

(2011) 04 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1138, 1139, 1141, 1142, 1143, 1144, 1145 of 1992 and C.W.P. No. 1084, 1351, 1367, 1457, 1458, 1597, 1601, 1690, 2325, 2381, 8965 of 1992

M/s Chain Singh Muni Lal and others

APPELLANT

Vs

Commissioner, Jalandhar Division, Jalandhar and others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Municipal Act, 1911 — Section 18, 237, 240, 46, 47

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 4, 5

Transfer of Property Act, 1882 — Section 106, 107

Citation : (2011) 163 PLR 64

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, I propose to decide the indicated writ petitions, arising out of single order dated 20.11.1991 (Annexure P5), by virtue of this common judgment, in order to avoid the repetition. However, the facts, which need a necessary mention for the limited purpose of deciding the core controversy involved in the instant writ petitions, have been extracted from (1) CWP No. 1138 of 1992 titled as "M/s Chain Singh Muni Lal v. Commissioner, Jalandhar Division, Jalandhar and others", in this regard.

2. The epitome of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that Municipal Committee, Hoshiarpur-respondent No.3 (for brevity "MC") was the owner of the property/ shops in dispute. The petitioners claimed that they took the shops on lease (rent), by way of public auction and had agreed to pay the rent at the rate of Rs.65/- per month for carrying on the wholesale business of

sale and purchase of fruits and vegetables (agricultural produce). According to the MC, the petitioners were licensees and were permitted to carry on the indicated business in the old market. The MC was governed by the provisions of The Punjab Municipal Act, 1911 (hereinafter to be referred as "the Act").

3. The Punjab Government had issued me notification bearing No.13(15)-81/3035 dated 23.2.1982 and constituted, a new Sabji Mandi in the area of village Rahimpur, which was also within the municipal limits of Hosharpur and no person could sell or purchase wholesale fruits and vegetables at any other place, including the site in dispute, except the premises notified by the Government, by means of another notification bearing No. 13(15)-M-iii-81/15315 dated, 12.11.1982. Thus, in the wake of these notifications, the petitioners were stated to have ceased to carry out the wholesale auction of fruits and vegetables (agricultural produce) in the premises in dispute after 1.4.1983. Their licenses issued by the MC to carry out the indicated business were also expired on 31.3.1983, which were never renewed. Thereafter, the petitioners were stated to have been carrying on the said business in the new Sabji Mandi, located in the area of village Rahimpur on Phagwara Road, Hoshiarpur.

4. Not only that, the MC, vide its resolution No.73 dated 16.3.1983, had terminated the licensees of the petitioners to carry out their business in the premises in dispute after issuance of required notices dated 18.4.1983. The petitioners did not vacate the shops in question despite termination of their licenses and since their possession/occupation became unauthorized, so, the MC initiated the ejectment proceedings against them, invoking the provisions of sections 4 and 5 of the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (hereinafter to be referred as "PPP Act") before the Sub Divisional Officer (C)-respondent No.2, exercising the powers of Collector under the said Act (for short "SDO-cum-Collector").

5. Faced with the situation, the petitioners contested the ejectment petitions and filed their respective written statements, inter-alia pleading that the SDO-cum-Collector did not have the jurisdiction to pass the ejectment order. The lease of the petitioners was perpetual lease. They could not be evicted, till they continued paying the rent to the MC. They were in possession of the shops in dispute since 1952-53 and paid the rent regularly to the MC till 30.4.1983. Thereafter, they paid rent by way of money orders and were entitled to retain the possession of the shops in question. The petitioners have denied all other allegations contained in the ejectment petitions and prayed for their dismissal.

6. The SDO-cum-Collector ordered the eviction of the petitioners, by virtue of ejectment order dated 17.3.1989 (Annexure P1). Dis-satisfied with the ejectment order, the petitioners filed the appeals before the Commissioner, Jalandhar Division (respondent No. 1) (appellate authority), which were accepted and the case was remanded back to the SDO-cum-Collector for its fresh decision, by way of order dated 20.8.1990 (Annexure P2).

7. After the remand, the SDO-cum-Collector again came to the conclusion that petitioners were unauthorized occupants and ordered their eviction, through the medium of impugned order dated 31.5.1991 (Annexure P4). Again aggrieved by the ejectment order, the petitioners filed 21 appeals, which were dismissed by the appellate authority, by means of common impugned order dated 20.11.1991 (Annexure P5) in this behalf.

8. The petitioners still did not feel satisfied and preferred the instant writ petitions, challenging the impugned orders (Annexures P4 and P5), invoking the provisions of Articles 226 and 227 of the Constitution of India.

9. Levelling a variety of allegations and narrating the sequence of events, in all, the petitioners claimed that the SDO-cum-Collector did not have the jurisdiction to entertain and adjudicate upon the ejectment proceedings as they were not the unauthorized occupants. As the petitioners have not violated any terms and conditions of the lease deeds, therefore, they could not be ejected from the premises in dispute. The impugned orders (Annexures P4 and P5) were stated to be illegal and without jurisdiction. On the basis of aforesaid allegations, the petitioners sought the quashment of impugned orders (Annexures P4 & P5) in the manner depicted hereinabove.

10. The respondent-MC contested the claim of the petitioners and filed its written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petitions, cause of action and locus standi of the petitioners. According to the MC that since no valid contract was ever executed by it in favour of the petitioners, in accordance with the provisions of section 47 of the Act, so, they (petitioners) have no vested legal right to continue in the premises in question. They were stated to have shifted their business to the newly established market yard and they have no right to carry on the business in old premises, which were let but to them for a particular purpose.

11. The case set up by the MC, in brief in so far as relevant, was that even the so-called lease of the petitioners, was terminated, vide resolution No.73 dated 16.3.1983. Their licenses to carry out the pointed business expired on 31.3.1983, which were never-renewed subsequently. The petitioners have no right to carry out their business in the old market after establishment of new market, vide notifications dated 23.2.1982 and 12.11.1982. The SDG(C).was claimed to have been appointed as Collector under the PPP Act, by virtue of Punjab Government notification bearing No.296-J-II-75/2398 dated 6.2.1975 (Annexure R1).

12. In a separate affidavit filed by T.R. Sharma, Executive Officer of the MC, it was claimed that under the General Rules framed u/s 240 of the Act, the MCs were not competent to alienate permanently or for a period of exceeding 10 years its property, unless prior sanction was obtained and no such sanction was obtained from the Deputy Commissioner. No valid contract u/s 47 of the Act was executed between the parties and the property cannot be leased out except by

way of registered documents. In all, the MC claimed that since their licensees were cancelled by it, vide resolution No.73 dated 16.3.1983, so, thereafter the petitioners became unauthorized occupants. They could not carry out their business in the old premises in question, in view of the indicated notifications issued by the Punjab Government. It will not be out of place to mention here that the respondent-MC has stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal. That is how, I am seized of the matter.

13. Assailing the impugned orders, learned counsel for the petitioners contended with some amount of vehemence that the impugned orders passed by the SDO-cum-Collector and appellate authority are without jurisdiction. The argument is that as the MC had granted the perpetual lease, therefore, the petitioners could not be ejected under the PPP Act, unless they failed to make the payment of lease amount. Thus, they prayed for the acceptance of the writ petitions.

14. On the contrary, hailing the impugned orders, the learned counsel for the respondents urged that the MC did not perpetually lease out the shops in question to the petitioners and they were temporarily permitted to carry on their business as licensees in the old market on payment of license amount for a specified period. The contentions are that after issuance of notifications dated 23.2.1982 and 12.11.1982 by the Government, establishing a new market yard, the petitioners could not legally carry out their business in the old market in question. The submission further proceeds that the licenses of the petitioners were cancelled on 31.3.1983, which were never renewed thereafter. After passing of resolution No.73 dated 16.3.1983 by the MC, by virtue of which, the alleged lease of petitioners was cancelled. Thereafter, they became unauthorized occupants of their shops in the old market w.e.f. 1.4.1983. They were rightly ejected by the SDO-cum-Collector and no interference is warranted in the impugned orders in this regard. In support of the contention, learned counsel for the MC has placed reliance on judgment of Hon'ble Apex Court in case Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, .

15. Having heard the learned counsel for the parties, having gone through the record and legal provisions with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petitions in this respect.

16. As is evident from the record, that petitioners claimed that the MC perpetually leased out the property to them and they could not be ejected under the PPP Act. On the other hand, according to the MC, they were temporarily permitted to carry out their business in the old market as licensees on payment of settled amount for a specified period. As their alleged lease was cancelled, vide resolution No.73 dated 16.3.1983, therefore, they became unauthorized occupants and were evicted by the SDO-cum-Collector under the PPP Act. Thus, it would be seen that the facts of this case are neither intricate nor much disputed. Moreover, the controversy boils down to a very narrow compass.

17. Above being the position on record, now the short and significant question, though important, that arises for determination in these petitions is, as to whether the MC perpetually leased out the shops in question in the old market to petitioners or not?

18. Having regard to the rival contentions of Seamed counsel for the parties, to me, the answer must obviously be in the negative, as no lease deed/documents or other evidence is forth coming on record to substantiate the claim of the petitioners in this relevant connection.

19. As is clear that Section 106 of The Transfer of Property Act, 1882 (hereinafter to be referred as "TP Act") postulates that in the absence of a contract or local law or usage to the contrary, a lease of immovable property, shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice. Similarly, Section 107 provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

20. Sequelly, Section 47 of the Act envisages that every contract made by or on behalf of the committee of any municipality of the first class whereof the value or amount exceeds one hundred rupees, and every contract made by or on behalf of the committee of any municipality of the second {and third class} whereof the value or amount exceeds fifty rupees, shall be in writing, and must be signed by two members, of whom the President or a Vice President shall be one, and countersigned by the Secretary.

21. Likewise, sub-section (2) of this section posits that every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the President or Vice President, and by at least two other members of the committee, whose execution thereof shall be attested by the Secretary. Sub-section (3) further escalates that no contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the committee.

22. Moreover, section 240 of the Act empowers the State Government to make any rules consistent with this Act to carry out the purpose thereof inter-alia with respect to the conditions on which property may be acquired by the committee or on which property vested in the committee may be transferred by sale, mortgage, lease, exchange or otherwise. In exercise of the powers conferred under this section, the State Government has framed the rules regulating the management of the municipal properties and of the State properties under the control of Municipal Committee. Rule II reads as under:-

The Management of Municipal Properties and of State Properties under the Control of Municipal Committee.

Alienation of Municipal Properties -

1(1) Any Municipal Committee proposing to alienate permanently or for a term

exceeding ten years any land or other immovable property of which it is the owner shall apply to the Deputy Commissioner for sanction.

(2) An application under rule (1) shall be accompanied by a plan of the proposals to be alienated together with a statement in the form appended to these rules.

(3) The Deputy Commissioner shall record an order on the application -

(i) sanctioning it (subject to such conditions if any as he thinks fit)

(ii) Refusing to sanction it, provided that no sale by auction shall be valid, until it has been confirmed by the Deputy Commissioner.

(4) When the Deputy Commissioner has accorded sanction to a sale by auction, the statement aforesaid shall in due course be re-submitted to him with the details regarding the auction which are shown in the form printed on the reverse of the statement and the Deputy Commissioner shall thereon either confirm the sale or refuse to confirm it. If the Deputy Commissioner refuses to confirm the sale, the same shall be void.

(5) Any orders passed by Deputy Commissioner under Rules (3) and (4) shall subject to the provisions of section 237 of the Municipal Act be final.

23. A conjoint reading of these provisions would reveal that no legal/valid contract could be executed by or on behalf of the committee of any municipality, except the fulfillment of essential ingredients, as contemplated u/s 47 of the Act and no property can be alienated in any manner permanently or for a term exceeding 10 years without the statutory sanction of the Deputy Commissioner, who shall record an order sanctioning it subject to such conditions, if any, as he thinks fit or refusing to sanction the same and thereafter, he will confirm the sale and if he refuses to confirm it, the alienation shall be void. This matter is not res integra and is well settled.

24. An identical question came to be decided by the Hon''ble Supreme Court in Dr. H.S. Rikhy's case (supra). Having interpreted the relevant provisions of sections 18, 46 and 47 of the Act, it was ruled that where the statute thus makes it obligatory that there should be a contract in writing and duly executed by the persons authorized by the Act to do so, the absence of such a contract cannot be cured by the mere receipt of rent from the occupiers of the shops owned by the Municipality. There being thus no relationship of lessor and lessee between the Municipal Committee and the occupiers of shops in Municipal market, the occupiers cannot claim the status of tenant/lessee.

25. What is not disputed here is that the petitioners have neither produced any lease deed/document or any other evidence to indicate whether any contract was executed as per sections 106 & 107 of the TP Act and section 47 of the Act or any statutory sanction of Deputy Commissioner was obtained, in view of above indicated Rule II. In that eventuality, a legal adverse inference is inevitable against the petitioners. That means, they have miserably failed to prove their

case before the authorities under the PPP Act that the properties in dispute were perpetually leased out to them by the MC. In the absence of the same, it cannot possibly be said that the MC had perpetually leased out the shops in question to the petitioners in the old market. On the other end, the MC has proved on record that it was a temporary arrangement on payment of settled amount for a specified period.

26. In this manner, the possession of the petitioners, after cancellation of their lease, vide resolution No.73 dated 16.3.1983, became unauthorized thereafter and they have no legal right to retain the same in the old market. Therefore, the mere payment of alleged lease amount by the petitioners and acceptance by the MC would not legally confer the status of perpetual lessor on the petitioners. Thus, the arguments of learned counsel for the respondents that as the petitioners were unauthorized occupants, therefore, the authorities under the PPP Act had rightly ejected them from the properties in dispute, has considerable force and the contrary submissions of learned counsel for petitioners "stricto sensu" deserve to be and are hereby repelled, in view of the ratio of law laid down in the aforesaid judgment, which "mutatis mutandis" is applicable to the present controversy and is the complete answer to the problem in hand.

27. Above-all, the petitioners cannot legally be permitted to carry on their business in the shops in question in the old market after the issuance of notifications dated 23.2.1982 and 12.11.1982, de-notifying the old market and establishing a new market in the area of village Rahimpur on Phagwara Road, Hoshiapur, by the State Government.

28. The other feeble argument raised on behalf of petitioners that the SDO-cum-Collector was not competent to pass the ejectment order under the PPP Act, is again not only devoid of merit but misplaced as well, in view of notification dated 6.2.1975 published in the Government Gazette, whereby all Sub Divisional Officers (C) in the State of Punjab were vested with the powers of Collector under the PPP Act.

29. There is another aspect of the matter, which can be viewed from a different angle. The Collector as well as appellate authority, having analyzed the cogent material on record, in the right perspective, recorded a finding of fact that the petitioners were unauthorized occupants of the shops in question. They have no legal right to carry on wholesale business of sale and purchase of fruits and vegetables in the old market, after issuance of indicated notifications and they were liable to be evicted.

30. Meaning thereby, the authorities below have recorded the valid reasons and rightly passed the impugned ejectment orders (Annexures P4 and P5). Such orders containing valid reasons based on the evidence, cannot legally be interfered with, in exercise of the writ jurisdiction of this Court, unless and until, the same are illegal, perverse and without jurisdiction. As no such patent illegality or legal infirmity has been pointed out by the learned counsel for the

petitioners, therefore, the impugned orders deserve to be and are hereby maintained in the obtaining circumstances of the case.

31. Be that as it may, as it emerges from the record that some of the petitioners got the allotment of plots in the newly established market, in lieu of their long possession of shops in the old market. Some of them remained unsuccessful in getting the plots in the new market for a variety of reasons. The right of such allotment of alternative site of some of the petitioners, who did not get the site in the new market, who were carrying their business in the old market, where they had established themselves over the years and who were being compelled to abandon their trading at those places, has been well recognized by the Hon''ble Apex Court in case Prem Chand Trilok Chand and others v. State of Haryana and others, (1998) 5 S.C.C. 213, in which, it was observed in para 4 as under:-

"We are of the view that normally once the Government starts regulating the place" of sale of agricultural produce covered by the Act and does not permit any other place to be used for the purpose, there is an inherent obligation of the Government to provide at the new site for all the licensed dealers sufficient accommodation for carrying on their trade and until that is done it would not be possible for the Government to direct closure of the old site."

32. Again reiterating the same view, Hon''ble Supreme Court in case Labha Ram and Sons and Others Vs. State of Punjab and Others, has ruled that "the Government has an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade. Merely providing an opportunity to compete with the rest of the public for getting accommodation in the new market is not sufficient to discharge the inherent obligation of the Government."

33. In this view of the matter, to me, the case of such petitioners, who remained unsuccessful in getting the plots in the new market, deserves sympathetic consideration by the State Government under the present set of circumstances. Furthermore, keeping in focus the fact that such petitioners, who did not get the plots in the new market and due to their virtual displacement from the places where they had established themselves over the years and who were being compelled to abandon their trading, (they) are also entitled for a reasonable time to vacate the premises in dispute. To me, a period of one year is reasonable and is granted to remain in possession to those petitioners, who did not get the plots in the new market.

34. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

35. For the reasons recorded hereinabove, as there is no merit, therefore, the instant writ petitions are hereby dismissed as such.

36. In the light of aforesaid reasons, the respondents are directed to sympathetically re-consider the claim of, only those petitioners, who remained

unsuccessful in the allotment of plots in the new market for any reason whatsoever, on reasonable terms and conditions of payment of market price in this relevant direction. However, the operation of impugned ejectment orders (Annexures P4 and P5) qua only those petitioners, who did not get the plots in the new market, shall remain stayed till 13.4.2012 to enable them to re-establish their business to earn livelihood.

37. Needless to mention here that the above mentioned directions would not be applicable, in any manner, qua those petitioners, who had already got the plots in the new market in this context.