

(2014) 05 P&H CK 0691

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 12858 of 1989 (O&M) and COCP No. 1162 of 2001
and 1060 of 2003

Kala

APPELLANT

Vs

Rattan Singh
 Pala Ram Vs Ram Singh
 The
Harijan Cooperative Society Vs The Financial Commissioner

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 7

Citation : (2014) 3 RCR(Civil) 720

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Mahavir Sandhu and S.D. Bansal, Advocate for the Appellant; Rajiv Parshad, DAG and S.D. Bansal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Kannan, J.—This order shall dispose of the above writ petition as well as the contempt petitions as the same arise out of the similar controversy and facts. The writ petition challenges the order dismissing the petition for ejectment filed by the petitioner society and passed by the 1st respondent Financial Commissioner in reversal of the judgment passed by the Assistant Collector and the Appellate Authority. The proceedings were initiated by the society claiming as a owner by way of allotment made by the government when the property was taken as escheated in favour of the government when the original owner Sheru died without leaving any legal heirs. Pursuant to the allotment said to have taken place in favour of the society through the order passed on 24.1.1976, the society filed a petition for ejectment contending that the property had been leased out to the respondent in the year 1965 and that he had been in arrears of rent for three years prior to 14.9.1985 when the petition was filed.

2. The private respondent took up a plea that there was no form of lease with the petitioner society and that he and before him, his father had been in

possession from one Hirdya Nath who was a mortgagee from Sheru. The Assistant Collector and the Appellate Authority found the ownership as established and finding that the respondent had not been paid the rent on his own admission allowed the eviction petition. The private respondent had filed a revision before the Financial Commissioner who passed the impugned order setting aside the order of ejectment passed.

3. The Financial Commissioner in his order has held the ownership of the petitioner as established but finding that there was no proof of tenancy between the petitioner and the society respondent, dismissed the petition for ejectment.

4. The counsel for the petitioner points out that the jamabandi has recorded the respondent as gair marusi majara which would mean the recognition of status of a tenant at will and when the petitioner was also found to be the owner by the Financial Commissioner, he could not have dismissed the petition.

4A. The counsel for the respondent argues that determination order was not possible under the Pepsu Tenancy and Agricultural Lands Act, 1955 without even a notice for ejectment. He would also contend the period of arrears of rent was not even set out in the petition and it was not, therefore, maintainable.

5. As regards the contention that the period of rent was not mentioned, I would have to reject such a plea for it is very specifically made out in the petition filed under the Act of 1955. However, I find force in the contention of the respondent that neither the Collector nor the authority had a power to order ejectment without affording to the tenant an opportunity to pay the arrears of rent within the time stipulated in the order and only on such failure it was possible to order an ejectment. Section 7 of the Act of 1955 sets out the provision for termination of tenancy. An ejectment order takes places in two phases. First, it was required the tenancy to be terminated and on termination of tenancy before an order of ejectment is made, there shall be an order or decree that would allow for payment of arrears and on failure to make such payment, ejectment order would follow. Termination of lease and ejectment cannot be simultaneous without gestation providing for a time for making payment of the amount of lease determined.

6. The respondent would mount a second string to the bow, as it were, that he had not even taken the property on lease from the petitioner society and, therefore, the petition itself was not maintainable. I will have to reject this contention since the issue of ownership has no relevance in a situation where there is a clear case of transfer of rights through allotment by the government in favour of the society. The respondent has no case before the court that he is the owner. On the other hand, he claims himself to be a tenant and before him his father as a tenant under a mortgagee from the original owner. If the property has ultimately devolved on the petitioner society, after the original ownership rights were escheated to the government, then there is an attornment by law which the respondent has perforced to make. A faint plea was also made that he

has got proprietary right by the law allowing for vesting of right as tenant. That may also not be available to him since in these proceedings no such plea was made nor did the tenant accept the petitioner as a landlord to plead for conferment of right of proprietor through the appropriate procedure established under the law.

7. I uphold his status as a tenant, but, while setting aside the finding of the Financial Commissioner that the jural relationship was not established, I hold that the order of ejectment passed without affording opportunity to the tenant to pay arrears of rent was not permissible. The authorities have not found even the rent payable. I, therefore, direct remand of the matter to the Assistant Collector to determine the rent and call upon the tenant to pay the same within a specified period. Only on his failure to pay such an amount, as directed in the order, could there be a resort to an order of ejectment in the manner sought.

8. In the course of proceedings, the respondent appears to have been forcibly ejected by the society. On an application filed, C.M. No. 8104 of 1991, when the Society was directed to furnish security for mesne profit and for restitution of land, the petitioner had given an undertaking that if the writ petition failed it will deliver back possession to the 2nd respondent within one month of the decision of the writ petition. In terms of the undertaking the petitioner shall cause restitution of possession in the hands of the 2nd respondent within one month. The proceedings will be taken up before the Assistant Collector only after ensuring that the property has been re-delivered to the 2nd respondent. He would thereafter proceed with the petition as per the direction given above. The impugned order is set aside and remanded to the Assistant Collector being the 1st authority for disposal in accordance with law. The writ petition is disposed of as above. The two contempt petitions would not require any separate order and they are disposed of unnecessary in light of the directions contained in the writ petition.