
(1987) 02 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 536 of 1979

Shrimati Gita Devi

APPELLANT

Vs

Financial Commissioner, Haryana and ors.

RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Citation : (1987) PLJ 265 : (1987) RRR 287

Hon'ble Judges : D.V.Sehgal, J

Advocate : Satya Parkash Jain, Advocate, P.N. Aggarwal, Advocates for appearing Parties

Judgement

D.V. Sehgal, J.

1. The petitioner who is a widow and claims to be a small landowner, filed an application for ejectment of her tenant Ji Sukh respondent No. 3, on the ground that he has failed to pay rent for a period of three years in respect of the land under his tenancy. The annal rent admittedly was Rs. 30/. The second ground taken by the was that she is a small landowner. She thus, sought ejectment on the above grounds under section 7(1)(b) and section 7A (1)(b) of the Pepsu Tenancy and Agricultural Lands Act, 1955 (for short `the Act'). It is not necessary to refer to the previous history of litigation. All that need be stated here is that the Assistant Collector vide an order dated 23.4.1970 accepted her application and directed ejectment of respondent No. 3 on both the grounds. In view of the proviso to section 7(1)(b) *ibid*, it was provided in the order that in case respondent No. 3 pays the arrears of rent amounting to Rs. 90/ within six months from the date of decree of ejectment passed by the Assistant Collector, he shall not be ejected on the ground of nonpayment of rent. Since the proviso to section 7A(1)(b) provides that no tenant shall be ejected under the said provision, if he is a tenant of small land holding until he is allotted by the State Government alternative land of equivalent value in standard acres, the decree of ejectment further laid down that respondent No. 3 shall not be ejected on the second ground established by the petitioner until he was allotted alternative land

under the above provision. It was, however, made clear that in case respondent No. 3 failed to deposit the arrears of rent within six months from the date of the decree, he shall be liable to ejectment on the first ground itself and shall not be entitled to the protection of proviso to section 7A(1)(b) of the Act. Respondent No. 3 filed an appeal from the aforesaid decree of ejectment before the Collector and also made an application for stay of his ejectment and an ad interim stay was granted by the Collector while entertaining the appeal. The appeal was, ultimately dismissed on 22.5.1971. Respondent No. 3 did not deposit the amount of Rs. 90/ within a period of six months from 23.4.1970 that is the date of the decree of ejectment passed by the Assistant Collector but during the pendency of the appeal before the Collector, he deposited the said amount on 5.1.1971.

2. Respondent No. 3 then filed a revision petition before Commissioner Ambala Division who vide order dated 9.9.1971 (Annexure P.4) made a recommendation to the Financial Commissioner respondent No. 1, that the revision petition be accepted order of ejectment passed against respondent No. 3 should be set aside and the case be remanded to the Assistant Collector for decision in accordance with law. The recommendation so made by the Commissioner was accepted by respondent No. 1 vide order dated 27.10.1978 (Annexure P. 5). The order of ejectment against respondent No. 3, passed by the Assistant Collector and confirmed by the Collector was set aside and the case was remanded to the Assistant Collector for framing issues arising out of the pleadings of the parties and deciding the ejectment application afresh. The legality and validity of the recommendation of the Commissioner and the order of the Financial Commissioner (Annexures P.4 and P.5) has been challenged by the petitioner through the present writ petition and a prayer is made for quashing the same by a writ of certiorari.

3. I have heard the learned counsel for the parties. The first submission made on behalf of the petitioner is that respondent No. 3 was required to deposit the amount of Rs. 90/ that is the arrears of rent for three years as determined by the Assistant Collector within six months from the decree of the Assistant Collector which was passed on 13.4.1970. As he did not make this deposit within the time stipulated in the proviso to section 7(1)(b) of the Act, the ejectment order against him on the ground of nonpayment of rent became final. The Commissioner, therefore, could not entertain a revision petition filed by respondent No. 3 nor could respondent No. 1 accept the same. It is contended that the deposit of rent of Rs. 90/ made by respondent No. 3 on 5.1.1971 beyond the specified period of six months mentioned above is of no help to him. It is further submitted that respondent No. 1 wrongly held that the period of six months so specified could be extended or enlarged by him. To deal with this submission, it is necessary to reproduce the provision of section 7(1)(b) and proviso thereto which is to the following effect:

"(1) No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:

(a);

(b) that the tenant has failed to pay rent within a period of six months after it falls due:

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he had failed to pay such arrears during that period."

A reading of the proviso makes it clear that a protection is given to the tenant and it is laid down that he shall not be ejected for his failure to pay the rent unless he has been afforded an opportunity to pay the same within a period of six months from the date of decree or order directing his ejectment and he has failed to pay such arrears during that period. Admittedly before the said period expired from the date of decree of ejectment passed by the Assistant Collector, respondent No. 3 had filed an appeal before the Collector and his ejectment from the land in dispute was stayed. It has been explained on behalf of respondent No. 3 that he was under a misapprehension that since his ejectment from the land had been stayed he was not required to make the deposit within six months from the date of decree of the Assistant Collector. Later, however, to avoid any complications, he deposited the amount of Rs. 90/ on 5.1.1971. No doubt, the appeal was dismissed by the Collector on 22.5.1971.

4. The order of dismissal of the appeal by the Collector, is to be construed as a fresh decree for ejectment as the decree under appeal passed by the Assistant Collector has merged in the same. Thus the order of the Collector would afford by implication a fresh starting point to respondent No. 3 for depositing the amount of arrears of rent within a period of six months. I find support for this view from *Dattatraya v. Shaikh Mahaboob Shaikh Ali and another*, A.I.R. 1970 Supreme Court 750. It is well settled that an appeal is a rehearing of the lis. Once the decree passed by Court has appealed against, the matter becomes sub judice again and thereafter the Appellate Court has the seisin of the whole case though for certain purposes, for example execution, the decree passed by the Court below is regarded as final and they retain jurisdiction in this respect. In the present case, however, ejectment of respondent No. 3 had been stayed. A Court of appeal has the same powers and performs as nearly as may be the same duties as are conferred and imposed on Courts of original jurisdiction. Thus, whether it dismisses the appeal or allows the same, it passes a fresh decree. This view finds support from *Amarjit Kaur v. Pritam Singh and others*, 1974 P.L.J. 406.

5. Even otherwise I find that it was quite legitimate for respondent No. 3 to construe the stay order granted by the Collector as not requiring him to deposit the amount of arrears or rent till the decisions of the appeal. Deposit of the amount by respondent No. 3 on 5.1.1971, was by way of abundant caution. Respondent No. 1 has, therefore, rightly held that it is in the interest of justice to condone the delay in making the deposit. It is by now well settled that a Court

has the jurisdiction to extend time for making deposit in appropriate cases particularly when it is done to relieve against a forfeiture clause and to further the ends of justice. I rely for this view on Smt. Periyakkal and others v. Smt. Dakshyani, A.I.R. 1983 Supreme Court 428. I, therefore, find no firmity in the order of respondent No. 1 that the delay in making the payment of the arrears of rent by respondent No. 3 is not such as should attract his ejectment from the land.

6. In all fairness to the learned counsel for the petitioner, it may be mentioned that placed reliance on a Full Bench judgment of this Court in Gurmej Singh and others v. The Financial Commissioner, Revenue, Punjab, Chandigarh and others, 1980 P.L.J. 603, wherein while interpreting the provisions of Rule 22 and the stipulation in Form 'N' of the Punjab Security of Land Tenures Rules, 1956, it has been held that the period of one month for deposit of arrears of rent stipulated in Form 'N' cannot be extended by the Assistant Collector or the Appellate or the Revising Authority, as no such jurisdiction vests in them. In my view, the tenor, language and the intention of the statutory provisions which came in for consideration before the Full Bench are altogether different and the ratio of the said judgment cannot be applied to the present case.

7. The learned counsel for the petitioner then contended that respondent No. 1, has wrongly entertained the plea of respondent No. 3 that he is entitled to protection under section 7A(2) of the Act. He contends that the revisional power vested in the Financial Commissioner was limited to examining the order of the Collector passed in appeal to satisfy himself whether it was in accordance with law and he could interfere with the same only in case there was any material irregularity or illegality in the exercise of jurisdiction by the authorities below. He submits that the above contentions have been raised before respondent No. 1 for the first time in revision. To canvass this view, he relied on Dhaunkal v. Man Kauri and antother, 1970 Punjab Law Journal 402 and Shiv Lal v. Financial Commissioner, Haryana and others, 1980 P.L.J. 32.

8. A close examination of the order Annexure P. 5 however, shows that the submission of the learned counsel for the petitioner is devoid of any force. Respondent No. 1 has observed that the plea of long tenancy and nonejectability had indeed been taken in the written statement filed by respondent No. 3 before the Assistant Collector. It was, there or, incumbent on the Assistant Collector to have framed a specific issue whether or not the protection of nonejectability as provided in subsection (2) of section 7A of the Act, is available to the tenant. Since however, no specific issue in this regard was framed, the evidence on the point could not be led and this resulted in failure of justice. It cannot be disputed that this amounts to material irregularity in the exercise of jurisdiction by the Assistant Collector. To prove, that he has a prima facie case for protection under subsection (2) of section 7A of the Act, respondent No. 3 produced copies of the revenue record. These have not been received as additional evidence by the Financial Commissioner but only for the purpose of satisfying himself that the

above defence of respondent No. 3 raises a triable issue which ought to have been framed and adjudicated upon.

9. In view of the above discussion, I find that the order Annexure p. 5, passed by respondent No. 1, is lawful and does not suffer from any infirmity. There being thus no merit in this petition, the same is dismissed, leaving the parties to bear their own costs. The Assistant Collector, respondent No. 2 is directed to adjudicate and finally decide the ejectment application of the petitioner with six months from the date he commences proceedings on remand of the case to him in pursuance of the impugned order passed by respondent No. 1.