

(2011) 06 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : CM No. 14035-CII in RA No. 87-CII of 2011 in CR No. 6370 of 2006

Harjinder Singh

APPELLANT

Vs

Ved Parkash

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13
Land Acquisition Act, 1894 — Section 16
Limitation Act, 1963 — Section 5

Citation : (2011) 06 P&H CK 0017

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The conspectus of the facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant application u/s 5 of the Limitation Act (for brevity "the Act") and emanating from the record, is that the original applicant Ved Parkash (for short "the landlord") filed the eviction petition to eject the tenant Harjinder Singh (in short "the tenant") from the premises in question, invoking the provisions of Section 13 of The Haryana Urban (Control of Rent & Eviction) Act, 1973. The tenant contested the ejectment petition, inter-alia pleading certain preliminary objections of, maintainability of the petition and jurisdiction of the Rent Controller to adjudicate upon the matter as the land had already been acquired by the Haryana Urban Development Authority under the provisions of The Land Acquisition Act, 1894 (for short "the LA Act"). The Rent Controller rejected the ejectment petition of the landlord, by virtue of order dated 31.1.2006. However, the appeal filed by the landlord was accepted by the appellate authority, by way of order dated 2.11.2006.

2. Aggrieved by the order of the appellate authority, the tenant filed CR No. 6370 of 2006 in this Court. After hearing the counsel for the parties, the CM No.

14035-CII of 2011 in RA No. 87-CII of 2011 in CR No. 6370 of 2006 -2 revision petition of the tenant was accepted. The ejectment petition filed by the landlord against the tenant was dismissed. However, liberty was granted to them to claim compensation under the provisions of the LA Act, being interested persons, by means of order dated 30.10.2009, the operative part of which is as under:

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.

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.

3. Now the applicant-landlord has filed the review petition on 25.5.2011 (after 11/2 years) to review the order dated 30.10.2009 on untenable ground that since in CR Nos. 3426 and 3427 of 2010, the matter was subsequently remanded back to the appellate authority by this Court, by virtue of order dated 9.3.2011 to decide the same on merits, so, the earlier main order dated 30.10.2009 be reviewed in this respect.

4. Not only that, the landlord has also filed an application u/s 5 of the Act for condonation of delay of 543 days in filing the review application on the following grounds (paras 4 and 5):

4. That the above noted revision petitions were allowed by this Hon''ble Court on 9.3.2011 and the impugned order passed by the appellate authority was set aside and the matter was remanded back to the learned Appellate Authority to decide it on merits. A copy of the order dated 9.3.2011 are annexed as Annexures R/2 and R/3 respectively.

5. That due to aforesaid reason applicant/Respondent-landlord is filing the review application but by that time 543 days delay occurred in filing the present review

application.

5. After hearing the learned Counsel for the applicant, going through the record with his valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the instant application in this context.

6. As is evident from the record, that the applicant-landlord has sought to review the order dated 30.10.2009, mainly on the ground that as in CR Nos. 3426 and 3427 of 2010, the matter was remanded back to the appellate authority by this Court, by way of order dated 9.3.2011 to decide the same on merits, therefore, the earlier main order dated 30.10.2009 be reviewed.

7. To me, the subsequent remand of aforesaid revision petitions, by means of order dated 09.03.2011 to the appellate authority is neither a ground for reviewing the earlier final order dated 30.10.2009, nor is a sufficient ground to condone the delay of 543 days occurred in this manner. The landlord is legally required to explain each and every day's delay by proving the cogent grounds, which are totally lacking in the instant application. Therefore, since the applicant-landlord has miserably failed to show sufficient ground to condone the long delay of 543 days, so, the instant application deserves to be dismissed.

8. In the light of aforesaid reasons, as there is no merit, therefore, the instant application is dismissed as such.