

(1997) 11 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 617 of 1997

Sarjiwan Tiwari and Others	Vs	APPELLANT
Punjab State Electricity Board and Another		RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 5, 7, 9

Citation : (1998) 118 PLR 313 : (1998) 2 RCR(Civil) 2

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Atul Mahajan, for the Appellant; G.S. Kanwar, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The present petitioners filed an application on 3.10.1996 before the learned Collector (Sub Divisional Officer), Ludhiana West for framing issues in the proceedings pending before that Authority u/s 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, hereinafter referred as the Act. This application was dismissed vide order dated 14.11.1996 by the said Authority u/s 4 of the Act. Feeling aggrieved from the said order, the petitioners have assailed the order dated 14.11.1996 in this revision petition. Before advertng to the main controversy between the parties, it may be appropriate to refer to necessary facts:

2. The petitioners herein are stated to be the employees of the Punjab State Electricity Board, The Mall, Patiala and are working on different posts The petitioners have unauthorisedly occupied some part of the land in the staff colony and constructed huts and are in occupation thereof. The respondent-Board claimed that the petitioners are in unauthorised occupation of part of the land of khasra Nos. 277, 278, 279, 280, 281, 282 and 283 as per jamabandi for the year 1991-92 of Village Sunat No. 59, Tehsil and District Ludhiana has instituted a petition u/s 5 of the Act. The petitioners herein appeared before the

Authority concerned and filed their reply. They took various objections including that the Executive Engineer was not competent and authorised person to file the petition as no resolution supported his authority. The details of the properties were not mentioned. While according to the respondent-Board, the petitioners being the employees of the Board were in possession of these premises and were required to pay rent which was being deducted from their respective salaries. The petitioners claim to be tenants in the alternative while raising their primary claim of ownership by adverse possession of the land in question. The Board disputed both these contentions and averred that; these petitioners were claiming house rent by giving fictitious addresses and claiming to be residents on payment of rent and they were being paid such rent. In addition to these pleas being raised, on merits, the respondent-Board has even raised preliminary objection to the very maintainability of the present revision petition on the ground that alternative efficacious remedy u/s 9 of the Act is available to the petitioners.

3. In the application filed by the petitioners they had only prayed that issues be framed before recording of evidence on behalf of either side. The learned authority while dismissing this application vide the impugned order had simultaneously allowed another, application filed by the respondents herein for amendment of the petition for eviction of the alleged unauthorised occupants. The relevant extract of the order dealing with both these applications relevant for the present petition reads as under:-

"File put up Rauqa was made in the evening at 3.30 P.M. Today, Shri J.S. Pahwa, Advocate, counsel for the petitioner was present. Respondents were also present, but their Advocate Mr. V.R. Rampal was not present and due to this after hearing all the other case, the Rauqa was made. Even then, the counsel for the petitioner Shri G.S. Pahwa, was present and the counsel for the respondents Shri Rampal was not present nor they had referred any citation of High Court in support of their application dated 3.10.1996. In this connection, he was told on 22.10.19%, 29.10.1996 and 6.11.1996 as is dear from the proceedings of earlier dates given on the file. After this, Shri J.S. Pahwa, Advocate, counsel for the petitioner, submitted the application made by the counsel for the respondents dated 13.10.96, on which, the counsel for the petitioners pleaded that this application is not maintainable and it is. liable to be dismissed on the merits because the present proceedings, are only summary proceedings and in it, the applicant's have shown their possession on the above land and to prove the illegal possession of respondents. This application is made only to delay the proceedings and is liable to be dismissed. The counsel for the respondents was asked again and again to produce/refer any ACT/Rules and citations of Hon''ble High Court and Supreme Court in support of the application dated 3.10.1996, but the same were not referred. As such, in view of the submissions made by the counsel for the petitioner, the application made by the respondents dated 3.10.1996 is dismissed."

4. Thus, two questions which arise for consideration as a result of the aforesaid facts are as under:-

(1) Whether the present revision petition is barred in view of the provisions of Section 9 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973?

(2) Is the Authority notified under the provisions of this Act is required to regulate its procedure strictly in accordance with the provisions of the code of Civil Procedure? If not, what procedure it is required to follow?

5. Question No. 1.

The language of Section 9 of the Act has been worded widely inasmuch as it states that every order of the Collector in respect of any public premises u/s 5 or 7 of the Act would be appealable to the Commissioner subject to the limitation stated therein. The expression "every order of the Collector" must have its connotation under the provisions of Section 5 or 7 of the Act. It may be every order of the Collector which is appealable u/s 9 of the Act but necessarily such order must have been passed either u/s 5 or 7 of the Act. Thus, the provisions of Sections 5 and 7 would determine the appealability of an order u/s 9 of the Act. Section 9 must necessarily be read in conjunction with Sections 5 and 7 of the Act.

6. The Collector who is the Competent authority under the provisions of this Act, while exercising his powers u/s 5 is empowered to pass an order of eviction directing eviction from the public premises, under the un-authorised occupation of persons. While u/s 7 of the Act the same authority can direct the payment of arrears of rent payable in regard to such premises, in instalments, under Sub-section (2) of the said section the authority is empowered to assess the damages which may be prescribed for use and occupation of such premises within the time specified in the order. Both these orders empower the authority concerned to pass final orders within the four corners of the authority vested in them under the respective provisions. Neither any interim orders are indicated in these provisions nor it will be possible to read into these two provisions any other orders except the final orders in regard to payment of arrears of assessment of damages of public premises. It is the final orders passed under these two sections which" are appealable u/s 9. The expression "any order" thus must be read ejus dem generis to the provisions of Sections 5 and 7 of the Act. The expression cannot enlarge the scope which otherwise is provided specifically under the substantive provisions. Any order obviously on the plain reading of these sections means an order of eviction order relating to recovery of damages or order u/s 7(2) of the Act. If any other order relate to these three basic reliefs that may also become applicable u/s 9 of the Act. For example, in a case of eviction u/s 4 an order during the pendency of the main petition may be passed u/s 5 for payment of arrears, such an order itself would be appealable u/s 9 of the Act, This is the only possible wide meaning or connotation that can be given

to the expression of "any order" appearing in Section 9.

7. If the contention of the learned counsel for the respondents is accepted that "any order" means any inter-locutory order not falling under the three clauses afore-stated, would also be appealable u/s 9, to my mind it would amount to frustrating the very scheme of the Act and the purpose sought to be achieved by these provisions. It is a settled rule of interpretation that rules and provisions of procedure should be construed liberally, but equally true is that such liberal construction must further the object of the Act and should be in consonance with the plain language of the substantive provisions. The word "order" in Section 9 must be given its natural meaning in accordance with common sense and in consonance with the provision. An order passed on an application for stay of proceedings u/s 4 notifying the other party does not constitute an order which would become appealable u/s 9 of the Act. This was so held by the Bombay High Court in the case reported as 1978(4) UCR Bom 303.

8. Another argument which needs to be considered is that no revisional powers are vested in any authority under any provisions of this Act. Thus, the orders which may be interim orders but affect rights of the parties to the petition or substantially affect the procedure which would ultimately prove prejudicial to the interests of either of the parties should be revisable by the High Court. In the case of Dalip Singh v. State of Punjab 1986 P.L.J, 699 it was specifically held that there is no provision preferring a revision petition before the Financial Commissioner under the Act and no inherent power could be exercised by such authority who might be vested with other powers under this Act or the other Act. The cumulative effect of this reasoning is that objection of the learned counsel for the respondents with regard to maintainability of the revision must merit rejection because the order is not appealable u/s 9 of the Act.

9. Question No. 2:

The reading of the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 and the Rules framed by the State of Punjab while exercising its authority u/s 17 of the Act, shows that this Act is an Act which can be termed as a Code in itself. It provides the out-line of the procedure to be adopted by the concerned authority. The scheme of the Act indicates with definite clarity that proceedings under this Act are intended to be summary proceedings and the authority concerned has to adopt its procedure in consonance with the provisions of the Act and the Rules framed there-under. Section 4 directs issuance of notice to the persons against whom proceedings under the provisions of Act are initiated, while Section 5 and 7 permit the authority concerned to pass appropriate orders only after compliance of provisions of Section 4 and after the parties have been given opportunity to produce evidence and have been given a reasonable opportunity of being heard. This procedure in fact spells out all that is required to be done in consonance with the principles of natural justice. Once the principles of natural justice and basic rule of law are satisfied, the Court would be reluctant to introduce un-

necessary stages of procedural law into summary proceedings. The general Code like the CPC deal with every possible Stage in a suit or proceedings and provisions of such general code cannot be made strictly applicable to such special Acts. However, such a general Code still continues to be the guiding factor, for the concerned authorities for determining the real controversy between the parties.

10. Section 8 of the Act specifically provides that a Collector shall, for the purposes of holding an enquiry under this Act, has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, but restrict such application to summoning and enforcing the attendance of any persons and examining him on oath, requiring the discovery and production of documents. But this limited application cannot be read with great rigidity because such provisions of the Code are also applicable to any other matter, which may be prescribed. u/s 17(2)(f), the State Government is further empowered to make rules in regard to any other matter which has to be or may be prescribed. The rules which have been framed under this provision to a larger extent are silent about what procedure must be adopted by the authorities while trying any petition or application under various provisions of this Act. However, that necessarily does not imply that the procedure with regard to documents, framing of issues, examination of witnesses, and execution of an order would ipso facto become applicable. So far any procedure or method has been prescribed under the provisions of the Act or the Rules, the authority concerned is bound to adhere to the same in precedence to the provisions of the Code of Civil Procedure. The provisions of the CPC do not bind the hands or limits the jurisdiction of the authority Concerned under this Act. The authority would be justified in following a summary procedure so far it is in consonance with the principles of natural justice and basic rule of law. Further more, such a procedure must be one which would not prejudicially affects the rights of a party and take the other by surprise. The basic or fair rule of law certainly expects that a person against whom an action is brought in Court must be put at notice of the case which he is supposed to meet. The respondent should be able to identify his defence and should be given due and reasonable opportunity to prove his case upon leading such evidence as is permissible under the provisions of this Act. Thus, the procedure by and large would have to be left to the discretion of the appropriate authority which he may like to adopt keeping in mind the facts and circumstances of the case and while such procedure must be in consonance and conformity with the provisions of the Act, rules framed thereunder and the principles of natural justice and basic rule of law. In absence of specific provisions, the provisions of the Code are a mere guiding factor for such authority. He is not bound by all the provisions of the Code except to the extent which have been made specifically enforceable under the provisions of the Act and the Rules with a specific reference to Section 8 of the Act.

11. The petitioner in the present case had moved an application for framing of issues in the cases. This application, as already noticed, was rejected vide the

impugned order. The authority concerned was of the view that framing of issues is foreign to summary proceedings and thus he was not obliged to frame issues. It can be true that provisions of Order 14 in relation to framing of issues as such are not applicable to the Act and the authority discharging functions under this Act. But pin-pointing the dispute between the parties, cannot be treated or rendered as foreign to the basic procedural law. When Sections 4 and 5 mention about issuance of notice, taking of evidence and grant of reasonable opportunity, then it obviously included in itself the right of the parties to lead evidence in support of their case and more particularly on the matter which is pleaded by either of them in order to succeed in the case. The under-lying feature behind framing the issues even under the general law is primarily to narrow the scope of controversy between the parties. Further to put each party to notice as to what onus in regard to what allegation they are liable to discharge to prove a particular fact or allegation. Determination of such an issue by whatever name it may be called, cannot be treated as alien to the basic concept of applicability of extended principles of natural justice.

12. There is nothing in the provisions of this Act or the Rules framed thereunder which would imply that "framing of issues" and/or specifying "points of determination" is prohibited by specific language, or upon application of principles of necessary implication to the provisions of this Act. This, it would have to be left to the discretion of the authority whether it considered it proper to narrow the controversy at the out-set by specifying points for determination or not. Such an approach would be in line with the decisions already taken by various courts. To prescribe a hard and fast rule which would be universally applicable is neither possible nor probably permissible. The summary procedure itself does not oust adoption of a proper procedure in the facts of a given case. To provide an immutable system or procedure does not appear to be the legislative intent of the Statutes. Susceptibility to decide cases expeditiously is the under-lying feature of a summary procedure.

13. At this stage it may be appropriate to make a reference to the judgment of this Court in the case of Harbhajan Singh alias Bhajan Singh v. The State of Punjab and Ors. (1991) 100 P.L.R. 681 where the Court while dealing with somewhat similar situation held as under:-

"In cases where the question of ownership is involved, it is obligatory on the Authority under the Public Premises Act to frame proper issues and give the parties proper opportunity to produce the evidence. The question of title cannot be decided summarily without framing any issues in the case and without giving the parties proper opportunity of being heard. In my view, the order of the Collector suffers from patent illegality inasmuch as he did not frame any issues in the case. There was no documentary evidence before him from which it can be concluded that the land in dispute is a public property."

14. In the present case serious disputes were raised by the present petitioner before the competent authority with regard to ownership of the property, claim of

ownership by adverse possession as would be evident from the following paragraphs:-

" PRELIMINARY OBJECTIONS

1. xx xx xx 2. xx xx xx 3. That the property of the Punjab State Electricity Board is not covered under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973.

4. This property is not the property of the Government and is not covered under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973. Only the remedy available to the petitioner is to file a civil suit for possession before the Civil Judge, Ludhiana.

5. xx xx xx 6. xx xx xx 7. xx xx xx 8. xx xx xx 9. That the possession of the respondent over the property in dispute is for the last more than 19 years. The possession of the respondent is open, peaceful, hostile, continuous, within the knowledge of the petitioner and petitioner has become the owner by way of Adverse possession.

10. xx xx xx 11. That the petitioner has deducted rent from the salary of the respondents and this fact establish that there is relationship of landlord and tenant. So the present petition is not maintainable when the respondent is not unauthorized occupant.

12. xx xx xx 13. xx xx xx ON MERITS:

1. xx xx xx 2. Para No. 2 of the application is wrong and denied. It is wrong that the Petitioner required the land measuring 30 Kanals 13 Marlas as mentioned in this plea for the Punjab State Electricity Board Staff Colony at Kartar Singh Sarba Nagar. It is absolutely wrong that the ownership of the said land was transferred in the name of the Petitioner Board and this fact is clearly evident from the Jamabandi for the year 1991-92."

15. The narration of the above facts certainly raises serious disputes which would require proper determination by the concerned authorities. In the cases where such variable disputes are raised and the petition lacks material and definite particulars as no notification or documents have been placed on record which would prima-facie show that the premises in question are public premises. It would have been just and fair that the authority concerned should have specified "points for determination". Framing of such points would have not only narrowed the controversy between the parties, but would have put at notice each party to the proceedings as to what evidence are they require to lead on what allegations. Identification of such onus would help in curtailing un-necessary evidence and would save the time of all concerned: The case in hand was certainly one where determination of such points would be necessary.

16. The learned counsel for the respondent has relied upon a judgment of this. Court in the case of Santokh Singh and Others Vs. Banta Singh and Others, . I

have not been able to appreciate as to how this case is of any assistance to the submission made by the learned counsel for the respondent that the summary procedure necessarily oust any view in regard to framing of issue or points for determination and the authority is not obliged to frame such issues at all. On the contrary in para No. 11 of this judgment the obligations are that when these revenue officers act as revenue Court, they follow the procedure prescribed under the Code of Civil Procedure, that is, filing of plaint, written statement, framing of issues, passing of judgment and drawing of decrees, whereas while acting as revenue officer they do not follow the stringent provisions of Civil Code and only follow some provisions of the same. In my view even this judgment appears to be supporting the view expressed above.

17. For the reasons afore-stated this revision petition is accepted. The impugned order dated 14.11.1996 is set aside to the limited extent that in the facts and circumstances of the case the authority concerned shall frame points of determination based on the pleadings of the parties and thereafter would proceed in accordance with law.