
(2013) 09 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4963 and 4992 of 2013

Jasjit Singh

APPELLANT

Vs

Estate Officer and Another
 M/s. S.R. Gupta Vs Estate
Officer and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 P&H CK 0022

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Judgement

Rameshwar Singh Malik, J.—This order proposes to decide two writ petitions arising out of the same facts against the same set of contesting respondents challenging the same orders of ejection under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("the PP Act" for short). However, for the facility of reference, facts are being culled out from CWP No. 4963 of 2013. The brief facts of the case are that the present proprietor Sh. Subash Chander claims that Sh. S.R. Gupta was his grandfather. Sh. S.R. Gupta was working as Photographer for the Indian Army since 1924. Service of photography used to be provided at various locations. He continued to serve as an official photographer for the Indian Army at Pathankot since June 1948. Thereafter, by virtue of contract dated 19.4.1949 (Annexure P-1) executed between the petitioner and Officer Commanding Headquarter, Pathankot Base, Pathankot, petitioner was granted a right of management of a photo studio located at the erstwhile base Headquarter at the rent of Rs. 20/- per month. The present site was leased out by the respondents in the year 1965. Some of the lease deeds were appended at Annexures P-14 to P-16. The shop was constructed by the petitioner, as per Annexures P-4 and P-5 and the cost was to be adjusted in the rent.

2. Last lease deed was executed on 15.11.2008 (Annexure P-16) for 11 months. Agreement for lease of the shop in question used to be entered between the parties. One such lease deed dated 15.6.1967 is appended at Annexure P-2.

However, after expiry of the lease period on 15.10.2009, neither lease period was extended nor a fresh lease deed was executed between the parties. It is the further pleaded case of the petitioner that he deposited the advance rent up to 31.3.2010, which was accepted by the respondent authorities. Thereafter, the impugned notice dated 9.11.2012 (Annexure P-20) came to be issued against the petitioner under the PP Act, to show cause as to why the order of eviction should not be passed against him. The petitioner submitted his mercy petition and reply to the above said notice, vide reply dated 29.11.2012 (Annexure P-21). Reply of the petitioner was considered and subsequently, he had a meeting with the Defence Estate Officer, Pathankot on 24.11.2012. It was held that the shop constructed on the defence land was needed for departmental requirements. Reply to the show cause notice was received. After examining the reply, it was found to be unsatisfactory. It was also held that neither the petitioner paid the rent nor the lease deeds were renewed. Accordingly, vide impugned order dated 18.12.2012 (Annexure P-22), petitioner was directed to vacate the premises within 30 days of the receipt of the order. Aggrieved, petitioner filed his statutory appeal vide Annexure P-24, but the same was also dismissed vide order dated 18.2.2013 (Annexure P-25) by the learned Additional District and Sessions Judge, Pathankot. Hence these writ petitions.

3. Notice of motion was issued and pursuant thereto, written statement on behalf of respondents No. 1 and 2 was filed. Replication was also filed on behalf of the petitioner.

4. Learned counsel for the petitioner submits that the impugned orders were illegal on the face of it. Provisions of the PP Act were violated. The impugned eviction order and the appellate order were contrary to the facts of the case as well as the provisions of law applicable thereof. The basic principles of natural justice were also violated, because no effective opportunity was granted to the petitioner for leading his evidence. Neither any opinion was sought u/s 4, nor any satisfaction was recorded u/s 5 of the PP Act. Cause shown by the petitioner was not considered. No evidence was led by the landlord. He relies upon the judgment by the Hon'ble Supreme Court in New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, and a Division Bench judgment of the Bombay High Court in Minoo Framroze Balsara Vs. The Union of India and others, . Finally, he prays for setting aside the impugned orders by allowing the present writ petitions.

5. Per contra, learned counsel for the respondents submits that the respondent authorities committed no error of law while passing the impugned orders. The Army base at Pathankot is a very sensitive area from the national security point of view and the premises occupied by the petitioner was required for departmental purposes. He further submits that the petitioner was in arrears of rent after March 2010 and even the lease deed was not renewed after 15.10.2009. He next contended that it was a transit camp of the Army and the premises were required for a bona fide need for Army. He submits that the

relevant provisions of law as well as the principles of natural justice were duly complied with. No prejudice of any kind, whatsoever, was caused to the petitioner. He relies upon the judgments of the Hon''ble Supreme Court in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and *Mohd. Ayub and Another Vs. Mukesh Chand*, . He prays for dismissal of the writ petitions.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that these are not the fit cases warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

7. It is an admitted position on record that the petitioner was in arrears of rent after March 2010. The last lease deed was executed on 15.11.2008 (Annexure P-16) for a period of 11 months, which expired on 15.10.2009. Thereafter, neither the lease deed was renewed nor any fresh lease deed was executed between the parties. However, it is pertinent to note here that the petitioner made the payment of rent up to March 2010 in advance, which was accepted by the respondent authorities. No reason is forthcoming as to why the petitioner stopped paying the rent after March 2010. In this view of the matter, the petitioner became unauthorised occupant and made himself liable for eviction under the relevant provisions of the PP Act. Having said that, this Court feels no hesitation to conclude that the respondent authorities proceeded on a factually correct and legally justified approach, while passing the impugned eviction order which deserves to be upheld.

8. It is again undisputed on record that no offer was made by the petitioner either to pay the rent or to get the lease deed renewed, for the reason best known to him. When a pointed question was put to the learned counsel for the petitioner, as to why the petitioner stopped paying rent after March 2010, he had no answer. Further, he failed to substantiate any of his arguments. Thus, the impugned orders deserve to be upheld.

9. It has been found to be a genuine case of bona fide requirement of the premises at the hands of the landlord-Army authorities. Undoubtedly, the Army base at Pathankot is a sensitive area from the point of view of national security. Once the Army authorities were repeatedly saying that the premises was required for departmental purposes, the learned appellate authority also appreciated this aspect in the right perspective.

10. There could not be any compromise with the national security. Even if the petitioner was having any right, still the national interest has to be given due preference over and above the interest of an individual. Once the respondent authorities have established their case of bona fide requirement to the satisfaction of the competent authorities under the PP Act, no prejudice as such,

has been shown to have been caused to the petitioner. In this view of the matter, it is unhesitatingly held that the respondent authorities committed no error of law, while passing the impugned orders and the same deserve to be upheld.

11. So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no doubt about the law laid down therein, but the same are not applicable in the present case, being distinguishable on facts. In none of the judgments relied upon by the learned counsel for the petitioner, issue of national security has been found to be involved.

12. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon"ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

13. Keeping in view the peculiar fact situation of the present case, noticed hereinabove, this Court feels it to be just and proper to hold that the respondent authorities have duly followed the basic principles of natural justice. Further, keeping in view the object and scheme of the PP Act, the trial was required to be conducted by way of summary proceedings, which was duly conducted in the present case. The long drawn trial is not the requirement of law under the PP Act. However, a show cause notice was issued to the petitioner and his reply thereto was sought. Petitioner filed his reply, which was duly considered.

14. The fact that the petitioner was an unauthorised occupant, was undisputed. He was also in arrears of rent since April, 2010. Lease deed stood expired way back in October, 2009 and thereafter, it was never renewed. Further, before passing the ejectment orders, the respondent authorities have discussed each and every aspect of the matter. Petitioner was granted due opportunity to defend. Thus, principles of natural justice stood complied with, because of which the impugned orders deserve to be upheld.

15. The thrust of the arguments raised by the learned counsel for the petitioner was that he was expecting the respondent authorities-landlords to conduct themselves like a private landlord. There is a basic fallacy in the argument. The public authorities were not expected to behave like the private landlords because of involvement of public purpose and larger public interest. Above all, it was the ultimate national interest involved herein and that too pertaining to the national security.

16. The view taken by this Court also finds support from the judgment of the Hon"ble Supreme in the case of M/s. Dwarkadas Marfatia and sons" case (supra) and the relevant observations made in para 14 of the judgment, which can be gainfully followed in the present case, read as under:--

Our attention was also drawn to the decision in Rampratap Jaidayal v. Dominion of India, where the Chief Justice Chagla observed as follows:--

It is not too much to assume, as the legislature did in this case assume, that the very government whose object was to protect the tenants and prevent rent being increased and prevent people being ejected, would not itself when it was the landlord do those very things which it sought to prohibit its people from doing, and therefore the underlying assumption of this exemption is that government would not increase rents and would not eject tenants unless it was absolutely necessary in public interest and unless a particular building was required for a public purpose.

17. Similarly, on the bona fide requirement of a landlord, the view as expressed hereinabove by this Court, also finds support from the judgment of the Hon'ble Supreme Court in Mukesh Chand's case (supra). The observations made in para 15 of the judgment, which aptly apply in the present case, read as under:--

It is well settled that landlords requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start, It was wrong on the part of the District Court to hold that the appellants case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of non vegetarian food. It is for the landlord to decide which business he wants to do. The Court cannot advise him, Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below.

18. Recapitulating the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, coupled with the fact that public premises is a part and parcel of an Army Base located in a sensitive area, involving the issue of national security, this Court is of the view that the impugned orders deserve to be upheld. The learned Additional District Judge, Pathankot, while passing the impugned order, recorded cogent reasons in support of the conclusion arrived at in favour of the respondent army authorities. The relevant observations made by the learned appellate authority in para 11 and 13 of the impugned order, read as under:--

On the other hand, learned counsel for respondents vehemently argued that army authorities require the suit property since they have to raise wall on the boundary for protection of army personnels. It has been asserted that the lease period was not extended from the year 2009 and since then, the appellant was in continuing unauthorized occupation of the disputed land. It has been further averred that reasonable opportunity of hearing has been given to the appellant but the appellant has failed to show cause any reasonable cause to continue in possession of the suit property. The impugned order has been passed in accordance with the settled principles of law.

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Conclusion with reasoning

The inquiry initiated under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is of very limited nature and scope and being summary nature, where technical rules of evidence are not applicable. As it is evident from the record that the Estate officer has given reasonable opportunity of hearing to the appellant by sending notices u/s 4 of Act 1971 wherein, it has been emphasized that the lease has not been extended and the shop was acquired by the Army Authority bona fide for military requirement. The appellant has been called upon to appear in person or through duly authorized agent along with evidence, which the appellant intended to prove or support cause shown and also for personal hearing. In these circumstances, it could not be said that there was any procedural unfairness in the conduct of the proceedings before Estate Officer.

19. During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record, in any of the impugned orders. Viewed from any angle, the view taken by the authorities, while passing the impugned orders, cannot be said to be illegal in any manner. Thus, the impugned orders have not been found to be suffering from any perversity or patent illegality, because of which the impugned orders deserve to be upheld for this reason as well.

20. No other argument was raised.

21. Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that both the writ petitions are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out. Resultantly, both the writ petitions stand dismissed, however, with no order as to costs.