
(1980) 03 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 803 of 1971

Harnam Singh

APPELLANT

Vs

The Financial Commissioner, Punjab Chandigarh and others

RESPONDENT

Date of Decision : 07-03-1980

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 14A(ii)

Citation : (1980) 03 P&H CK 0022

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : B.N. Aggarwal, for the Appellant; D.S. Kang, for the Respondents 5 and 6 and Nemo, for Respondents Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Kang, J.—Khem Singh and Amrik Singh purchased lands from Mahant Darshan Parkash. Harnam Singh Petitioner, was a tenant on this (and under Mahant Darshan Parkash. In fact he had been cultivating this land for the last more than 40 years.

2. Khem Chand and Amrik Singh made an application u/s 14-A (ii) of the Punjab Security of Land Tenures Act, 193(sic) (hereinafter referred to as "the Act") for the recovery of rent from Harnam Singh and for his ejectment. This application was accepted by the Assistant Collector on 28th August, 1969. Notice in form "N" had been issued to the Petitioner. It is the case of the Petitioner that the notice was not served on him. However, the process server in connivance with the landlords made a false report that the tenant Petitioner had refused to accept service of the notice, It later on transpired that the process-server had also reported that he had affixed the summons on the outer door of the Petitioner's house. On the basis of this report dated 8th July, 1969, ex-parte proceedings were taken by the Assistant Collector II Grade on 6th August, 1969. The case was adjourned to 19th August, 1969 for arguments and orders after ex-parte evidence produced by the landlords had been recorded on 12th August, 1969. On

19th August, 1969 he filed an application for setting aside the ex-parte proceedings taken against him. No orders were passed on that day and the case was adjourned to 25th August, 1969. On that day the arguments on behalf of the applicant landlords were heard ex parte. The application for setting aside the ex-parte proceedings was rejected. Subsequently, the Assistant Collector passed order dated 29th August, 1969 for (sic) of the Petitioner.

3. The Petitioner filed appeal to the Collector against the order passed by the Assistant Collector, whereby he had refused to set aside the ex parte proceedings as well as also against the final order allowing the recovery of rent and ejectment. The Collector after going through the records concluded that prima facia(sic) he was of the view that the order refusing to aside the ex parte order should be set aside. He observed that even if the lower Court was not prepared to reconsider its decision of setting aside the ex parte order dated 6th August, 1969(sic) it should in any case have allowed the Petitioner to join further proceedings also held that the lower Court did commit a mistake in not allowing the Appellant Petitioner to joio(sic) further proceedings, since he had made (sic) appearance in the Court, however, he concluded that the Petitioner had not been prejudiced in any manner, because had not complied with the provisions of law in so far as he had failed to deposit the rent within 30 days of the service of the notice. The Collector dismissed the appeal on 21st October, 1969.

4. The Petitioner filed a revision petition before the Commissioner against the order of the Collector and the Assistant Collector. He held that the Petitioner came to know about the proceedings relating to notice in Form "N" on 18th August, 1969. He (tenant) did not take any steps (sic) controvert his liability for payment of rent. Even if he had not been served, he should have ascertained the facts on the file and taken steps to protect his interest by making payment or contest his liability. The Commissioner dismissed the revision petition on 16th February, (sic) Dissatisfied with this order, the Petitioner went in revision to the Financial Commissioner, who observed that the Petitioner was(sic) very much within (sic) rights to appear before the Assistant Collector on 25th August 19 (sic) and could certainly seek permission for participating in the arguments but he did not do so. Therefore, he must suffer for his lafches.(sic) He also concluded that the Petitioner must have acquired knowledge of the proceedings on the 8th July, 1969, the day on which the process server recorded his report and should have given reply to the notice in Form "N" within one month thereform. He did not do his job even after acquiring knowledge of proceedings against him on 18th August, 1969. The (sic) Commissioner dismissed the revision petition by his order dated 22nd September, 1970.

5. Mr B N Aggarwal the learned Counsel for the Petitioner, has argued that the decision of the Assistant Collector of (sic) August, 1969, for taking ex parte proceedings against the Petitioner was illegal and without jurisdiction. The Petitioner did not refuse service. In any case, the process server could not effect substituted service by posting a copy of the summons, as alleged by him, but

denied by the Petitioner, on the outer-gate of the Petitioner's house. By (sic) of Rule 11 of the Punjab Security of Land Tenures Rules, 1953 thereafter called "the Rules"), the procedure of revenue officers exercising powers under the Act will be the same as prescribed by Section 9(sic) of the Punjab Tenancy Act, 1887. In view of the provisions of Sub-section (2) and (4) of this section, the process server could not on his own authority post a copy of the summons on the residential house of the Petitioner. Even En the case of refusal of service of summons(sic) by him such a service is wholly illegal and without jurisdiction. It will be useful to reproduce Section 90 of the Punjab Tenancy Act, at this stage:-

90. Mode(sic) of service of summons-(1) A summons issued by a Revenue Officer or Revenue Court shall if practicable be served (a) personally an the person to whom it is addressed, or failing him on (b) his recognised agent, or (c) an adult male member of his family who is residing with him.

(2) If the service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last know place of residence of the person to whom it is addressed, or if that person does not reside in the district in which the Revenue Officer is employed or the Revenue-Court is held and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons on some concpiguous place in or near the estate wherein the land is situate.

(3) If the summons relates to case in which person having the same interest are so numerous that personal services on all of them is not reasonably practicable it may if the Revenue Officer or Revenue Court so directs, be served by delivery of a copy thereof to such of those persons as the officer or court nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may if the Revenue Officer or Revenue Court so directs, be served on the persons named therein either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under part III of the Indian Post Office Act, 165(sic).

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered the Officer or Court may presume that the summons was served at the time when the letter would be delivered in the ordinary course or(sic) post.

It is plain(sic) from the language of Section 90, ibid, that if the person sought to be served, refuses to accept service of summons, the process-server has to bring this fact to the notice of the Court or the officer issuing the summons It is then that the Court or the Officer will deride as to in what manner substituted service should be effected on such a person. The court or Officer may then order the service to be effected by posting a copy of the summons. The process server himself cannot take recourse to substituted service by posting the notices on the

dwelling house of the person who refuses to accept summons.

6. Mr C. D. Kapur, Financial Commissioner. Punjab has examined in detail the powers of the process server performing his duties u/s 90 of the Punjab Tenancy Act in a case *Gulzara Singh v. Sakta Singh* 1971 P. L. J. 553. He has observed as under:-

If the Petitioner had at all refused to accept service of the summons, then the appropriate course which the process server should have followed was that he should have submitted his report to the learned Collector and he should have then decided as to what sort of substituted service be adopted to secure presence of the Petitioner before him, keeping in view the provisions of Sub-sections (2) and (4) of Section 90 of the Punjab Tenancy Act 1887. The process server could not on his own authority, post a copy of the summons on the residential house of the Petitioner even though it may be assumed to be correct that the Petitioner had refused to accept service of the summons.

The statement of law enunciated by the Financial Commissioner is the correct interpretation of Section 90 of the Punjab Tenancy Act, 1887. This interpretation advance the cause of justice. This eliminates the danger of false reports by unscrupulous servers. The proceedings launched on such a report culminating in a final order can play havoc with the rights of the litigants. This power of taking recourse to substituted service should in the very nature of things will remain with the Court or with the Officer. It should not be delegated to a minor functionary like the process server. The ex-parte orders passed on the basis of the report of the process server were wholly illegal and without jurisdiction. The Assistant Collector should have allowed the application of the Petitioner and set aside the ex-parte proceedings

7. Even the Collector, was of the view that the order passed on 25th August, 1969 refusing to set aside the ex-parte proceedings was liable to be set aside. He has also observed that the Assistant Collector should have allowed the Petitioner to join further proceedings. As has been noticed earlier, the Assistant Collector had already recorded the ex parte evidence on 12th August, 1969. He had adjourned the case for arguments to 25th August, 1969. It is on that date the Petitioner filed an application for sitting aside the ex-parte proceedings. Since the case was fixed for arguments only no useful purpose would have been served if the Petitioner had been allowed to participate in the proceedings at that stage. Without there being any defence on the file on behalf of the Petitioner he could not gain anything by addressing arguments. As noticed earlier even this facility had been denied to the Petitioner. Since the Assistant Collector had refused to permit the Petitioner to join the proceedings, he could do nothing in the matter. He could neither make payment nor could he contest his liability to make the payment. He could also not convinced the Officer that he had in fact made the payment. In reply to a notice in form "N" the tenant has either to make the payment within one month or he has to make the payment in the latter case, the Assistant Collector has to adjudicate upon the plea of the tenant. If (sic) comes

to the conclusion that the tenant had not succeeded in proving the case, but the defence made by him was not frivolous, he has to give the tenant an opportunity to deposit the rent within 30 days of the passing of the order. In somewhat similar circumstances as in the present case, it was so held by this Court in Brij ohan(sic) Singh v. Financial Commissioner 1967 P.L.J. 251. The Assistant Collector has not proceeded in accordance with law. He did not allow the Petitioner any opportunity to make the payment or to contest his liability to make the payment or to prove that the Petitioner had in fact made the payment. The petition (sic) in paragraph 11 of the petition has said that he had made the payment in the month of February, 1969. This plea has not been controverted by the landowners who have not chosen to file a written statement.

8. The observations of the Financial Commissioner that the Petitioner would have acquired the knowledge of the proceedings on 8th August, 1969, on which day the process server recorded his report was not based on any evidence No body has said that he had come to know about this report that day It is the case of the Petitioner that he had come to know about these proceedings on 18th August, 1969. Moreover, the orders of ejectment had been passed on 29th August, 1969. Thirty days had not even expired till then So, the Petitioner cannot be blamed for not depositing the rent as mentioned by the Financial Commissioner In fact as held ealiar,(sic) the Petitioner had not been allowed any opportunity to participate in the proceedings So he could not do anything in the matter.

9. Consequently I allow this writ petition and set aside the orders passed by the Assistant Collector, the Collector, the Commissioner and the Financial Commissioner, I remand the case to the Assistant Collector 11(sic) Grade, Patti District Amritsar, to decide it afresh after summoning the Petitioner and affording adequate opportunity to the parties. No Costs.