

(1993) 06 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9572 of 1987

Gian Chand and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 01-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Security of Land Tenures Act, 1953 — Section 9, 9(1)

Citation : (1995) 109 PLR 267

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : S.C. Kapoor and Ashish Kapoor, for the Appellant; Viney Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Vasanda Ram, the father of the present petitioner was a tenant on agricultural land measuring 120 Kanals 9 marlas. He having died, his three sons viz. the present petitioners stepped into his shoes. They having been ordered to be evicted on account of non payment of rent, the application of respondent Nos. 5 to 8 viz. the landlords was allowed by the Assistant Collector. The appeal and the revision filed by the petitioners having been dismissed, they have approached this Court through the present writ petition. A few facts may be noticed.

2. The petitioners claim to have been tenants for a long time. Prior to the year 1974, they were paying a fixed rent at the rate of Rs. 800/- per year alongwith 2-1/2 maunds of fruit. In 1974, the landlords applied for the fixation of rent at the rate of 1/3rd share of the crop and execution of a lease deed. This application was contested by the petitioners. Ultimately, the claim of the landlords was upheld by the revenue authorities. The writ petition filed by the present petitioners having been dismissed by this Court in Vasandha Ram and Anr. v. The State of Haryana and Ors. 1982 PLJ 453, the petitioners approached

the Supreme Court through SLP No. 3854 (C) of 1982. This petition was dismissed by their Lordships on April 14, 1982.

3. The petitioners aver that after the dismissal of the Special Leave Petition, the rent became due to the respondent-landlords on June 15, 1983. As there was no agreement with regard to the rate of rent, the petitioners moved a petition u/s 14-A(iii) of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "the Act") on June 14, 1983 before the Assistant Collector for directions to the landlords to accept the rent and issue the receipt. It was also mentioned in this application that the tenants had requested the revenue authorities to appraise the rent and to fix the amount of rent in accordance with the provisions of Section 17 of the Punjab Tenancy Act, 1887. This application was opposed by respondent Nos. 5 to 8. It was dismissed by the Assistant Collector vide order dated March 27, 1984. A copy of this order has been produced by the petitioners as Annexure P-2 with the writ petition.

4. On June 16, 1983, the landlords filed an application u/s 9(1) (ii) read with Section 14-A(i) for eviction of the tenant on account of failure to pay the rent. A copy of this application has been produced by the respondents with their written statement as Annexure R-5/1. In this application, it was mentioned that "the tenants have not paid the rent for Rabi 1983 inspite of repeated demands and without any sufficient cause and the Batai for the earlier crops is also in arrears. The tenants do not make payment of Batai intentionally". This application was contested by the tenants viz. the petitioners. They filed a written statement. It was mentioned that "all the rent from 1974 to 1983 has either been paid or an application for the payment of the same has been filed. No rent is due and the applicants do not take the rent at time and want to get the land vacated by troubling the respondents and are filing repeated false applications". This written statement has been produced as Annexure R-5/2. On May 6, 1985 the Assistant Collector allowed this application. A copy of this order is at Annexure P-3 with the writ petition. Aggrieved by the order, the present petitioners filed an appeal before the Collector which was dismissed vide order dated September 17, 1985 (Annexure P-5). They filed a revision petition before the Commissioner who vide his order dated October 15, 1985, made a recommendation to the Financial Commissioner for the acceptance thereof. However, the Financial Commissioner, declined the reference vide order dated November 24, 1987. As a result, the petitioners were ordered to be evicted. Aggrieved by these orders, the petitioners have approached this Court through the present writ petition.

5. The orders passed by the authorities have been challenged by the petitioners primarily on the ground that they had sufficient cause for the default and were, therefore, not liable to be evicted.

6. A written statement has been filed by respondent Nos. 5 to 8 controverting the claim made on behalf of the petitioners. Since, there is no dispute between the parties, on the above mentioned facts, it is not necessary to make a detailed reference to the averments in the written statement.

7. I have heard Mr. S.C. Kapoor, learned Counsel for the petitioners and Mr. Viney Mittal, learned Counsel who has appeared for respondent Nos. 5 to 8. No one has appeared on behalf of respondent Nos. 1 to 4.

8. Mr. Kapoor, learned Counsel for the petitioners has raised a two-fold contention. He contends that non-payment of rent can lead to the eviction of the tenant only when it is proved that it was without sufficient cause. He submits that in the present case, the sequence of events clearly shows that the tenants were acting bona fide and had sufficient cause for not making the payment. He further submits that the view taken by the respondents that the amount of money which was to be paid to the landlords having not been indicated in the application filed by the petitioners on June 14, 1983, the plea taken by them was incorrect, cannot be sustained in view of the fact that while under Rule 22 of the Punjab Security of Land Tenures Rules, 1956, a proforma has been prescribed for an application to be submitted by the landlord, no such provision has been made for the application to be submitted by a tenant. The claim made on behalf of the petitioners has been controverted by the learned-Counsel for the respondents.

9. The short question that arises for consideration in this case is - Did the present petitioners (originally their father Vasanda Ram) have a sufficient cause for not depositing the rent ? He had appeared as RW-1. During the course of the proceedings before the Assistant Collector 1st Grade, Kurukshetra, his statement was recorded on oath. During the course of examination, he categorically admitted that "I have not paid any rent from 1974 till this date for any crop to the owners nor have deposited the same in any Court but I have filed proceedings for depositing the same. It is correct that my proceedings for depositing the rent have been dismissed by the Financial Commissioner." It is thus clear that the default complained of by the respondent-landlords is not the solitary ground. In fact, the tenants have not paid any rent since the year 1974. Consequently, it is apparent that they have failed "to deposit rent regularly". Have they shown any cause for this continuous default ?

10. A perusal of Section 9 shows that a tenant is bound to pay rent regularly. If he makes a default, he must show sufficient cause therefor. In the present case, it is apparent that the petitioners have not paid any rent since the year 1974. It is thus a case where the tenants are not guilty of a single default only for which they may have a sufficient cause. In fact, they are guilty of a series of defaults and apparently, no cause whatsoever much less than a sufficient cause has been shown therefor.

11. Mr. Kapoor, learned Counsel for the petitioners, however, submits that the conduct of the tenants has been absolutely fair and bona fide. An application had been filed before the date on which, the rent was finally due so that the Court could direct the landlords to accept the rent. He also submits that even in the previous years, similar applications had been made. It is thus clear that the petitioners were not actually trying to pay the rent to the landlords. An effort had in fact been made to avoid payment. The application was only a pretext to avoid

payment. It was a device being adopted so as to deprive the landlords of what was rightfully due to them. It is also the admitted position that like the application in the present case, even the earlier applications filed by the petitioners or their predecessors-in-interest were continuously dismissed. Taking the totality of the circumstances into consideration that the petitioners had failed to pay the rent regularly and that they have not been able to prove the existence of any cause whatsoever much less than a sufficient cause for the default which was the subject matter of the present proceedings before the revenue authorities.

12. It is no doubt correct that the Rules do not prescribe any particular form in which a tenant has to move an application for the issue of directions to the landlord. However, a tenant at least knows the amount which he has to pay to the landlord. That amount can be mentioned in the application. Still further, it is the claim of the petitioners that the rent had been actually offered to the landlords but they had refused to accept it." However, there is no averment as to how much was offered and when it was offered. A perusal of the application shows that only a vague averment has been made that "the applicants requested the respondents many time to receive the Batai of the disputed crop Rabi 1983 and to give receipt thereof to the applicants, but the respondents refuse to take the Batai and give the receipt. Hence the need for the applicants to file this application."

13. In the circumstances of the case, I am satisfied that the petitioners did not act bonafide and that their conduct does not entitle them to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution. No injustice much less than any manifest injustice has been caused to them. It is no doubt true that the Act has been promulgated primarily for the benefit of the tenant. It is heavily loaded in favour of the tenant. Still, payment of whatever is due to the landlord must be ensured. In the present case, the tenants have failed to give the rightful dues of the landlords. Consequently, they are entitled to no concession whatsoever.

14. Accordingly, this petition is wholly lacking in merit. It is dismissed.

15. Before parting with the judgment, it may be noticed that Civil Misc. Application No. 6373 of 1991 has been filed by respondent Nos. 5 to 8 with a prayer that petitioners be directed to pay an amount of Rs. 90,000/- to the respondents for use and occupation of the land for the crops from Kharif 1990 to Rabi 1991. Notice of this application was given to the Counsel for the petitioners. A reply to the application has been filed. It has been stated that "the rent was not paid as the landlord was not accepting the same. The application having been rejected, the present application is incompetent." It is not disputed that the petitioners are still in possession of the land. They are, therefore, liable to pay the rent from Rabi 1990 to Rabi 1993. It is just and fair to direct them to make the payment.

16. Mr. Viney Mittal points out that while disposing of Civil Misc. Application Nos.

8305 of 1988 and 14412 of 1989, vide order dated October 31, 1989, G.R. Majithia, J. had directed the petitioners to deposit the arrears of rent as may be assessed by the Assistant Collector 1st Grade. Civil Misc. Application No. 6373 of 1991 is disposed of in the same terms. It is directed that the petitioners shall pay the arrears of rent from Rabi 1990 to Rabi 1993 at the rate as may be assessed by the Assistant Collector 1st Grade, Thanesar. The payment shall be made within the month of the assessment of the arrears of rent.

17. Mr. S.C. Kapoor, learned Counsel for the petitioners submits that L.P.A. No. 210 of 1991 is pending against the order of G.R. Majithia, J. He further states that suits for the payment of arrears of rent from Rabi 1990 to Rabi 1993 are also pending.

18. So far as the first objection is concerned, it may be noticed that an order was passed by G.R. Majithia, J. on October 31, 1989. On the other hand, Mr. Viney Mittal points out that no L.P.A. was filed against the order dated October 31, 1989 passed by G.R. Majithia, J. He points out that the L.P.A. had in fact been filed against the order by which the objections filed by the petitioners against the assessment order by the Assistant Collector 1st Grade were dismissed by G.R. Majithia, J. on August 7, 1990. This position is not controverted by Mr. Kapoor, learned Counsel for the petitioners. Mr. Viney Mittal further points out that no suit has been filed by respondents for claiming the arrears of rent from Rabi 1990 to Rabi 1993. Mr. S.C. Kapoor, learned Counsel for the petitioners is not in a position to produce any document to controvert this position. In this situation, it is appropriate to direct the petitioners to pay the arrears of rent as may be assessed by the Assistant Collector 1st Grade, Thanesar. It is accordingly directed. The Assistant Collector shall proceed to make the assessment forthwith and finalise it within three months from the date of the receipt of a copy of this order.

19. In view of the above, the writ petition is dismissed with costs. Counsel fee Rs. 2000/-. Civil Misc. Application No. 6373 of 1991 is allowed as above.