
(1967) 11 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2222 of 1966

Chuni Lal Tilak Raj

APPELLANT

Vs

The Estate Officer

RESPONDENT

Date of Decision : 15-11-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 35(1)
Constitution of India, 1950 — Article 226, 227
Punjab Land Revenue Act, 1887 — Section 67, 75, 76, 77(1), 95(1)
Transfer of Property Act, 1882 — Section 111

Citation : (1968) 1 ILR (P&H) 637 : (1968) 70 PLR 556

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : Ram Rang, for the Appellant; Gopal Singh, General, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Pandit, J.—This order will dispose of two connected writ petitions NPS. 2222 and 2454 of 1966. It was conceded by the counsel for the parties that the decision in one of them will govern the other as well. I would, therefore, give the facts of C.W. 2222 of 1966 only.

2. This petition under Articles 226 and 227 of the Constitution had been filed by M/s. Chuni Lal Tilak Raj, challenging the legality of the order dated 7th October, 1966 passed by the Estate Officer, exercising the powers of Collector, Chandigarh.

3. The facts are not in dispute. The site of the shop-cum-flat No 42 in Sector 23-C, Chandigarh, was sold in an auction held on 15th of February, 1955, by the Estate Officer, Chandigarh. This plot was purchased by one Roshan Lal. He after taking a loan from the Government, constructed only the shop and not the residential flat thereon. According to the Petitioner, Roshan Lal leased out the shop to him on a monthly rent of Rs. 150 in July, 1959. The Petitioner, therefore, became a tenant of Roshan Lal. It appears that Roshan Lal could not pay the

instalments of the loan in terms of the bond executed by him, with the result that the Estate Officer, who also exercises the powers of the Collector, sold, by auction; the shop u/s 75 of the Punjab Land Revenue Act, 1887 (hereinafter called the Act) for the recovery of the balance of the loan from him as arrears of land revenue. This sale was made towards the end of August, 1966. It was then confirmed by the Commissioner, Ambala Division. The Petitioner, however, continued to occupy the said shop. Since the possession of the shop had to be delivered to the auction-purchaser, the Estate Officer, on 7th of October, 1966, sent the impugned notice to the Petitioner directing him to vacate the said shop within seven days from its issue and hand over its vacant possession to his office, failing which he would be evicted forcibly without any further notice to him. That led to the filing of the present writ petition on 14th of October, 1966.

4. Learned Counsel for the Petitioner submitted that after the shop had been auctioned and the purchaser had paid the price, the Estate Officer had no jurisdiction to serve any notice on the Petitioner asking him to vacate the premises. The auction-purchaser had become the landlord of the Petitioner. The Estate Officer was not authorised under the law to evict the Petitioner in this arbitrary manner by using force for delivering the possession of the shop to the auction-purchaser. The Petitioner had acquired a valuable right to continue in peaceful possession of the premises and could not be evicted otherwise than by due process of law. The Petitioner was prepared to attorn to the auction-purchaser who had now become his landlord. According to the learned Counsel, it could not be said that the possession of the Petitioner was in any way unauthorised or illegal. Section 75 of the Act, under which the shop had been sold, did not authorise the Estate Officer to recover possession from the tenant who was in valid and legal occupation of the premises as a tenant under the previous landlord.

5. The only point for decision in this case is whether the Estate Officer, who admittedly exercises the powers of a Collector, is authorised, under the law, to get possession from the Petitioner by the use of force. It is undisputed that if Roshan Lal had sold the property, then the purchaser had to file a regular civil suit for getting possession of the shop from the Petitioner. Now the question is whether the Government has to file a similar suit against the Petitioner or they can recover possession by using force, as they are proposing to do.

6. It is common ground that Roshan Lal was unable to pay the instalments of the loan taken by him from the Government and, therefore, the shop was sold for the recovery of that loan as arrears of land revenue u/s 75 of the Act. Could the balance of the loan be recovered as arrears of land revenue ? Section 98(dd) of the Act says-

In addition to any sums recoverable as arrears of land-revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered, namely:

(dd) A loan advanced by the State Government towards the cost of a house or site under a Government sponsored Housing Scheme together with interest chargeable thereon and costs, if any, incurred in making or recovering the same.

7. According to this clause, if a loan had been advanced by the State Government towards the cost of a house or site under a Government-sponsored Housing Scheme, the same, together with interest chargeable thereon, could be recovered as arrears of land revenue. According to the return filed by the Estate Officer, Roshan Lal had been advanced two loans under the Low Income Group Housing Scheme and House Building Loan Scheme for the construction of the shop-cum-flat. The learned Advocate-General appearing on behalf of the Estate Officer, showed me the application forms and the conditions of the loan from which it was apparent that the schemes under which the loan was given were Government sponsored. In any case, to put the matter beyond doubt, the Estate Officer has filed an affidavit in support of that fact. Under these circumstances, it has to be held that the said loan came within the purview of Section 98 (dd) and the same could, therefore, be recovered as arrears of land revenue. u/s 75 of the Act, the Collector, with the previous sanction of the Commissioner, was authorised to sell the property in respect of which the arrears were due. Roshan Lal was declared to be a defaulter by the Estate Officer and the permission of the Commissioner had been taken to sell his property in order to recover the balance of the loan as arrears of land revenue. It may be mentioned that an argument was raised by the learned Counsel for the Petitioner that the arrears of land revenue could be recovered only by selling the land and no other property, like the shop, of Roshan Lal who was a defaulter. There is, however, no substance in this contention, because u/s 67(h) of the Act, an arrear of land revenue could be recovered by proceeding against other immovable property of the defaulter, and u/s 77(1) of the Act that property would be treated as if it were the land in respect of which the arrear was due. Section 76 of the Act deals with the effect of sale on encumbrances on the property sold. Under that section, land sold u/s 75 shall be sold free of all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the land, shall become void as against the auction-purchaser. Certain exceptions are, however, given under that section, but the case of the Petitioner admittedly does not come under any of them. The effect of this section on the Petitioner would be that his rights of tenancy would come to an end and become void as against the auction-purchaser. u/s 95(1) of the Act, after a sale had been confirmed, the Collector had to put the person, declared to be the purchaser, into possession of the property sold. Roshan Lal admittedly was not in possession of the shop and it was the Petitioner who was occupying the same as his tenant. The impugned notice was, therefore, given to him to vacate the shop and deliver possession to the Estate Officer, so that he might hand over the same to the auction-purchaser in terms of Section 95(1).

8. The manner in which this order of ejectment will be executed is given in Rule 43 of the Land Revenue Rules. It says-

43. Execution of orders of ejectment, etc.-(i) Order of ejectment from, and delivery of possession of immovable property shall be enforced in the manner provided in the CPC for the time being in force in respect of the execution of a decree whereby a civil court has adjudged ejectment from, a delivery of possession of such property.

(ii) And in the enforcing of these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a civil court may exercise in the execution of a decree of the description mentioned in Sub-section (i).

9. According to this rule, the order of ejectment and delivery of possession shall be enforced in the same manner in which civil court decrees of that kind are executed under the Code of Civil Procedure. In other words, the order of the Estate Officer will be treated as a civil court's decree and will be executed in accordance with the procedure prescribed in the Code of Civil Procedure. In that connection, reference may be made to the provisions of Order XXI, Rule 35. According to Sub-rule (1) thereof, the possession shall be delivered, if necessary, by removing any person bound by the decree who refuses to vacate the property. Indisputably Roshan Lal and all persons claiming through him were bound by the order of the Estate Officer which, as already mentioned above, amounted to a decree. Moreover, the tenancy rights of the Petitioner had come to an end both u/s 76 of the Act and Section 111(c) of the Transfer of Property Act. If the Petitioner, therefore, refuses to vacate the property, he can be removed from the premises under Order XXI, Rule 35 of the Code of Civil Procedure. The impugned notice is, thus, valid in law.

10. The result is that this petition fails and is dismissed. There will, however, be no order as to costs.