
(2009) 10 P&H CK 0088
In the Punjab And Haryana At Chandigarh

Harjinder Singh

APPELLANT

Vs

Ved Parkash

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 12, 16, 18

Citation : (2010) 157 PLR 162 : (2009) 2 RCR(Rent) 498

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Invoking the provisions of Sub-section 6 of Section 15 of the Haryana Urban (Control of Rent & Eviction) Act, 1973, (hereinafter to be referred as "the Rent Act"), Harjinder Singh petitioner-tenant (hereafter to be referred as "the tenant") has directed the present revision petition against the impugned order dated 02.11.2006, vide which the Appellate Authority has set aside the order of Rent Controller and accepted the eviction petition of Ved Parkash respondent-landlord (hereinafter to be referred as "the landlord") and he (tenant) was ordered to be ejected from the demised premises (booth).

2. The matrix of the facts culminating in the commencement, relevant for disposal, of present petition and emanating from the record, is that originally, the landlord filed a petition u/s 13 of the Rent Act for eviction of the tenant, inter-alia, pleading that the tenant took the demised premises for 11 months at a monthly rent of Rs. 1100/-with effect from 28.7.1992, vide rent note of even date with clear stipulation that 10% of the rent was to be increased after expiry of every 11 months. According to the landlord, the tenant did not pay the rent with effect from 28.07.1998 till the filing of the petition and, thus, he is in arrears of rent of Rs. 45,984/-.

3. Leveling variety of allegations in all, according to the landlord, as the tenant is in arrears of rent in question, therefore, he is liable to be evicted from the

demised premises. He asked him to pay the arrears of rent, but in vain, which necessitated him (landlord) to file the ejectment petition against the tenant in the manner indicated here-in-above.

4. The tenant contested the ejectment petition and filed the written statement, inter alia, pleading certain preliminary objections of maintainability of the petition, being false and frivolous, not properly verified and the objection of jurisdiction of the Rent Controller to try and adjudicate the matter in dispute, as the land had already been acquired by the Haryana Urban Development Authority (hereinafter to be referred as "the HUDA"). The landlord ceases to be owner of demised premises after its acquisition and he cannot resort to the ejectment proceedings under the Rent Act.

5. On merits, it was claimed by the tenant that since no rent note was executed, so question of any enhancement of rent did not arise. He has already paid monthly rent, but the landlord did not issue any receipt in this respect. Nothing is due towards him. It will not be out of place to mention here that the tenant had stoutly denied all other allegations contained in the ejectment petition and prayed for its dismissal.

6. Controverting the allegations of the written statement and reiterating the pleadings of the petition, the landlord filed the replication. However, the factum of acquisition of the demised premises was admitted by the landlord.

7. In the wake of pleadings of the parties, the Rent Controller framed the following issues vide order dated 1.5.2003:

1. Whether the respondent is liable to be ejected from the demised premises in question, on the ground as alleged in the petition? OPP

2. Whether the petition is not maintainable in the present form? OPR

3. Relief.

8. Thereafter, the case was slated for evidence of the landlord.

9. In order to substantiate the grounds of eviction, the landlord has stepped into the witness box as his own witness as AW1, who has rendered into the evidence copy of rent note Ex.A1. Thereafter, his evidence was closed by order of the Court.

10. The tenant, in order to rebut the evidence brought on record by the landlord, himself appeared as his own witness as RW1.

11. The Rent Controller decided issue No. 1 against the landlord, while issue No. 2 was decided in favour of the tenant. As a sequel of findings on the aforesaid issues, the Rent Controller dismissed the ejectment petition of the landlord vide order dated 31.1.2006.

12. Aggrieved by the order of the Rent Controller, the landlord filed an appeal. Appellate Authority vide impugned order dated 2.11.2006 reversed the order of

the Rent Controller, accepted the ejectment petition of the landlord and ejected the tenant.

13. The tenant did not feel satisfied with the impugned order of the Appellate Authority and filed this petition. That is how I am seized of the matter.

14. Thus, it would be seen that the controversy lies within a narrow-compass and revolves around the determination of the fact whether the relationship of landlord and tenant still exists when the demised premises had already been acquired by the State. This was subject matter under issue No. 2.

15. Having heard the learned Counsel for the parties, having gone through the record of the case with their valuable help and after bestowal of thoughts over the entire matter, to my mind, as the impugned order of the appellate authority cannot legally be sustained, therefore, the present revision petition deserves to be accepted, for the reasons mentioned here-in-below.

16. As indicated earlier, the landlord has filed the ejectment petition against the tenant u/s 13 of the Rent Act on the grounds mentioned therein. The tenant has specifically pleaded in the written statement that the Rent Controller has got no jurisdiction to try and adjudicate the matter in dispute as the land has already been acquired by the HUDA. The landlord is no more landlord of the property and cannot resort to the ejectment proceedings under the Rent Act. The objection of the tenant weighed and the Rent Controller dismissed the ejectment petition, being not maintainable vide order dated 31.1.2006, but the same was set aside by the appellate authority vide impugned order dated 2.11.2006. The bare perusal of the record would reveal and it is also acknowledged by the learned Counsel for the parties that the award has already been passed and possession of the land has already been taken by the HUDA under the provisions of Land Acquisition Act (hereinafter to be referred as "the LA Act").

17. The appellate authority non-suited the tenant merely on the ground that the suit property may have been acquired by the State, but that does not bring any change or improvement in his status and for him, the respondent remains the landlord and the petitioner is bound to pay the rent to him. Here, to my mind, the appellate authority fell in error in this respect.

18. Such, thus being the position on record, now the short and significant question, though important, arises for determination in this petition is whether the relationship of landlord and tenant ceased as the award has been passed, possession has been taken and compensation has already been deposited.

19. Possibly, it cannot be denied that the provisions of the L.A. Act are designed to acquire the land by the State exercising the power of the eminent domain to serve the public purpose. The State is enjoined to comply with the statutory requirement contained under Sections 4 and 6 of the L.A. Act by proper publication of notification and declaration within a stipulated period. The moment declaration u/s 6 of the L.A. Act is published, the public purpose gets crystalized

and becomes conclusive. Thereafter, the State is entitled to authorize the Land Acquisition Officer to proceed with the acquisition of the land and to make the award under Sections 11 and 11-A of the L.A. Act. Thereon, the State is entitled to issue notice to the parties u/s 9 of the L.A. Act and on expiry of the statutory period, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award u/s 12 of the L.A. Act.

20. Section 12 of the L.A. Act postulates that such award shall be filed in the Collector's office and be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested. The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

21. Section 16 of the L.A. Act further posits that when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. According to Section 18, any person interested, who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether this objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested and if there is any dispute as to the apportionment that can be resolved by the Court as contemplated u/s 30 of the Act. It means, the L.A. Act is a complete code in itself and is meant to serve public purpose.

22. However, the routine argument of learned Counsel that no doubt, the booth in question has already been acquired but still the relationship of the landlord and tenant between the parties exists, is not only devoid of merits but misplaced as well because as mentioned here-in-above, the property in dispute alongwith other properties had already been vested in the State Government free from all encumbrances as contemplated u/s 16 of the L.A. Act. Having regard to the rival contentions of learned Counsel for the parties, I cannot help observing that the Appellate Authority has just ignored the mandatory provisions of the L.A. Act without any legal basis. Because bare perusal of the record would go to show rather admitted by the Appellate Authority that the land in question, on which the booth stands constructed, has been acquired by the HUDA, the award has been announced and the amount of compensation has also been deposited by HUDA.

23. Once, it is found that the property in dispute has already been vested in the State Government free from all encumbrances by operation of law then, to me, the relationship of landlord and tenant between the parties ceases to exist for all intents and purposes and no petition u/s 13 of the Rent Act can be maintained because the authorities under the Rent Act becomes functus-officio in this

connection. The landlord and tenant become the persons interested by operation of law (L.A. Act). The property in dispute absolutely vests in State Government free from all encumbrances, which has already taken its possession by implication of Section 16 of the L.A. Act. Possibly, neither there can be two owners nor two persons can simultaneously be in possession of the same property at the same time. Thus, to my mind, the appellate authority has committed a patent illegality and irregularity in ordering the ejectment of the tenant from the demised premises vide impugned order which cannot legally be sustained in the obtaining circumstances of the case.

24. No other point worth consideration has been urged or pressed by learned Counsel for the parties.

25. In the light of the aforesaid reasons, the present revision petition is accepted, the impugned order of the appellate authority is hereby set aside and ejectment petition filed by the landlord against the tenant stands dismissed. Needless to say, having the land vested in the State Government, the landlord and tenant become the persons interested as defined u/s 2 can claim compensation under the provisions of L.A. Act in accordance with law.