
(2000) 11 P&H CK 0251
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9119 of 1999

State of Haryana

APPELLANT

Vs

Commissioner, Hisar Division

RESPONDENT

Date of Decision : 01-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 — Section 5, 9

Citation : (2000) 11 P&H CK 0251

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. D.P. Singh, D.A.G, for the Appellant; Mr. Rajinder Chhokar, for the Respondent

Final Decision : Allowed

Judgement

K.S. Garewal, J.—This petition under Article 226 of the Constitution of India has been filed by the State of Haryana through Tehsildar, Tosham, impugning the order of the Commissioner, Hisar Division, dated July 18, 1997 (Annexure P-10).

2. One Smt. Pari owned 37 bighas 1 biswa of land in village Kairu (equivalent to 57 kanals 16 marlas post consolidation). She died issueless and without any heirs, which led to the land being escheated to the State and mutation in this respect was sanctioned on August 28, 1971. The Collector allotted the said land to Mahabir and Bhola vide order dated July 7, 1976. There was a term in the agreement which debarred Mahabir and Bhola from mortgaging or transferring or parting with the possession of the land or any part thereof till they became owners. However, Mahabir and Bhola parted with the possession of the above land in violation of the said term in 1977 when Chhotu respondent No. 2 came into possession of the land in Kharif 1977 in an unauthorised manner without any lease granted by the State. Consequently, the Collector cancelled the allotment vide order dated February 26, 1985. This order was challenged by Bhola and vide

order dated March 23, 1987 the Commissioner, Hisar Division, respondent No. 1 set aside the cancellation of allotment. The State of Haryana being aggrieved filed an appeal before the Financial Commissioner, who vide order dated April 6, 1994 set aside the Commissioner's order and restored that of the Collector. Thereupon, the State through Tehsildar filed an eviction petition under the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 against Chhotu-respondent No. 2, which petition was accepted on February 27, 1997. Chhotu filed an appeal before the Commissioner, Hisar Division, who accepted the appeal vide the impugned order dated July 18, 1997.

3. The order has been challenged on the ground that the Commissioner had erred in holding Chhotu to be a gair marusi tenant instead of an unauthorised occupant of the suit land. The Commissioner had also erred in ignoring the basic law of tenancy which could only be created by an agreement between the parties. Since the State had never entered into an agreement with Chhotu, therefore, he was not a tenant under the State and was an unauthorised occupant, who was liable to be evicted under the Act.

4. The petition was contested by Chhotu respondent No. 2 by filing a written statement to the effect that he and before him his father, was cultivating the suit land as gair marusi from Kharif 1977 and there was a finding to that effect by the learned Senior Subordinate Judge and District Judge. The findings of the Civil Court were binding on the revenue authorities, therefore the petition was not maintainable.

5. From the record it stands established that the land in question was nazool land and its allotment in favour of Mahabir and Bhola was on the basis of order dated July 7, 1996 passed by the Collector and in terms of the Nazool Land Transfer Rules, 1956. Both Mahabir and Bhola had executed separate agreements, which contained a term of the effect that as long as the ownership of the nazool land was not transferred to the allottees, they shall not sell, mortgage or otherwise transfer or part with the possession of whole or any part thereof except with the permission in writing of the State Government. The agreements are Annexures P-4A and P-4B. The Collector on February 26, 1985 found that the two allottees had in fact handed over the possession of their respective shares to Chhotu during Kharif 1977 and Chhotu remained in possession upto Rabi 1982 as per the report of the Tehsildar. The Collector referred to the civil suit decided by the Senior Sub Judge, Bhiwani entitled Chhotu v. Mahabir on July 20, 1979, wherein it was held that Chhotu was in possession of the land. Therefore, the Collector's view was reinforced by the fact that the transfer of possession had indeed taken place in favour of Chhotu and this was a violation of Clause IV of the agreement. The order of the Collector is Annexure P-5. Nevertheless, Bhola took up the matter before the Commissioner, who accepted the appeal vide order dated March 23, 1987 (copy Annexure P-6), but when the matter was taken up by the State before the Financial Commissioner, the order of the Commissioner was set aside and that of the Collector was restored vide order dated April 6, 1994 (copy

Annexure P-7).

6. Once the allotment in favour of the original allottees Mahabir and Bhola stood cancelled, the status of Chhotu respondent No. 2 became that of trespasser without any right to remain on the land. In fact, Mahabir and Bhola by transferring the possession to Chhotu had invited the cancellation of the allotment upon themselves. Since, the land reverted to the State, the status of Chhotu could not continue to be that of a tenant or a lessee in lawful occupation. Therefore, the learned Commissioner had erred in holding that Chhotu was not in unauthorised possession and that the Collector had no jurisdiction to evict him under the Act. The learned Commissioner relied upon the finding of the Civil Court, wherein Chhotu respondent No. 2 had been held to be a gair marusi tenant, but the Commissioner over-looked the fact that this finding was in a suit was between Chhotu and Mahabir and was clearly on the basis of a mistaken, view of the legal status of Mahabir, the original allottee of the nazool land. In fact, Mahabir by parting with possession had violated the terms of the allotment, which led to the cancellation of the allotment. Therefore, Chhotu was nothing but a trespasser on the land and could be evicted under the Act. Consequently, the order dated July 18, 1997 (Annexure P-10) deserves to be set aside and the order dated February 27, 1997 passed by the Collector Bhiwani (Annexure P-9) must necessarily be restored.

7. This petition is accepted and a writ in the nature of certiorari is hereby issued quashing the order dated July 18, 1999 (Annexure P-10). No costs.

8. Petition allowed.