

(2014) 06 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14320 of 1991 (O&M)

Phulla

APPELLANT

Vs

The Financial Commissioner

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 06 P&H CK 0037

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : J.S. Saneta, Advocate for the Appellant; Kartar Singh, DAG, Haryana, H.S. Gill, Senior Advocate and R.K. Dhiman, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Kannan, J.—The petitioner and the private respondents are landlord and tenant in relation to the property. The petitioner has sought for ejectment on the ground of non-payment of batai for the land measuring 36 kanals 12 marlas situate in Village Urlana Khurd, Tehsil Panipat, District Karnal. The ground of eviction was alleged default in payment of rent from Rabi 1981 to Kharif 1983.

2. When the Assistant Collector dismissed the ejectment application, the Collector reversed the decision and ordered ejectment. The Commissioner, Ambala, reversed the decision accepting the tenant's contention that he had paid the rent but this was again set aside by the Financial Commissioner holding that the rent had not been proved to have been paid. The ultimate order that prevailed was of the Financial Commissioner who held that the rent had not been paid. It is this order that remains for consideration before this court.

3. When the payment is not under any receipt before any ejectment is ordered for non-payment, the authority must give an opportunity to direct the rent as payable if the determination as pleaded by the tenant is not accepted. A direct order of ejectment cannot be made against an agricultural tenant. In Pritam

Singh through his LRs. Versus Financial Commissioner, Animal Husbandry, Punjab, Chandigarh-2012(4) Law Herald 3358, a Bench of this Court held that no tenant could be rejected in proceedings based on non-payment of rent unless and until the amount due on account of rent had been determined by court and the tenant had been allowed six months from date of such determination to pay arrears. The court held that any ejectment order without such opportunity was liable for interference. There is also a decision of the Division Bench in Ajmer Singh and others Versus Financial Commissioner, Haryana and others-(2007) 1 LAR 533. I accept the contention of the petitioner rested on the above legal premise and set aside the order of the authorities. The matter is remitted to the court of first instance, namely, the Assistant Collector, who shall determine the amount payable and the petitioner shall not be heard any longer that he had already made the payment. The petitioner gets an opportunity through this order for determination of rent for the years when rent was said to have been not paid and after affording the opportunity to pay the rent within the time as prescribed, a suitable order shall be passed depending on whether the tenant complied with the order for payment within the time as stipulated. Only if there still existed such default beyond the period prescribed, any order of ejectment would be passed. The impugned order is set aside and the matter is remitted to the Assistant Collector for disposal in the light of the directions given above.

4. The writ petition is disposed of with the above observations.