

(1989) 05 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4751 of 1984

Om Parkash and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 18-05-1989

Acts Referred:

Citation : (1989) PLJ 378 : (1989) 2 RRR 90

Hon'ble Judges : J.V.Gupta, J

Advocate : Mr. C.P. Sapra, Advocate., Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. The challenge in this writ petition is to the order of the Financial Commissioner, Haryana, dated August 21, 1984, copy Annexure P.4, whereby the orders of the three lower revenue officers, i.e., the Commissioner, the Collector and the Assistant Collector, First Grade, copies, Annexures P.3, P.2 and P.1, respectively were maintained.

2. The Respondents, who are the landowners, filed two applications under section 9(1)(vii) of the Punjab Security of Land Tenures Act, before the Assistant Collector, First Grade. Sonapat, with the request that the petitioners who are the tenants on the land, in dispute, be required to execute the Qabuliatnama under the abovesaid Act for payment of onethird of produce as the rent for the land. The Assistant Collector, after hearing the parties, found that the rent could be enhanced to either the customary rent in the area or onethird of the produce whichever is less. He further held that customary rent in this estate could not be determined and vide order dated November 23, 1982, ordered that the rent should be paid at the rate of onethird of the produce and Qabuliatnama should be executed accordingly within one month and if the tenants failed to do so, they would be deemed to have been ejected from the land in dispute. Against the said order of the Assistant Collector, the appeal was filed by the tenants. The learned Collector maintained the order of the Assistant Collector. Revision was filed by the tenants before the Commissioner who also maintained the earlier orders.

Further revision to the Financial Commissioner was also dismissed and it was observed that since the landowners had asked for onethird of the batai which was the maximum permitted under the law, the demand of the landowners cannot be termed as illegal or unreasonable in the absence of any agreement not to increase the cash rent. Since the value of the produce has gone up, it is quite obvious that the cash rent due to the landowners would also increase proportionately. Under the circumstances of the case, it appeared quite equitable that the tenants be asked to pay onethird share of the produce to the landowners since the cash value of each crop is likely to be different for each crop.

3. The learned counsel for the tenants/petitioners submitted that they have been paying rent in cash since long and, therefore, now by executing the qabuliatnama they could not be directed to pay onethird batai. This, according to the learned counsel, was violative of rule 9 of the Punjab Security of Land Tenures Rules, 1956 which provides for the mode of determination of rent. According to the learned counsel the said rules does not contemplate that the cash rent can be converted into onethird batai. The learned counsel further submitted that no order of ejectment or enhancement could be passed when compensation for improvement for the land had not been paid to the tenants. As regards the second contention, the same was never urged before the learned Financial Commissioner and, therefore, the petitioners cannot be allowed to take this point for the first time in this writ petition.

4. As regards the first contention, there is no merit therein also.

5. Section 12 of the aforementioned Act reads as follows :

"Amount of maximum rent. (1) Notwithstanding anything contained in the Punjab Tenancy Act, 1887 (Act XVI of 1987), or in any agreement or usage or any decree or order of a Court, the maximum rent payable by a tenant for any land held by him as such shall not exceed onethird of the crop of the such land or the value thereof as determined in the prescribed manner, and where the customary rent is less than onethird the maximum rent shall be customary rent.

(2) In computing the maximum rent payable by a tenant, such portion, of the rent, if any, as represents the consideration for services or facilities provided by the landowner in relation to the land shall not be taken into account."

The language of section 12 clearly provides that notwithstanding anything contained in any agreement or usage, the maximum rent payable by a tenant for any land held by him shall not exceed onethird of the crop of such land or the value thereof as determined in the prescribed manner. That being so, the outer limit prescribed by the said section is that the maximum rent will not exceed onethird of the crop of such land or the value thereof which may be determined in the prescribed manner. Thus, there is nothing wrong or illegal in the impugned orders as to be interfered with in the written jurisdiction.

6. Apart from the above, it was held in *Guru Amarjit Singh v. Punjab State*, 1962

Punjab Law Journal 98 by the Division Bench of this Court that no doubt the value of the produce of the land is always taken into consideration when fixing the cash rent, but the same cannot remain in force for all times to come because the value of the produce of the land goes on varying from year to year. A cash rent fixed in any particular year become the customary rent. The landlord can get the rent enhanced, but the same cannot be exceed onethird of the crop of the land or the value thereof.

7. Again in Vasandha Ram v. State of Haryana, 1982 Punjab Law Journal 452 : 1984 R.R.R. 596, it was held by this Court that the purpose of execution of qabuliatnama will be frustrated unless the amount of rent is determined.

8. Under the circumstances, the writ petition fails and is dismissed with costs. At the time of the motion hearing, the operation of the impugned order was stayed on October 18, 1984. That being so, the petitioners are directed to execute the qabuliatnama within two months from this order failing which they will be treated to have been ejected from the land, in dispute.