988. The omission to do so is not innocent. In fact, despite the findings of the Civil Court, the contention, as noticed above, was raised. The petitioners are guilty of suppressing relevant information.

Regarding (ii):

It was then contended that the amount of rent due from the petitioners having not been specified, they cannot be ordered to be ejected. Even this contention cannot be accepted. Firstly, no such contention appears to have been raised before the Commissioner or the Financial Commissioner. The petitioners cannot be permitted to raise it for the first time before this court. Secondly, a perusal of the order dated September 30, 1986, a copy of which has been produced as Annexure R.9 with the written statement, shows that the respondents had filed a suit for the recovery of Rs 9,902.29 ps. as their share of the crops for the period Rabi 1976 to kharif 1978 against the petitioners. This suit was decreed. The challenge against this order was negatived upto the Financial Commissioner. It is thus clear that the petitioners had not paid rent amounting to Rs 9,902.29 ps. Consequently, the grievance now sought to be made is wholly unfounded. Thirdly, in the replication filed by the petitioners, it has been specifically mentioned that the respondent had initiated execution proceedings against the petitioners. The warrant of sale was issued by Respondent No. 4 on June 4, 1987. The land was auctioned for Rs. 10,00/-. The sale was subsequently confirmed. This is clearly indicative of the fact that the petitioners were aware of the amount of rent due from them and the Decree was, accordingly, executed. Consequently, even the second contention raised by the learned counsel for the petitioners is rejected.

Regarding (iii):

Mr. Garg then submitted that the petitioners cannot be evicted from the land unless alternative allotment was made to them. In support of his submission, learned counsel referred to the provision contained in Section 7-A of the Pepsu Tenancy and Agricultural Lands Act, 1955. Even this contention cannot be accepted.

15. A perusal of the order passed by the Financial Commissioner shows that it had been held that the petitioners "own almost 14 acres 4 kanals and 19 marlas of land..." apart from the land in dispute. In the writ petition, it has been averred that the petitioners own only 2-1/2 standard acres while the land in dispute is less than 3 standard acres roughly. In the written statement filed on behalf of the respondents, this claim has been controverted. It has been averred that the petitioners own/possess more than 14 standard acres besides the land in dispute. It has also been averred that the respondents are small land-owners and their holding is below the permissible limit. In the replication filed by the petitioners, the averment that the respondents are small land-owners had not been disputed. They have, however, disputed their possession with regard to the land measuring 28 bighas 14 biswas as mentioned at Item No. 2 in paragraph 11 of the written statement. Though this averment is contrary to the finding recorded by the learned Financial Commissioner, yet even if it is assumed that the averment of the petitioners is correct, they would still be owners in possession of land measuring 8 acres 5 kanals and 2 marlas. Are they still entitled to the benefit u/s 7-A ? The relevant provision is in the following terms:-

7A. Additional grounds for termination of tenancy in certain cases. - (1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in addition to the grounds specified in Section 7, namely:-

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter 11:

(b) that the landowner owns thirty standard acres or less of land and falls within his permissible limit: Provided that no tenant other than a tenant of a landowner who is member of the Armed forces of the Union shall be ejected under this sub-section-

(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standards acres, until he is allotted by the State Government alternative land of equivalent value in standard acres."

16. Section 7 of the Act provides the grounds for determination of tenancy. One of the grounds is that "the tenant has failed to pay rent within a period of six

months after it falls due..." The petitioners had become liable to ejectment in accordance with the provisions of Section 7. Section 7-A provides the additional grounds for termination of tenancy. It is only in a case where a tenant is being evicted on the two grounds mentioned in clause (1) of Section 7-A that the benefit of the proviso regarding allotment of alternative land can be available to the tenant. In the present case, the petitioners are not being evicted on the ground that the land comprising the tenancy has been reserved by the land-owner for his personal cultivation or that the land-owner has 30 standard acres or less area of land which falls within his permissible limit. Consequently, the provision is not attracted. Still further, even if it is assumed that the provision is attracted to the facts of the present case, it is established on the record that the area under the personal cultivation of the petitioners exceeds 5 standard acres besides the land in dispute. Consequently, they are not entitled to the benefit under the above said provision.

17. Lastly, half hearted attempt was made to contend that the decree passed in the rent suit having been executed, the petitioners are not liable to be ejected. Reliance in support of this submission was placed, on the decision of a learned Single Judge of this Court in Smt. Gita Devi v. Financial Commissioner Haryana 1987 P.L.R. 265. This case is clearly distinguishable on facts. In this case, a decree for an amount of Rs. 90/- was passed by the Assistant Collector on April 23, 1970. Before the expiry of six months, the tenant had filed an appeal before the Collector and his ejectment was stayed. The tenant entertained "misapprehension that since his ejectment from the land had been stayed, he was not required to make the deposit within six months from the date of decree of the Assistant Collector. Later, however, to avoid any complications, he deposited the amount of Rs. 90/- on 5.1.1991." In this situation, the learned Judge took the view that "it was quite legitimate for respondent No. 3 to construe the stay order granted by the Collector as not requiring him to deposit the amount of arrears of rent till the decision of the appeal," However, the factual position in the present case is entirely different. The rent suit filed by respondent Nos. 5 and 6 was decreed by the Assistant Collector 1st Grade on December 29, 1981. He had to pay the rent within six months thereafter. This was admittedly not paid. Finally, decree was executed in the year 1987. This being the situation, the contention raised by the learned counsel has no merit. It has to be rejected. We do so.

18. No other point was urged.

19. Accordingly, there is no merit in this petition. It is dismissed in limine. In the circumstances of the case, we make no order as to costs.