
(1983) 05 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5090 of 1981

Municipality Bhatinda and another	Vs	APPELLANT
S.D.O.(Civil) and others		RESPONDENT

Date of Decision : 20-05-1983

Acts Referred:

Citation : (1983) PLJ 352 : (1984) RRR 449

Hon'ble Judges : J.M.Tandon, J

Advocate : O.P. Goyal, Advocate., Advocates for appearing Parties

Judgement

J.M. Tandon, J.

1. The Municipality Bhatinda moved an application dated March 8, 1977 (P.1) against Kala Ram respondent for his eviction from the shop No. 4 situate at Mall Road, Bhatinda, and for the recovery of damages for unauthorised use and occupation thereof at the rate of Rs. 288/ per month. The Municipality alleged that the shop was let out to the respondent at Rs. 240/ per month for a period of five years from August 1, 1971 to July 31, 1976, by leased deed dated April 5, 1973. After the expiry of the lease period the respondent was in unauthorised occupation of the shop with effect from August 1, 1976. The Municipality prayed for his eviction and also for an order for the payment of damages for use and occupation of the shop with effect from August 1, 1976. On May 26, 1977, the Collector issued notice (R.1) under section 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (hereafter the Act). The respondent submitted his reply dated July 22, 1977 (P.3). On January 27, 1978, the Collector issued another notice under section 4 of the Act to the respondent which reads:

"Whereas I, as the undersigned, am of the opinion of the ground specified below that you are in unauthorised possession of the public premises mentioned in the scheduled below and that you should be evicted from the premises:

Grounds:

That you are in unauthorised occupation of the public premises mentioned in the Schedule.

Now, therefore, in pursuance of subsection (1) of Section 4 of the Act, I (omitted) on or before 28.2.1978 why such an order of "eviction should not be made".

2. The respondent submitted his reply dated February 28, 1978 (R.2) to the notice under Section 4 of the Act. After recording the evidence led by the parties the Collector vide order dated January 17, 1979, (P. 4) ordered the eviction of the respondent and also directed him to pay Rs. 288/ per month with effect from August 1, 1976. The respondent filed an appeal against the order P.4. The Commissioner vide order dated April 16, 1981, (P.5) held that notice under section 4 of the Act was bad inasmuch as it was not issued when the application was filed before the Collector and was in fact issued during the pendency of the case. The order of ejectment of the respondent was set aside. The order of the Collector regarding damages for use and occupation of the shop in dispute was also modified. The respondent was allowed to pay the amount at the rate of Rs. 240/ per month and that too in instalment of Rs. 100/ per month. The petitioner has assailed the order P.5, in the present writ petition.

3. The relevant part of Section 4 of the Act reads:

"4. Issue of notice to show cause against order of eviction(1) If the Collector is of opinion that any persons are in unauthorised occupation of any public premises situate within the jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided, a notice in a writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall(a) specify the grounds on which the order of eviction is proposed to be made, and.....

4. Section 5 of the Act deals with the eviction of unauthorised persons and its relevant part reads:

"5. Eviction of unauthorised persons(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, the Collector may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises of the estate in which the public premises are situate....."

5. The case of the respondent before the Commissioner was that after the Municipality had filed an application before the Collector the latter issued a notice under section 7 of the Act for the recovery of damages. After the proceedings

had been initiated on the application of the Municipality, the Collector had no jurisdiction to issue another notice under section 4 of the Act. In the instant case, the Collector did not issue any notice under Section 4 of the Act when the proceedings were initiated. The notice under section 4 of the Act issued by the Collector during the pendency of the proceedings is bad. This contention has been upheld by the Commissioner. The approach of the Commissioner is not correct. After the Collector had issued a notice under Section 7 of the Act to the respondent, there was no legal bar for him to issue another notice, under section 4 to him. The Collector did issue such notice on January 27, 1978 (P.2) before passing the order of eviction of the respondent under section 5 of the Act. The eviction order of the Collector, therefore, could not be set aside on the ground that notice under section 4 of the Act was issued by the Collector after the proceedings had started and notice under section 7 of the Act had been issued.

6. The learned counsel for the petitioner has argued that the respondent had been given the shop in dispute on lease for a period of five years which expired on July 31, 1976. After the lease period had expired, the respondent was liable to pay damage for use and occupation at the rate of Rs. 288/ per month, including the increase of 20 per cent as directed by the Government and not at the rate of Rs. 240/ per month. This aspect of the case has not been examined by the Commissioner. The petitioner may raise this point before the Commissioner who will decide the same according to law.

7. In the result, the writ petition is allowed and the impugned order of the Commissioner dated April 16, 1981 (P.5) set aside. The Commissioner will decide the appeal filed by the respondent against the order of the Collector dated January 17, 1979 (P.4) afresh in the light of the observations made above.

8. The parties through their counsel are directed to appear before the Commissioner, Ferozepur Division, on June 20, 1983. Petition accepted.