

(2006) 07 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14124 of 1998

Harbhajan Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 06-07-2006

Acts Referred:

Citation : (2007) 1 ILR (P&H) 130 : (2007) 2 PLR 182 : (2006) 4 RCR(Civil) 917 : (2006) 2 RCR(Rent) 630

Hon'ble Judges : Viney Mittal, J and H.S.Bhalla, J

Advocate : Mr. J.K. Sibal, Sr. Advocate with Mr. Sapan Dhir, Advocate.Mr. Sukhdip Singh Brar, Addl. Advocate General, Punjab, Mr. K.S. Pannu and Shri S.S. Narula, Advocates., Advocates for appearing Parties

Judgement

Viney Mittal, J.—This judgment shall dispose of five writ petitions viz. Civil Writ Petition Nos. 14124, 14024, 14025, 14214 and 14754 of

1998 as the common challenge in all the petitions is to the vires of the Punjab Religious Premises Land (Eviction and Rent Recovery) Act, 1997

(hereinafter referred to as "the Act"). The petitioner has also challenged the filing of the eviction petition by the Shiromani Gurdwara Parbandhak

Committee (hereinafter referred to as the "SGPC") and the notice issued by the Collector on the said eviction petition. For the sake of

convenience, the facts are borrowed from Civil Writ Petition No. 14124 of 1988.

2. Certain lands are owned/attached to Gurdwara Singh Sabha Kakar Majra in District Fatehgarh Sahib (hereinafter referred to as the "respondent

Gurdwara"). According to the petitioner, agricultural land and some constructed premises had been given on rent by the respondent Gurdwara to

various persons. One such plot measuring 80.27 sq. yards bearing plot No. 64 was rented out to the petitioner about 30 years ago and petitioner

claimed that he is in occupation of the premises since 1968/69. Initially the plot in question was rented out to the petitioner at the rate of Rs. 360/

per annum but later on rent was enhanced and at the time of the filing of the petition, the petitioner claims to be paying the rent at the rate of Rs.

900/ per annum. The petitioner had pleaded that, similarly, various other persons had also been let out small plots of different areas varying from

500 sq. ft. to 1000 sq. ft. In the year 1978, the respondent Gurdwara came under the control and management of SGPC. According to the

petitioner thereafter the tenants of the respondent Gurdwara started paying rent to SGPC. The petitioner claims that the rent is being regularly

collected by various persons of SGPC. He relies upon certain rent receipts in this regard.

3. The State of Punjab enacted the Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997, Punjab Act No. 4 of 1998 with

effect from January 29, 1998. The aforesaid Act provides for the eviction of an unauthorised occupant from religious premises and for certain

incidental matters. Section 2(d) of the Act defines "religious institution", whereas Section 2(e) defines a "religious premises". Section 3 of the Act

defines "unauthorised occupation" of any religious premises by a person. Section 4 of the Act provides for an application to be filed by a religious

institution, with regard to unauthorised occupation of any religious premises. It further provides that on filing of such application after following the

procedure laid therein, the Collector may pass an order of eviction against such unauthorised occupants. Against the order of eviction, an appeal is

provided under Section 8 of the Act to the Commissioner. Section 9 of the Act provides for finality of the order passed by the Commissioner and

it is provided that the order passed by the Commissioner shall be final and shall not be called in question in any original suit, application or

execution proceedings and no injunction shall be granted by any Court or other authority in respect of any action or to be taken in pursuance of

any power conferred in this Act. Section 12 of the Act bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of the

eviction of any person who is in unauthorised occupation of any religious premises or recovery of the arrears of rent.

4. The petitioner has challenged the vires of the aforesaid Act. It has been maintained that the Act has defined a religious institution and religious

premises, with regard to the properties owned by religious institutions and, therefore, the aforesaid enactment was clearly hit by the principle of secularism enshrined in the Constitution of India. It has been maintained by the petitioner that the aforesaid definition provided unguided and unfettered powers to the Collector and, therefore the Act was also violative of the provisions of Article 14 of the Constitution of India. The petitioner has also maintained that factually he had been inducted as a tenant by the respondent Gurdwara in the year 1968-69 and since then he had been paying rent regularly, earlier to the respondent Gurdwara and later on to SGPC. On that basis it has been maintained that the Collector had no jurisdiction to treat the petitioner as unauthorised occupant. A specific challenge has been made by the petitioner to the explanation appended to Section 3 of the Act wherein it has been provided that a person shall not, merely by reason of the fact that he has paid any rent, be deemed to have entered into possession as an allottee, lessee or grantee. The petitioner maintains that the aforesaid explanation as a matter of fact, changes the status and character of the petitioner from that of a tenant to that of an authorised occupant. It is, thus, maintained that the aforesaid explanation was ultra vires other provisions of the Act and in any case ultra vires the Constitution of India.

5. We have heard Shri J.K. Sibal, learned Senior counsel appearing for the petitioner, Shri S.S. Brar, learned Additional Advocate General, Punjab for the respondent State, Shri K.S. Pannu and Shri S.S. Narula, Advocates appearing for SGPC and respondent Gurdwara and with their assistance have also gone through the record of the case.

6. Shri Sibal, learned senior counsel appearing for the petitioner during the course of arguments, has reiterated the pleas raised by the petitioner in the writ petition, as noticed above. Consequently, it has been argued by the learned senior counsel that the provisions of the Act were ultra vires of the Constitution of India and, in any case, explanation to Section 3 of the Act was in direct conflict with various other provisions of the Act and was liable to be quashed.

7. On the other hand, the learned counsel appearing for the respondents have maintained that the Act had been enacted by the State Legislative Assembly which was competent to enact the same. The aforesaid Act had been

enacted with a view to provide for the eviction of unauthorised occupants from the religious premises and also for certain incidental matters. Learned counsel have maintained that the Act was a special piece of legislation dealing with the property possessed by religious institutions and, as such, since the religious institutions had been treated as a class, therefore, the enactment was legal and constitutional. Learned counsel have also argued that the concept of secularism enshrined in the Constitution had not been violated or hit by the provisions of the Act in any manner, inasmuch as the aforesaid Act applies equally to all the religious institutions such as Gurdwara, temple, church, Mosque, temples of Jain and Budha and includes any other place of worship, by whatever name it may be called. Learned counsel for the respondents have also contended that the various pleas raised by the petitioner on facts need to be adjudicated by the Collector on the basis of the material brought on the record and, therefore, the question of vires of the Act is wholly irrelevant for consideration.

8. We have duly considered the rival contentions of the learned counsel for the parties.

9. At the outset we may notice Sections 2(d), (e), (f) and Sections 3, 4, and 5 of the Act as follows :

2(d) ""Religious institution"" means any Gurdwara, temple, church, mosque, temples of Jain or Budhawhich is registered under the provisions of the Societies Registration Act, 1860 (Central Act No. XXI of 1860) or is established under any institution and includes any other place of worship by whatever name it may be called, which is registered as aforesaid or is established under any statute.

(e) ""religious premises"" means any land whether used for agricultural or non agricultural purposes, or any building or part of a building belonging to a religious institution and includes

(i) the garden, grounds and outhouses, if any appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(f) ""rent"" in relation to any religious premises, means the consideration payable periodically for the authorized occupation of the religious premises

and includes

(i) any charge for electricity, water or any other services in connection with the occupation of the premises;

(ii) any tax (by whatever name called) payable in respect of Religious premises;

where such charge or tax is payable in respect of the Religious Institution.

3. For the purposes of this Act, a person shall be deemed to be in un authorized occupation of any religious premises

(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of

any allotment, lease or grant; or

(b) where he being an allottee, lessee or grantee has by reason of the determination or cancellation of his allotment, lease or grant in accordance

with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold

such religious premises; or

(c) where any person authorized to occupy any religious premises has, whether before or after the commencement of this Act

(i) Sublet, in contravention of the terms of allotment lease or grant, without the permission of the Religious institution, the whole or any part of such

religious premises; or

(ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such religious premises;

Explanation. For the purpose of clause (a) a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into

possession as allottee lessee or grantee.

4. (1) On an application made by a religious institution, if the Collector is of opinion that any persons are in unauthorised occupation of any

religious premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided, a notice

in writing, calling upon all persons concerned to show cause why an order of eviction not be made.

(2) The notice shall

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons, who are, or may be, in occupation of or claim interest in, the religious premises to

show cause, if any, against the proposed order on or before such date, as is specified in the notice, being a date not earlier than ten days from the

date of issue thereof.

(3) The Collector shall cause the notice to be sent through a registered post and also affixed on the outdoor or some other conspicuous part of the

religious premises, or of the estate in which the religious premises are situated whereupon the notice shall be deemed to have been duly given to all

persons.

(5)(1) If after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence he may produce in

support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the religious premises are in

unauthorised occupation, the Collector may make an order of eviction, for reasons to be recorded therein, directing that the religious premises shall

be vacated, on such, date not being the date of beyond the period of fortyfive days from the date of receipt of application by him under Section 4

and as may be specified in the order by all persons who may be in occupation thereof or any part thereof and cause a copy of the order to be

affixed on the outer door or some other conspicuous part of the religious premises or of the estate in which the religious premises are situated.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of order made under subsection (1), the

Collector or any other officer duly authorised by him in this behalf may evict that person from and deliver the possession of the religious premises

to the concerned Religious institution and may for that purpose, use such force as may be necessary.

10. A perusal of subsection (d) of Section 2 shows that various institutions such as Gurdwara, temple, church, Mosque, temples of Jain and Budha

or any other place of worship, by whatever name it may be called, have been defined as a ""religious institution"". Under subsection (e), the

property, any land (agricultural or nonagricultural) any building or a part of the building belonging to a religious institution has been defined as a

religious premises"". The definition of religious premises itself shows that the

said definition is only descriptive in nature and does not disclose the nature of the property or the fact as to whether any worship is being performed in the said premises or not. A nomenclature of religious premises had been used for the property owned by a religious institution. In our considered view the aforesaid nomenclature does not hit the principle of secularism in any manner. It is apparent that various religious institutions included in the definition of a "religious institution" are such institutions which are places of worship in various faiths/religions and are managed/controlled by some Managing Committees by whatever name it may be called. The public at large has an inherent interest in the management/control of the aforesaid religious institutions. There are various enactments, such as Religious Endowment Act, Sections 91-92 of the Code of Civil Procedure etc. which deal with the maladministration/mismanagement of the aforesaid institutions. It is in the light of the aforesaid fact that the said institutions are juristic persons rather than living persons, the State of Punjab has chosen to enact the Act in question with a view to preserve the property of the aforesaid institutions. The enactment of such a law cannot be termed to be contrary to any principle of secularism. No particular favour has been shown to any religious institution. The Act applies uniformly to institutions of all faiths and religions. Further, as noticed above, the mere nomenclature of "religious premises" for the property held by such a religious institution does not offend any provision of the Constitution of India in any manner nor the spirit of secularism enshrined in the Constitution of India is violated.

11. Section 3 of the Act provides that a person shall be deemed to be in unauthorised occupation of any religious premises, where he has whether before or after the commencement of the Act, entered into the possession thereof, otherwise than under and in pursuance of any allotment, lease or grant, or where he being an allottee, lessee or grantee has by reason of the determination or cancellation of his allotment, lease or grant, ceased to be entitled to occupy or hold such religious premises or where such person duly inducted in the premises had sublet, without any authority/permission or where he had acted in contravention of any terms of the lease/grant. The explanation to Section 3 specifically provides that merely on account of the fact that such a person had paid any rent shall not be

deemed to have entered into possession as an allottee, lessee or grantee. Thus, it is clear that a person who had entered the religious premises on a valid allotment, lease or grant shall not be treated as an unauthorized occupant, for the period, the aforesaid allotment/lease or grant subsists but shall be so treated as a unauthorised occupation, after the determination or cancellation of the allotment, lease or grant or on violation of the terms of the allotment etc., or on subletting. The explanation specifically provides that mere payment of rent by a person shall not raise any presumption that he had entered into possession as a allottee, lessee or grantee, meaning thereby that such a person was required to prove that he was validly inducted as a lessee or grantee. By any stretch of imagination, the aforesaid explanation cannot be interpreted to mean that even when a person had been inducted authorisedly and validly initially and had been paying rent, he could still be treated as an authorised occupant. On the other hand, if a person had not been so inducted authorisedly in the beginning, the mere payment of rent by him could not confer upon him any legitimacy. The aforesaid provisions of Section 3 and even the explanation appended thereto, do not confer any arbitrary power on the Collector and cannot be termed to be vague or indefinite in any manner. The status and character of an occupant is required to be determined at the time of his initial induction and after the determination of his status by efflux of time or cancellation of allotment, lease, grant etc. The apprehension expressed by petitioner, stressed by the learned senior counsel during the course of argument, with regard to explanation to Section 3 is totally without any basis. We do not feel that explanation to Section 3 suffers from any infirmity or illegality.

12. A detailed and comprehensive procedure is provided under Sections 4 and 5 of the Act for evicting an the unauthorised occupant. If the Collector is satisfied of the unauthorised occupation of a person, then eviction order shall be passed against that person after following due procedure. A person aggrieved against the order of the Collector can file an appeal before the Commissioner under Section 8 of the Act. The Act is, thus, a complete code in itself and deals with classified institutions with regard to the eviction from property owned by them in unauthorised possession of an occupant. Neither the provisions of the Act can be termed to be

contrary conferring any unguided and unfettered powers on the

Collector nor can it be said that the Act in question suffers from any violation of any of the provisions of the Constitution of India.

13. We also take note of the various pleas raised by the petitioner on facts. In our considered view the aforesaid pleas are required to be taken by

the petitioner before the Collector by filing written statement. On the basis of the written statement the evidence would have to be led by the

petitioner to prove the aforesaid facts. Thereafter, the Collector would be required to determine the controversy between the parties. It is only

when the Collector comes to the conclusion that the petitioner is in unauthorized occupation, in view to the provisions of Section 3 of the Act, that

an eviction can be ordered against him. However, if the petitioner is able to prove that he is not in unauthorised occupation, having been validly

inducted by the respondent Gurdwara initially and later on having paid rent regularly to SGPC, then of course the petitioner cannot be termed to be

an unauthorised occupant even in terms of Section 3 of the Act.

No other point has been urged before us.

In view of the aforesaid discussion, we do not find any merit in the present petitions. The same are dismissed. However, we make it clear that the

petitioner would be at liberty to take all factual pleas before the Collector in the eviction proceeding pending before him.

Petitions dismissed.