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**(2014) 05 P&H CK 0056**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition Nos. 4561 and 4562 of 1992

Sampuran Singh

APPELLANT

Vs

Financial Commissioner (Appeals)

RESPONDENT

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**Date of Decision :** 15-05-2014

**Acts Referred:**

**Citation :** (2014) 176 PLR 158 : (2015) 1 RCR(Civil) 200

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Advocate :** K.G. Chaudhary, Advocates for the Appellant; Anand Kataria, A.A.G, Advocates for the Respondent

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## **Judgement**

K. Kannan, J.—Both the writ petitions address the same issue of liability on the tenant for ejectment for non-payment of rent on the ground that the tenant had not paid the rent before filing of the petition. It is borne out on record that the tenant complained that the landlord was deliberately not receiving the rent and applied to the Collector for directions to the landlord to be given for receipt of rent. The rent for the year 1985-86 had admittedly been paid during the pendency of the proceedings. The collector proceeded to allow the petition for ejectment on the ground that if the rent had not been paid when it fell due he was liable for ejectment and it was irrelevant that the rent was paid during the proceedings. Learned counsel for the petitioners would contend that the legal mandate under Section 14-A which prescribes a proceeding for ejectment and recovery of arrears of rent specifically contemplates a situation when the landlord refuses to receive the rent and sets out a procedure about how the tenant may compel the landlord to receive the rent by appropriate directions. When such a direction was given and the rent was also deposited as borne out through records under Annexure P-5 in CWP No. 4561 as well as in CWP No. 4562 there could be no further liability of the tenant and the order of ejectment passed was erroneous. The Counsel cites a judgment of the Division Bench rendered in *Ajmer Singh and others v. Financial Commissioner, Haryana and*

others 2007 (1) LAR 533 to support the view that the Assistant Collector shall not have a power to direct ejectment without determination of rent and afford an opportunity to pay the rent to the landlord. In this case the rent has also been admittedly paid to the landlord.

2. Learned counsel appearing on behalf of the respondent landlord states that the Court will not make intervention in the writ petition unless there is an error of jurisdiction. All the authorities who passed orders have not acted within the jurisdiction but exceeded their power to adjudicate on the respective rights between the landlord and tenant and to order ejectment without following the mandate of what Act provides for. Learned counsel also relies on a judgment of this Court in Chanan Singh v. Assistant Collector Grade-I-cum-Sub Division Officer (Civil), Fatehabad and others 2010 (1) LAR 70 where the Court was considering the extent of interference under Articles 226 and 227 where the issue was whether the tenant had paid the rent or not. The Court said that it was essentially a question of fact and therefore, the High Court will not interfere.

3. In this case the issue is not whether the rent was paid or not. The issue is whether the authorities could have ordered ejectment without taking note of the fact that the tenant's contention as soon as the ejectment petition was filed was that the landlord had refused to receive rent and had applied before the Assistant Collector himself to cause a direction to the landlord to receive the rent. The Assistant Collector who had actually passed an order under Section 14A(3)(i) was directing the rent to be paid and consigning the records. At the time when the order was passed on adjudication, the Collector had observed that the rent paid during the proceedings on the application of the tenant cannot avail to the tenant to plead that ejectment could not be ordered. This reasoning of the authorities is clearly untenable. The authorities were giving the interpretation to Section 14-A which makes irrelevant for a procedure for deposit of rent in a case where the landlord refuses to receive the same. A provision for the authorities to direct the landlord to receive the rent cannot be merely a cosmetic exercise. It is intended to settle the rights of parties. A landlord who would refuse to receive the rent cannot take advantage of his own wrong and seek ejectment on that ground. It is in this case the judgment of the Division Bench referred to above namely in Ajmer Singh's case (supra) assumes significance. The Bench was holding directly on this point that an order of ejectment cannot be passed by authority without affording an opportunity to tenant to pay the rent. If only the tenant fails to comply with the directions given within the stipulated time, ejectment could be ordered. In this case, there was not even a necessity for the authority to give a direction to deposit rent, for the tenant had volunteered to do so on a plea by him that the landlord was refusing to receive the rent. The order of ejectment after a direction given during the course of proceedings to deposit the rent to the credit of the landlord was clearly untenable. The impugned order is set aside and the writ petitions are allowed.