
(1986) 08 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1429 of 1979

Siri Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Security of Land Tenures Act, 1953 — Section 14A, 9
Punjab Tenancy Act, 1887 — Section 77(3)

Citation : (1987) 2 ILR (P&H) 32

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : Sunil Gaur, for the Appellant; Aman Dahiya, for the Respondent

Final Decision : Allowed

Judgement

Gokal Chand Mital, J.—On 5th August, 1975, Ram Phal and other landowners filed a suit against Siri Chand tenant for eviction and recovery of rent of Rs. 300 for the crops from Kharif 1972 to Rabi 1975 at the rate of Rs. 100 per year for the agricultural land measuring 11 Bighas 14 Biswas. The suit was filed u/s 77(3) of the Punjab Tenancy-Act, 1887 (for short "the 1887 Act"), before the Assistant Collector-1st Grade, Sonapat. On coming to know of the suit, the tenant immediately deposited the amount of Rs. 300,--vide Exhibit D4 on 27th November, 1975. But in the written statement he took a plea that he had paid rent from Kharif 1972 to Rabi 1974 and for Kharif 1974 and Rabi 1975 he had sent Rs. 100 by money order on 24th June, 1975 but the landowners refused to take the Money Order as they wanted to evict him. The Assistant Collector by order Annexure P 3 dated 1st April, 1976 ordered the eviction and also found that Rs. 300 were due and the deposited amount was ordered to be paid to them. The tenant's appeal to the Collector, further revision to the Commissioner and the Financial Commissioner remained unsuccessful and, thereafter, this petition under Article 226 of the Constitution of India was filed, to impugn those orders.

2. The Statutory authorities have found that the tenant had not paid rent from Kharif 1972 to Rabi 1974. However, it was found that the tenant had sent Rs. 100 by Money Order for the last two crops, but observed that there was no provision provided under the Act to send rent through Money Orders. It was also observed that the refusal on the part of the landowners to accept the Money Orders was not proved from Exhibits D1 to D3 as there was no note of refusal thereon,

3. The Learned Counsel appearing for the tenant has argued that the 1887 Act is over-ridden by the provisions of Section 9 read with Section 14-A of the Punjab Security of Land Tenures Act, 1953 (for short "the 1953 Act"), because of the following non-obstante clause:

Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject a tenant except when such tenant Section 9 provides the grounds on which ejectment can be sought and Section 14-A provides the procedure for seeking ejectment. Clause (ii) of Section 14-A of the Act permits a landowner to apply in writing to the Assistant Collector to recover arrears of rent from a tenant and on receipt of an application a notice in the prescribed form is to be sent to the tenant either to deposit the rent or to give proof of having paid it or of the fact of the landowner's refusal to receive the same or to give a receipt within the period specified in the notice. The form has been prescribed in the Rules and the relevant form for our purpose would be form "N". A reading of form "N" shows that the amount has to be deposited within a month of the receipt of notice unless tenant is able to prove that he has paid the rent or is able to prove that the landlord refused to receive the rent or gives a receipt for it. In the present case, since the suit was filed u/s 77(3) of the 1887 Act, and not under the 1953 Act, the procedure prescribed by Section 14-A(ii) of the 1953 Act was not followed nor notice in form "N" was given. In spite of not following the prescribed procedure the tenant did not take the risk and deposited Rs. 300 on 27th November, 1975, on coming to know of the suit. It is not disputed that in case notice in form "N" had been issued to Trim and he had deposited Rs. 300 within a month of the receipt of notice, order of ejectment could not be passed against him. For the failure to proceed in accordance with law, the tenant cannot be penalised and since he has deposited the amount of Rs. 300, no case for ejectment was made out and all the Statutory Authorities have gone beyond their jurisdiction in passing the order of ejectment under Section 77(3) of the 1887 Act and in remaining oblivious of the provisions of Section 14-A(ii) of the 1953 Act, and also form "N", in which notice had to be issued to the tenant. Because of this fundamental error in the procedure, which goes to the very root of the jurisdiction of the authorities concerned, as well as to the root of the controversy, the impugned orders cannot be sustained.

4. For the reasons recorded above, this petition is allowed with costs and the order of ejectment passed by the Statutory Authorities is hereby quashed. However, the order for payment of the deposited amount of Rs. 300 to the

landowners is hereby maintained. The amount must have been paid to the landowners and in case it is not paid, it may be paid to them now.