
(2012) 01 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4038 of 1988 (O and M)

Roshan khan (Deceased) Through Lrs.

APPELLANT

Vs

Financial Commissioner, Punjab and others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 — Section 7, 7(1), 7(2), 7(3), 71

Citation : (2012) 166 PLR 250 : (2012) 3 RCR(Civil) 385

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition challenges the order passed by the Financial Commissioner rejecting a reference made by the Commissioner in favour of the tenant that the ejectment sought at the instance of the landlord could not be lawfully carried out before the Assistant Collector and the Collector. The landlord was successful in securing an ejectment under the provisions of Pepsu Tenancy and Agricultural Lands Act, 1956. The grounds of eviction were nonpayment of rent and use of property as having been rendered unfit for the purpose for which it was leased and the fact that the tenant was in possession of more than 5 standard acres of land, while the landlord was in possession of less than the permissible limit. The Additional Collector and the Collector dealt with only the issue of non-payment of rent and the fact that the landlord was in possession of less land than the permissible area, while the tenant was in possession of more than 5 standard acres. The Commissioner's intervention in favour of the tenant was not accepted by the Financial Commissioner who affirmed the findings of the Assistant Collector and the Collector that the tenant has been in possession of the property for more than three years and they had been proved the default of payment of rent.

2. The learned counsel appearing for the tenant contends that the issue whether

tenant had been given possession for a period longer than three years would not by itself afford a ground of eviction and Section 8 is not have the provision which can be invoked for eviction but landlord must be able to refer to any one of the ground permissible u/s 7 or the 7(A) of the Act. The learned counsel argued that if the ground of eviction was non-payment of rent, such order cannot be passed in terms of Section 71(b) proviso without providing an opportunity to the tenant to pay arrears of rent within a further period of six months from the decree or order directing ejectment. I can immediately find that the authorities have failed to advert to the proviso and treated merely the non-payment as entitling landlord to secure an eviction the order of eviction could not have been passed without opportunity to pay the arrears of rent within six months. The order passed by the Financial Commissioner directing an ejectment on the ground of non-payment cannot therefore be sustained.

3. Learned counsel appearing on behalf of landlord-respondents urges that even apart from the non-payment of rent, the landlord had claimed that the tenant had constructed a room in the demised property and he had rendered it unfit for the purpose for which it was leased to him. There was not even denial of the fact that the tenant had put such a construction. The impugned orders do not advert to this ground while ordering eviction. In this situation, the matter would required to be examined firstly on the grounds stated by the authorities in the orders and on the basis of evidence adduced by the parties in that regard.

4. The learned counsel appearing for the respondents however, states that in terms of Section 7A a landlord who owns 30 standard acres or less land falling within a permissible limit can obtain an eviction provided that the area under the personal cultivation of the tenant is an excess of 5 standard acres. It is admitted case that the tenant has in his occupation the land in dispute and was in possession of more than 5 standard acres. Arguments on behalf of landlord are that this property was an evacuee land and allotted to the predecessor of the landlord under the Displaced Persons Compensation and Rehabilitation Act, 1954. Allotment that is made is free from any encumbrance and in the order of allotment itself the tenant's predecessor endorsed the allotment and said that he was not taking any claim as a tenant. If that was the stand of the tenant's predecessor, the additional grounds averred u/s 7A itself cannot be availed by the landlord. Section 7 (A) Clause I reads as under:-

Additional ground for termination of tenancy in certain cases - (1) subject to the provisions of sub-sections (2) and (3) a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in addition to the grounds specified in Section 7 namely:

- (a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II
- (b) that the landowner owns thirty standard acres or less of land and the land

falls within his permissible limit:

Provided that no tenant other than a tenant of a landowner who is a member of the Armed Forces of the Union shall be ejected under this sub-section

(i) from any area of land, if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres, until he is allotted by the State government alternative land of equivalent value in standard acres.

5. The additional ground of the availability of the tenant being in excess of extent of 5 standard acres would be available only if a tenancy subsists at the commencement of the Pepsu Tenancy and Agricultural Lands Act, 1956. Although, the tenant in this case had contended that he and his predecessor had been in possession of property since 1941, the landlord has denied it and the evaluation is that the tenant or his predecessor was not a tenant in 1956. If status as tenant can not subsist by the intervention of the Displaced Persons Compensation and Rehabilitation Act of 1954, applicability of Section 7A also can not be available to the landlord.

6. The only grounds on which the landlord could pursue a claim of ejectment would therefore be (i) his contention that the property had been rendered unfit for the purpose for which it was leased to him. (ii) the additional ground would be a conditional order of payment of rent within a period of six months from the date when the order directing the ejectment was passed. In this case, I notice that after the ejectment order has been made, the tenant has filed a writ petition and Division Bench of this Court has admitted the same on 11.7.1988. The case has come up for hearing after two decades only now and I am informed by the counsel appearing for the respondents although stated so in the pleadings that the landlord had obtained the ejectment and they have sold the property and in the property now there is Sugar Mill constructed. If the impugned order was required to be interfered it should have been necessary to qualify the order to secure the order of ejectment conditional upon non-payment of rent for the period of three years subsequent to the period though the landlord have complained that the tenant had not paid the rent. Nothing is brought on record whether the tenant has been paying rent subsequent to the proceedings after the writ petition was admitted and whether he had continued in possession. Referring the matter back for enquiry before the authority under the peculiar circumstances become unnecessary and I do not think that there is any scope for clock back to annul the order although I find that the impugned order suffers from uncertain defects. I would not find the factual situation obtaining in favour of the tenant to be conducive for fresh adjudication. I would leave the matter recite as how the order of eviction was passed already and will not subject the same for any interference.

In the peculiar facts and circumstances, the present writ petition is dismissed.