

(2006) 05 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19424 of 2004

Digamber Singh

APPELLANT

Vs

Haryana Urban Development Authority

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Urban Development Authority Act, 1977 — Section 17, 18

Citation : (2006) 144 PLR 759 : (2006) 4 RCR(Civil) 27

Hon'ble Judges : Viney Mittal, J;A.N. Jindal, J

Bench : Division Bench

Advocate : Manoj Bajaj, for the Appellant; Aman Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Viney Mittal, J.—Petitioner-Digamber has approached this Court through the present petition filed under Article 226/227 of the Constitution of India for the issuance of a writ of Certiorari for quashing the eviction orders dated 12.7.2004 and. 16.11.2004. The aforesaid orders have been appended as Annexures P-16 and P-19 respectively with the present petition.

2. The facts which emerge from the record show that land measuring 2000 square yards in Dharuhera was given on lease to the petitioner by Estate Officer, Haryana Urban Development Authority, Gurgaon-respondent No. 3 vide two separate lease deeds dated 16.2.1981 and 15.4.1982. The period of lease was 15 years and the rent was fixed @ Rs. 312/- per months. The petitioner maintains that the aforesaid lease deed was renewable at the option of the lessee. After taking the aforesaid land on lease, the petitioner raised construction and set up a petrol pump. It has been maintained by the petitioner that he kept paying the rent regularly. It has also been stated by the petitioner that prior to the expiry of the aforesaid lease period, he had applied for renewal of the aforesaid lease. However, according to the petitioner, no action for renewing the lease was taken by the respondents.

3. On 13.3.2001, Estate Officer, Haryana Urban Development Authority, Rewari-respondent No. 3 issued a show-cause notice u/s 17 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) requiring the petitioner to deposit a sum of Rs. 34,67,146/- towards the arrears of rent. The petitioner replied to the aforesaid show-cause notice and declined his liability to pay the aforesaid arrears. The reply submitted by the petitioner was rejected by the Estate Officer-respondent No. 3 and another show cause notice was issued requiring him to deposit the aforesaid amount of Rs. 34,67,146 and even a penalty for the equivalent amount was imposed.

4. At this stage, the petitioner approached this Court through C.W.P. No. 18170 of 2001 challenging the notice of recovery as well as imposition of penalty. Vide interim order dated 21.11.2001, a Division Bench of this Court directed the petitioner to deposit a sum of Rs. 5 lacs within 6 weeks from the date of the order and upon the aforesaid deposit, the recovery of the balance was to remain stayed. Ultimately, the aforesaid petition came up for final hearing and was disposed of vide order dated 11.11.2003. The aforesaid recovery order and the penalty orders were quashed with liberty to the respondent to pass fresh orders in accordance with law after hearing the petitioner. Further undertaking of the petitioner was recorded that within 2 months of the passing of the order, petitioner would deposit a further sum of Rs. 5 lacs towards the claim raised by the respondents without prejudice to his rights and subject to the outcome of the proceedings before the authorities concerned.

5. It appears from the record that in the meantime, vide a policy decision dated 16.3.2004, Haryana Urban Development Authority approved monthly rents of petrol pump sites in various cities and in various urban estates in the State of Haryana. For Rewari/Dharuhera, for an area of 900 square metres, Rs. 19,930/- was fixed as monthly rent. A copy of the aforesaid policy decision dated 16.3.2004 is appended as Annexure P-11 with the present, writ petition.

6. After the aforesaid policy had been formulated by the Haryana Urban Development Authority for various urban estates, the Estate Officer, Haryana Urban Development Authority, Rewari-respondent No. 3 also issued a communication dated 21.5.2004 to the petitioner-Digamber Singh informing him of the aforesaid rates fixed by the Chief Administrator, Haryana Urban Development Authority and requiring him to give his consent to the aforesaid rates. The petitioner was informed that in case he did not give his consent, then it would be presumed that he was not inclined and in such a situation, proceedings u/s 18 of the Act would be initiated against him for eviction of the site. A copy of the aforesaid communication dated 21.5.2004 is appended as Annexure P-12 with the present petition. The petitioner replied to the aforesaid show-cause notice showing his inability to pay the aforesaid amount through a communication dated 1.6.2004 (Annexure P-13). Certain other communications seem to have been sent by the petitioner to the authorities. Ultimately, since the petitioner did not agree to the rates which had been fixed by the Chief

Administrator, Haryana Urban Development Authority, therefore, notice u/s 18 of the Act was issued against him to show-cause as to why he be not ordered to be evicted from the site in question. The petitioner chose not to respond to this notice and ultimately vide order dated 12.7.2004 (Annexure P-16) the petitioner was ordered to be evicted by the Estate Officer, Haryana Urban Development authority, Rewari. The petitioner still represented but the order of eviction was again reiterated vide another order dated 16.11.2004 (Annexure P-19). It appears from the perusal of the aforesaid order that the petitioner had been provided an opportunity to show-cause against the eviction but he failed to do so.

7. In these circumstances, the petitioner had approached this Court through the present petition challenging the aforesaid eviction orders.

8. The claim of the petitioner has been contested by the respondents in the written statement filed by them. It has been maintained therein that although through the two lease deeds dated 16.2.1981 and 15.4.1982, lease was granted with regard to the land in favour of the petitioner for a period of 15 years, a specific clause was there in the aforesaid lease deeds with regard to the revision of rent payable by the petitioner to be revised after every 5 years. The respondents maintained that the aforesaid revised rates -were implemented as per decision dated 23.6.2000 taken by the Chief Administrator, Haryana Urban Development Authority. However, the petitioner never chose to pay the enhanced lease amount and as such an amount of Rs. 34,67,146/- was still outstanding against him. The respondents have also appended a copy of the communication dated 31.5.2005 addressed by the petitioner to the Estate Officer, Haryana Urban Development Authority, Rewari, specifically stating that he did not want to continue with the petrol pump site on lease as per new quoted rates. Copy of the aforesaid communication has been appended as Annexure R-2 with the written statement of the respondents.

9. At this stage, it may be relevant to reproduce the aforesaid communication as below:

To @ TAB : The Estate Officer

HUDA, Rewari.

Sub : Floatation of petrol pump site.

Ref. Your letter No. 5076 dated 21.5.2004

Dear Sir,

With reference to your letter No. dated 21.5.2004, I hereby submit my consent that I do not want to continue my petrol pump site on lease as per new quoted rates by you. This is for your information and further necessary action please.

Sd/- Digamber Yours faithfully.

10. We have heard the learned Counsel for the parties and have also gone

through the record of the case.

11. At the very outset, we may notice that on 2.5.2006 when the present petition was fixed for hearing, a query was put by the court to the learned Counsel for the petitioner as to whether the petitioner was ready and willing to accept the rate of rent as laid down in the policy framed by the Haryana Urban Development as per Annexure P-11. Learned Counsel had sought time to seek instructions from the petitioner.

12. Today, Mr. Manoj Bajaj, learned Counsel for the petitioner has informed the Court that petitioner is not ready and willing to accept the rate of lease as fixed by the Chief Administrator, Haryana Development Authority stipulated in the policy decision Annexure P-11.

13. On the basis of the aforesaid statement of the learned Counsel, we have proceeded to adjudicate upon the controversy.

14. The facts which emerge from the record as noticed above, clearly show that the lease of the land in favour of the petitioner was for a period of 15 years. The said period of 15 years expired in the year 1996. No fresh lease deed has been executed in his favour. Even as per the original lease deed, the respondents were within their right to revise the rate of lease after every 5 years. The respondents have maintained that in June 2000, the rate were revised and an intimation was sent to the petitioner in this regard. He chose not to respond to the same nor at any point of time, he deposited the revised lease amount. It further appears that the aforesaid rates have again been revised through policy decision Annexure P-11 for the various urban estates in the State of Haryana. Dharuhera being one of them. Petitioner has specifically declined to accept the aforesaid revised rates. Not only this, through a communication dated 31.5.2004, extracted above, the petitioner even submitted an application to the Estate Officer that he did not want to continue with the petrol pump site on lease as per new quoted rates. In these circumstances, there is no justification for the petitioner to continue with the occupation of the site, which admittedly belongs to the respondents.

15. Mr. Manoj Bajaj, learned Counsel for the petitioner has vehemently argued that the rates could not be revised by the respondents and in any case the petitioner could not be forced to agree to the revised rates. It has also argued by the learned Counsel for that the eviction orders passed by the respondent-Estate Officer were without affording an opportunity of hearing to the petitioner.

16. We have duly considered the aforesaid contentions of the learned Counsel but find ourselves unable to agree with the same.

17 At this stage, we may notice with advantage certain observations made by a Division Bench of this Court in *Mulakh Raj Mutneja and Another Vs. The State of Punjab and Others*, as follows:

It deserves notice that the relationship between the landlord and tenant is of a purely contractual nature. The provisions of the Rent Restriction Law do not

apply. Still further, the Council which is the owner of the property, has a right to fix the rent or provide its periodic increase. On account of populist considerations the Council may agree to fix certain terms. However, if the state Government in exercise of its statutory powers feels compelled to lay down a uniform criteria, it cannot be accused of having acted unfairly or arbitrarily. Undeniably, there is an all-round increase in prices. The costs of works to be expected by the Committees is increasing. The projects undertaken by the Committees or the usual functions of maintenance of roads etc. make it incumbent for it to look for additional resources. Whenever, there is an effort to levy a new tax or fee, there is all-around resistance. On the other hand, the expenses on account of wages and even cost of maintenance are continuously rising. The inflation is a fact of life and has to be recognised. In this situation, the State Government was fully justified in laying down a uniform policy for the periodic increase in rents and for the transfer of tenancy. Its action in doing so was only a recognition of the existing situation. It was calculated to provide additional resources to the Committees. The State Government cannot be said to have acted unfairly or arbitrarily. Its action calls for no interference. It is in larger public interest and deserves to be upheld.

The aforesaid observations made by Division Bench in *Mulkh Raj Mutneja*'s case (supra), apply on all fours to the present controversy. The facts are almost identical. When the Chief Administrator, Haryana Urban Development Authority has taken a decision to revise rates and the aforesaid rates are being enforced by the Estate Officer, the petitioner cannot claim any exclusion or a special treatment. He was required to accept the revised rates if he wished to continue at the site.

18. Even otherwise, we are satisfied that petitioner has already been granted a reasonable opportunity to explain his position. Various show-cause notices under the Act were issued to him but the petitioner chose not to respond. In this view of the matter when the petitioner did not choose to participate/respond to the eviction proceedings, then he cannot make a complaint that eviction orders have been passed without affording an opportunity of hearing. The said stand taken by the petitioner is contrary to the record.

No other point has been urged.

As a result of the aforesaid discussion, we do not find any merit in the present petition. The same is dismissed.