
(2013) 08 P&H CK 0665
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17043 of 2013

Parmanand

APPELLANT

Vs

Divisional Commissioner

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0665

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—A Batch of 10 cases bearing CWP Nos. 17043 to 17046, 17055 and 17059 to 17063 of 2013 is being disposed of by this common order as the facts and law involved therein are identical. However, for the sake of convenience, facts are being extracted from CWP No. 17043 of 2013. In short, respondent No. 3 filed a petition u/s 4 of the Punjab Religious Premises & Land (Eviction & Rent Recovery) Act, 1997 [for short "the Act"] for seeking eviction of petitioner from the shop in dispute belonging to the Arya Samaj Mandir. On the pleading of the parties, issues were framed and after taking evidence the Collector, Patiala vide his order dated 25.9.2012 passed the order of eviction. The petitioner challenged the said order by way of statutory appeal which has also been dismissed by the Divisional Commissioner, Patiala on 26.2.2013.

2. Learned counsel for the petitioner has raised two fold arguments. Firstly, it is submitted that one of the issues before the Collector was as to whether the possession of the petitioner from June 2010 is unauthorized and he is liable to be ejected on the ground of non-payment of rent. Learned counsel for the petitioner has referred to Section 3(b) of the Act to contend that the petitioner would be called an unauthorized occupant if the lease in his favour has been determined or cancelled in accordance with the terms of the lease deed. It is argued that since the petitioner has been paying rent to the respondents and there is no evidence brought on record as to when his lease has been determined or cancelled in

terms of the lease deed, he cannot be considered to be in unauthorized occupation as such the petition filed against him u/s 4 of the Act was not maintainable.

3. Secondly, it is argued that the Collector was required to assess the arrears of rent, costs, interest and should have afforded an opportunity to make the payment within 15 days from the date of first hearing, in terms of the decision of the Supreme Court in the case of Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others,

4. Learned counsel for the respondents has submitted that the petitioner is not covered u/s 3(b) of the Act but covered u/s 3(a) of the Act and its explanation. He has argued that in view of Section 3(a) of the Act, if the petitioner has entered into possession otherwise than under and in pursuance of any lease and has been paying rent would not clothe him with the status of a lessee who could seek the protection of Section 3(b) of the Act.

5. Insofar as other argument is concerned, he has referred to the reply filed by the petitioner to the application filed u/s 4 of the Act in which he has denied the relationship of landlord and tenant alleging that property in dispute belongs to Arya Samaj which manages the Junior School and not Arya Samaj Mandir. In this regard, he has submitted that once the relationship of landlord and tenant is denied, Court is not obliged to follow the decision in the case of Rakesh Wadhawan and others (Supra). In this regard, he has also relied upon the following decisions:-

1. Ram Kumar and Another Vs. Avinash Chander and Others,

2. Hukama Devi and Others Vs. Bhagwan Dass,

3. M/s. Rachitech Engineering Pvt. Ltd. v. M/s. Kundan Steel Pvt. Ltd. 2007(3) PLR 386

I have heard learned counsel for the parties and perused the record.

In order to appreciate the first contention of learned counsel for the petitioner, it would be relevant to refer to Section 3 of the Act, which reads as under:-

Section 3: Unauthorised Occupation of religious premises

For the purposes of this Act, a person shall be deemed to be in unauthorized occupation of any religious premises,-

(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) where he, being an allottee, lessee or grantee had be reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether be-fore or after the commencement of this Act; to be entitled to occupy or hold such religious

premises; or

(c) where any person authorised to occupy any religious premises has, whether before or after the commencement of this Act-

(i) Sub-let, in contravention of the terms of allotment, lease or grant, without the permission of the Religious Institution, the whole or any part of such religious premises; or

(ii) Otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such religious premises.

Explanation-For the purpose of clause (a) a person shall not merely be reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

6. Concededly, there is no lease deed in favour of the petitioner, thus, there are no terms and conditions available. Section 3(b) of the Act would come into operation if the lessee has a lease deed in his favour, reduced into writing the terms and conditions thereof. Otherwise, merely the fact that the petitioner has been paying rent, he would not be deemed to be lessee and for that matter Section 3(a) and explanation thereof of the Act would apply which says that if a person who has, before or after the commencement of the Act, entered into possession thereof otherwise than under and in pursuance of any allotment of any lease, would be deemed to be an unauthorized occupant even if he has been paying rent to the landlord.

7. In view thereof, I do not find any substance in the first argument raised by the learned counsel for the petitioner and the same is hereby rejected.

8. The decision in the case of Rakesh Wadhawan and others (Supra) was dealing with Section 13(2)(i) proviso of the East Punjab Urban Rent Restriction Act, 1949, which is not the case herein but even if, for the sake of argument, it is presumed as suggested by learned counsel for the petitioner that Rent Controller should have assessed the provisional rent before passing the order of eviction and give opportunity to the petitioner to tender rent, the reply filed by the petitioner demolishes his entire case as he did not accept the relationship of landlord and tenant with the respondent because it is alleged that the property in dispute belongs to Arya Samaj which manages the Junior School and not Arya Samaj Mandir, who has filed the eviction petition. Once, the relationship of landlord and tenant is denied, the Rent Controller much less the Collector herein is not obliged to assess the provisional rent. In this regard, reference could be made to the following decisions:-

1. Ram Kumar and Another Vs. Avinash Chander and Others,

2. Hukama Devi and Others Vs. Bhagwan Dass,

3. M/s. Rachitech Engineering Pvt. Ltd. v. M/s. Kundan Steel Pvt. Ltd. 2007(3) PLR 386

9. No other argument has been raised.

In view of the aforesaid discussion, I do not find any merit in the present writ petition. Consequently, all the writ petitions are hereby dismissed.

No costs.