
(2000) 07 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19562 of 1998

Manohar and others

APPELLANT

Vs

Financial Commissioner, Haryana and others

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Punjab Tenancy Act, 1887 — Section 77

Citation : (2000) 4 RCR(Civil) 124

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant; D.P. Singh, D.A.G., Haryana, for the Respondent Nos. 1 to 4 and Mr. L.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Petitioners were tenants on the land of Respondent No. 5. They did not pay the rent from Rabi 1983 to Rabi 1988. The fifth Respondent filed a suit for eviction and recovery of rent. The Assistant Collector, Ist Grade, Faridabad framed the issues and tried the suit. A finding in favour of the present Respondent was returned on all the issues. Aggrieved by the decree, the Petitioners appealed to the Collector. The appeal was partly accepted. It was held that the present Petitioners should be given time to pay rent. Consequently, vide order dated 22nd February, 1996, the Collector directed the present Petitioners "to pay the rent as batai tihai on or before 15th April, 1996 according to the crop failing which they were to be deemed to have been evicted." A copy of this order is at Annexure P-2 with the writ petition. The Petitioners did not pay. They filed a revision petition before the Commissioner. The authority noticed the sequence of events. It took into consideration the fact that "a compromise was effected in Court to deposit rent upto 15th April, 1996". The Petitioners did not make the payment. Thus, the Court held that "such a tenant does not deserve any sympathy and no further opportunity can be given for depositing the rent as decreed by the Collector. In accordance with condition imposed by the Collector,

the tenants are deemed to have been ejected for non-payment of rent." The Petitioners filed a revision petition before the Financial Commissioner. This petition was dismissed in limine. Aggrieved by the orders passed by the officers in the hierarchy of the revenue department, the Petitioners have approached this Court through the present writ petition.

2. In response to the notice of motion, a written statement has been filed by the fifth Respondent,

3. Shr R.K. Jain, counsel for the Petitioners has made a two-fold submission. Firstly, it has been contended that the fifth Respondent having filed a suit u/s 77 of the Punjab Tenancy Act, 1887 and not under the provisions of the Punjab Security of Land Tenures Act, 1953, the impugned orders are vitiated. Secondly, it has been contended that it was incumbent on the Assistant Collector to send a notice to the Petitioners in Form "N" of the Punjab Security of Land Tenures Act, 1953 calling upon them to deposit the rent. Such a procedure having not been adopted, the impugned action cannot be sustained. The claim made on behalf of the Petitioner has been controverted by Shri.L.K. Singhal, counsel for Respondent No. 5.

4. So far as the first argument is concerned, it may only be noticed that the Assistant Collector had framed the following issues:

(1) Whether Defendants are liable to be ejected? OPD

(2) Whether the Plaintiffs has (have) right to file suit? OPD

(3) Whether the suit is maintainable? OPD

(4) Whether Smt. Sunehri widow of Shri Ram Chand is not made a party? What is effect on the suit?OPD

(5) Relief.

5. The Assistant Collector had recorded evidence and come to a conclusion that the tenant had not paid rent of Rs. 2717/-i.e.1/3rd for the crops without any sufficient cause. With regard to issue No. 2, it was found that the tenants (the present Petitioners) "are cultivating the land of the Petitioner (now Respondent No. 5) on batai tihai. Therefore, Petitioner, (Respondent No. 5) is having all the right to file this case." Even on the other issues, the findings were in favour of the 5th Respondent. Therefore, the Petitioners had filed an appeal. This was a clear admission of the liability. On this, the Collector had ordered the Petitioner "to pay the rent as batai tihai on or before 15th 1996." Despite admission, the payment was not made. Consequently, the order for eviction passed by the Collector had become enforceable. The being the position the Commissioner and the Financial Commissioner rejected the revision petitions.

6. In view of these facts, it is clear that the Petitioners had admitted their liability. They had undertaken to vacate the land in case of failure to pay. They had failed to pay. That having happened, their conduct in delaying the

proceedings by resorting to the revision petitions and then this petition is clearly an attempt to by-pass the process of law.

7. The matter can be viewed from another angle. The basic issue that arises for consideration is should the proceedings be annulled merely because Respondent No. 5 had chosen the lengthy procedure of a suit u/s 77 instead of a comparatively easier and summary procedure as envisaged under the provisions of the Punjab Security of Land Tenures Act, 1953? More than that - Should the writ Court interfere unless any prejudice has caused to the Petitioner? Admittedly, the Assistant Collector and other authorities have gone into a lengthy procedure of framing issues, recording evidence and considering the factual and legal aspects. By this process, the Petitioners have suffered no prejudice whatsoever. If at all, he had a better opportunity to prove his case. A defaulter who has not paid anything to the landlord from 1983 onwards is seeking the shelter of law without even fulfilling the undertaking given before the Collector. On examination of the matter, we are satisfied that no prejudice has been caused. In this behalf, we may notice that a plea akin to the one as raised in this case has already been considered by a Division Bench of this Court in Faquira and Others Vs. Khem Chand and Others, In view of the reasons given in that decision, we reject the first contention.

8. As for the second submission, it may only be noticed that the Petitioners had admitted their liability before the Collector. They were aware of the amount. They had to make the payment. In such a situation, the question of issuing any notice in any form to the Petitioners did not arise. Since they had failed to comply with terms of the compromise as recorded by the Collector, they were liable to be evicted. The Commissioner and the Financial Commissioner have only upheld the order based on the undertaking given by the Petitioners. The formality of issuing a notice in a particular form has to be followed in the cases where the summary procedure is followed. Not in the cases like the present.

9. No other point has been raised.

10. In view of the above, we find no merit in this writ petition. It is consequently, dismissed. It is a fit case for compensation Respondent No. 5 by awarding costs. However, keeping in view the fact that the Petitioners are tenants, we leave the parties to bear their own costs.

Sd/- K.S. Garewal, J.