
(2011) 07 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 12256, 12257 and 12258 of 1989 (O and M)

State of Punjab

APPELLANT

Vs

Commissioner, Ferozepur Division, Ferozepur and others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 5
Transfer of Property Act, 1882 — Section 106, 106(1), 108, 111, 117

Citation : (2012) 3 RCR(Civil) 401

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : K.S. Sivia, DAG Punjab, for the Appellant; M.L. Sarin with Ms. Atka Sarin, Advocate for the Respondent No. 3 in C. W.P. Nos. 12256 and 12257 of 1989 and Mr. Harinder Singh, Advocate for the Respondent No. 3 and 4 in C. W.P. No. 12258 of 1989, None for the Others, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan J.

I. The Subject of lis in writ petitions

1. All the writ petitions are at the instance of the State of Punjab against persons or their representatives who were erstwhile lessees to whom properties had been offered on lease for a specified period through the Manager, Government Seed Farm. Shorn of details relating to the respective properties that had been granted to each one of the private respondents in the three writ petitions, properties had been granted on lease for agriculture purpose on a stipulation that the lessee shall pay 1/3rd share of the produce. In C.W.P. No. 12256 of 1989, the lease was executed in favour of Sh. Balbir Singh on 30.01.1968 for a period of one year. In C.W.P. No. 12257 of 1989, the lease had been in favour of Sh. Ujagar Singh through a lease deed dated 1.5.1973 again for a period of one year. The original tenant had died on 25.7.1987 and his legal heirs namely respondent Nos. 3 to 11

had given the possession of the land leased to the original lessee. In C.W.P. No. 12258 of 1989, the lease had been in favour of Sh. Teja Singh by lease deed dated 15.3.1964 and after the death of Teja Singh, his legal heirs namely the widow and some came into possession of the property.

II. Raison d'être for dismissal by authorities below

In respect of these lease transactions, the petitioner had filed applications u/s 5 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as "Public Premises Act") before the Collector, Muktsar for recovery of possession on the ground that their respective possession had become unauthorized after the termination of the lease period. The applications were dismissed on 30.11.1982 holding that the tenants were not unauthorized but they had been paying rent subsequent to the lease period and therefore, they could not be evicted. These orders of the Collector had been the subject of appeal before Commissioner, Ferozepur Division, who dismissed the appeal again affirming that the receipt of rent from the tenants of 1 /3rd produce showed the continuance of lease and character of possession of property as not unauthorized. Even when the appeal was pending before the Commissioner, a fresh notice was issued by the land owner on 17.04.1983 demanding eviction and expressing the intention to resume land for personal cultivation from Kharif 1983. Since the appeals to the Commissioner were dismissed, the Government approached the Collector again for ejectment in the year 1987. The petitions were dismissed holding that after the dismissal of appeals by the commissioner, some other action must have been taken than petitions for eviction under PP Act. The appeals were dismissed subsequently holding that a 2nd petition was barred by res judicata. The orders passed by the Commissioner are the subject matter of challenge in the writ petitions.

III. Principle of res judicata wrongly applied

2. On the first issue of the maintainability of fresh petitions for ejectment, I have no doubt in my mind that the bar of res judicata was clearly wrongly applied. The application for ejectment was previously dismissed on the ground that the tenants were not in unauthorized and the payment of leases showed that there had been a continuation of lease and that they were tenants holding over. A subsequent eviction petition, when he rents were not any longer received could not be said to be barred. Even receipt of rents after the determination of the period originally stipulated in the agreements of lease without execution of fresh documents of lease would only show that they were tenants from year to year in respect of agricultural lands and therefore, an ejectment action beyond the period of one year when they did not collect the rent, could not have been termed as pursuit of eviction proceedings on the same cause of action. The principle of res judicata has no application when a fresh action for eviction is taken after notice. The action for eviction declaring the land owner's intention to assume direct cultivation through notices dated 17.04.1983 spelt out distinct causes of action and not affected by res judicata.

IV. Petition under PP Act for eviction constitutes lawful procedure

3. The Collector's dismissal of the petition that some other action must have taken is equally meaningless. The action of public authority to seek eviction against its erstwhile lessee after the completion of the notice period was perfectly competent. It must be remembered that by virtue of Section 117 of Transfer of Property Act, the provision relating to eviction contained in the Act are not applicable to tenancies for agricultural purposes. The principles laid down under the said Act, however, are applicable (See Ranga Iyengar Vs. Sivaswami Pandaram, A continuance in possession after the expiry of lease by efflux of time puts the possession of lessee as at sufferance, liable for ejectment in accordance with law. The petition under PP Act is in accordance with law and hence tenable.

V. Competence of petitions for eviction u/s 5 of Public Premises Act and the finality of orders passed under the PP Act remain the only issues for adjudication

4. All the petitions were filed u/s 5 of the Act. The contention in response by the tenants and their representatives were that Collector could not proceed to eject u/s 5(1) without issuing notice u/s 4 of the Act. Section 4 of the Public Premises Act sets out a procedure for setting out the reason for eviction of the person in possession and only after the issuance of notice and determining a status of person as unauthorized, it would be possible u/s 5 to take action for ejectment. A petition for eviction, straightaway u/s 5 does not fall within the scheme of the Act and the counsel for the respondent also refers to a judgment of this Court in Kartar Singh v. State of Punjab, in 2008(2) LAR 17 that held that action for ejectment u/s 5 without a notice u/s 4 was incompetent. Any such action would stand vitiated. Yet another objection found in the reply by the lessees is that the action of the authority under the PP Act is final u/s 10 and hence a fresh petition was not maintainable. In my view, these two objections alone remain for consideration, after the rejection of the defence that the petition under Public Premises Act was not maintainable or that the actions were barred by principles of res judicata.

(a) Continuance of possession of tenants or their representatives without any rent from 1984 is grossly against public interest.

5. The writ petitions had been instituted in the year 1989 and during all the period, the tenants or their representatives possession of property without paying any amounts. The continuance of proceedings before this Court without being taken up was a shot in the arm for each one of the respondents, who was possession. The Government, which was bitten once by its first application being spurned off on the ground that collection of rent amounted to continuance of possession under authority and impressing them with character of tenants, they became twice shy in not collecting the rents for all the period even when they were alleged to be some offers to make the payments at the instance of the respondents. In each one of the writ petitions, the extent of property is about 15 to 16 acres of land. The erstwhile tenants have been able to hold of possession

for 22 years without remitting any amounts to the State, which is a gross loss of revenue to the State. After making pretense of payments, the tenants had the fortune of having these offers to be turned down by Government. I had heard the cases on 15.3.2011 and reserved it for judgment. When I had noticed a situation of alleged offers by tenants and the refusals of rents to be received by the Government, I wanted to elicit further details about the extent of land respectively held by the tenants and the fair return by way of rent/damages that could be assessed from each set of holdings. In C.W.P. No. 12257 of 1989, Bhajan Singh son of Ujagar Singh stated that the property for about 108 Kanals of land was being held in equal shares by respondent Nos. 6 and 11 and the rent was being accepted by the landowner only upto 1984 and that after 1984, the Government had not accepted rent. The rent for the years 1984 to 1986-87 calculated at 1/3rd batai, comes to Rs. 22,938/- and if rents were to be worked at Rs. 80/- per acre per year from the year 1987 to 2011, the rent payable would be Rs. 27,000/-. In C.W.P. Nos. 12256 and 12257 of 1989, the extent of property as found in the agreement is 13-1/2 acres of agricultural land. As regards the C.W.P. No. 12258 of 1989, the extent of property is 202 kanals 06 marlas.

6. The Government itself has given short affidavits bringing out the average yield per acre in each year, the cost of the grains and the income that would have been earned and the value of the 1/3rd batai in the respective lands in the cultivation of the respondents. The Government has given a figure of Rs. 22,10,468.14 as the amount recoverable from the lessee in C.W.P. No. 12256 of 1989. It is also further urged that the average rent payable per acre in the vicinity presently is Rs. 29,651/- per year. As regards C.W.P. No. 12257 of 1989, the Government has given a figure of Rs. 17,44,128.80 as the amount recoverable from the lessee and has further stated that the average rent payable per acre in the vicinity presently is Rs. 29,651/- per year. As regards the C.W.P. No. 12258 of 1989, the Government has given a figure of Rs. 35,07,546.18 as the amount recoverable from the lessee and has further stated that the average rent payable per acre in the vicinity presently is Rs. 20,550/- per year. If the cases must be seen from the context of the nature of holding of the tenants after the expiry of the period of lease, it would admit of no doubt that all the tenants are in unauthorized occupation after the expiry of the lease period. (b) Notice issued already is reasonable and will be deemed to comply with the requirements of section 4 of PP Act

7. Even the Government cannot take possession of property except in due process of law and the eviction actions could proceed only after first serving notice u/s 4 and following it up with further action, for eviction u/s 5. We have already seen that principles of law laid down in the chapter relating to eviction under the TP Act are applicable for termination of leases and ejectment actions in respect of agricultural leases also. In relation to actions for eviction, provisions of the Transfer of Property Act, 1882 are applicable on the grounds of justice, equity and good conscience (Katragadda Brahmayya, minor by mother and guardian Katragadda Jagadamba and Others Vs. Katragadda Balatripura

Sundaramma and Others, . It is enough if the notice is reasonable (Kodali Bapayya and Others Vs. Yadavalli Venkataratnam and Others, The provisions relating to the exclusion of the day on which the terms of the lease were to commence are also applicable to agricultural leases. The rights and duties enumerated u/s 108 of the Transfer of Property Act 1882 have also been applied to agricultural leases (Vasudevan Nambudripad v. Valia Chathu Achan, (1990) ILR 24 Mad 47 (FB); Kandoth Chathoth Kunhi Raman Nambiar Vs. Cheriyananthot Aniyath Elambilam Kunhi Kannan Nambiar and Others, The provisions relating to termination of lease under the various circumstances as detailed u/s 111 of the Transfer of Property Act 1882 have also been applied in some cases (Bridget Souza Bai Vs. Maria Louis Bai and Others, AIR 1944 229 (Nagpur)

8. In C.W.P. No. 12256 of 1989 and other connected petition, notices have been sent on the same day on 31.03.1983 to each one of the tenants or their representatives, which read as follows:-

The above land which you are cultivating now the Deptt. Of Agriculture wants to cultivate itself from Kharif 1983. Therefore, you are directed to hand over the possession of the vacant land immediately and under crops after reaping the harvest, to the incharge of the officer of the Agriculture Deptt. incharge of the Govt. Seed Farm Aspal. If you interfere in the possession of the land after 1st of May 1983 you shall be treated as an offender. If you fail to do so you shall be proceeded against for taking possession in accordance with law and you shall be responsible for all the consequences and expenses incurred therefore.

Even as regards the principle of Transfer of Property Act that is applicable, what is necessary is that the notice given is reasonable. In Siri Ram Vs. Pritam Singh, , the Himachal Pradesh High Court was considering the issue of applicability of Transfer of Property Act to agricultural tenancies where it held that "there can be no dispute that the Transfer of Property Act has not been applied as such to the territory of erstwhile State of Punjab and the Courts confined themselves to applying the principles embodied therein, in so far as they can be said to be founded for justice, equity and good conscience". In yet another judgment in Chiranjit Lai v. Narain Singh AIR 1972 P&H 432 and an earlier judgment of Full Bench in Bhaiya Ram Hargo Lal Vs. Mahavir Prasad Murari Lal Mahajan, , this Court has held that the provisions of Section 106 of Transfer of Property Act were not applicable to the State of Punjab and 15 days notice was the minimum reasonable period for such notice. It was further held that such notice need not necessarily terminate strictly with the end of month of tenancy. Section 106 of Transfer of Property Act itself undergone a change in bringing out an amendment through Act 3 of 2003. Section 106(1) and (3) are alone relevant for our purpose:

Section 106. Duration of certain leases in absence of written contract or local usage. (1) In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor

or lessee, by six months" notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice expiring with the end of a month of the tenancy. Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

(2) xxx

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

9. If the principle of Transfer of Property Act were to be understood as requiring a notice, which is reasonable, it would be seen that notices issued by the Government to the lessees are sufficient to put them on guard that their respective possession was at sufferance of the landowner and the State as a landowner had a clearly expressed intention to resume the property for its own cultivation. Even for any reason, it must be understood that the principle of the Transfer of Property Act could be understood as even requiring at least a year's notice for terminating agricultural tenancies, it can still be seen that by virtue of sub-clause 3 of Section 106, the shortfall in the period as mentioned in the respective notices is made" up by the facts that the actual institution of the petitions before the appropriate authority u/s 5 of the PP Act was made more than a year later. The sub-clause (3) has retrospectivity in the sense that it is applicable to cases where the notices had been issued prior to the coming to the force of the Act but the proceedings were stilt pending where the issue of notice was a point for consideration. The challenge to the provision itself was put to test before the Bombay High Court in Allahabad Bank v. Prakash Shankar Wagh, AIR 2006 Bombay 321 where it held "the legislature has considered it appropriate in its wisdom to expand the application of the amended provisions of situation where adjudication has not been concluded on the validity of a notice of termination u/s 106 of the Transfer of Property Act. There is nothing arbitrary or ultra vires therein." I, therefore, hold that the action taken u/s 5 of the PP Act was perfectly tenable. Even the objection that no proper notice was issued u/s 4 will have no meaning, for the contents of notice extracted above secures sufficient information that is necessary for the notice mandated u/s 4 of the PP Act. The petition is, therefore, perfectly tenable.

(c) Finality to decisions taken by authorities under PP Act

10. The finality to decisions u/s 10 of PP Act must be held to be confined to actions taken on the same cause of action. If the petitions for eviction are

dismissed earlier on the ground that the possession of the tenants was not unauthorized, but the subsequent evictions came to be filed after issuance of notices and when the landowner had declined to receive rents, the applicability of section 10 simply does not arise. There cannot be a situation that the landowner forfeits his right to obtain eviction for all times to come by the only fact that an earlier action came to naught by a different legal incident, such as receipt of rents. By subsequent conduct of clear intention of terminating the jural relationship, when fresh petitions were filed, there was no longer the bar to secure evictions.

VI. Payment of reasonable amounts as mesne profits shall be condition precedent to contest the lawful claims of the State

11. Even at the time of final hearing, I asked the Senior Counsel, Mr. Sarin appearing for the respondents what they would be willing to pay. Beyond stating that the tenants will be willing to give @Rs. 80/- per acre i.e. at the same rate at which it was given nearly 3 decades back, they were not prepared to joint issues on the submissions made by the Government elaborately setting out the average yield per acre for every year and the value of the yield. The registry has brought to my notice that after the case was reserved for judgments, the respondents have filed a petition to receive their statements that for some years the lands were waterlogged due to floods and they could not realize the incomes as suggested in the affidavits filed on behalf of the State. Without a full-fledged enquiry on the respective contentions relating to the income, it shall not become possible for to call upon the tenants to pay the amounts calculated in the affidavits given by the Government. If the dispensation must meet with public interest and to give no leverage to squatters on the property for their own personal benefit, then it is imperative that the tenants are allowed to contest proceedings only if they pay upfront some reasonable amount as determined by the Government in the manner set forth in the petition. I have already culled out the details which the Government has given by way of affidavit will all appendices in the above writ petitions. A procedure like this was followed by the Bombay High Court, which was affirmed by the Hon''ble Supreme Court in *Shangrila Food Products Ltd. and anr. v. Life Insurance Corporation of India and another*, 1996(2) R.CR.(Rent) 221:1996SCC(S) 54. In that case, property belonged to the Life Insurance Corporation has been leased out to M/s. Interseas Corporation. There had been sub leases of the property to others, one of whom was the appellant M/s. Shangrita Food Products Ltd. When legal proceedings were initiated by the Life Insurance Corporation against the Shangrita Food Products Ltd. under the provisions of the Public Premises Act, the Estate Officer held the possession of the appellant company as in unauthorized occupation and passed an order of ejectment and also assessed damages. The High Court found that the proceedings have not been properly done and found that there was a scope for a remand for proper adjudication. However, the question remained as to how the persons, who had been in possession of the property could be made to do equity before claiming any equity on protection of its possession. The

Hon"ble Supreme Court held while upholding the decision of the High Court as under:-

It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priority, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief....

We cannot be oblivious to the fact that when the occupation of the premises in question was a factor in continuation the liability to pay for the use and occupation thereof, be it in the form of rent or damages, was also a continuing factor. The cause of justice, as viewed by the High Court, did clearly warrant that both these questions be viewed inter-dependently. For those who seek equity must bow to equity.

Except that the tenants are not writ petitioners themselves in this case, the principle of element of fair play shall dictate that the tenants pay what is reasonable, even before a full fledged contest on the actual mesne profits payable is determined.

VII. Disposition

12. In the result, I hold that all the writ petitions shall be allowed and the impugned orders passed by the authorities under the PP Act are quashed. There shall be an order of ejectment against the respective lessees in each one of the cases. The writ petitions do not still conclude the proceedings taken under the Public Premises Act and they conclude only the issue of ejectment. The Public Premises Act itself makes provision for determination of mesne profits. The affidavits give the details of the crops and their respective value and they shall be treated as evidence before the authority and erstwhile lessees shall have a right to adduce their own evidence, including the contentions raised that the lands were waterlogged and adequate incomes were not raised. The enquiry shall be summary and shall conclude within a period of three months from the date of receipt of the records. The registry is directed to despatch all the records immediately to the Collector, Muktsar. At the time when the arguments were in progress, learned Senior Counsel appearing on behalf of the petitioners in C.W.P. No. 12256 and 12257 of 1989 offered to pay Rs. 80/-per acre as stated originally in the agreements. In my view, it is grossly low in the present prevailing market rates. However, the respondents shall be permitted to contest and join enquiry as regarding the determination of mesne profits only if twice the amounts of what are specified in agreements executed three decades back are laid down by the lessees respectively. It could still be noticed that these amounts do not count for

even 1%. of the amounts brought through elaborate documentary evidence by the State. These amounts at twice the amounts found in the agreements shall be paid for all the years when the case was pending and since when the lessees have not paid lease to the Government. There could be still no bar of limitation for claims upto 30 years prior to the filing of the petitions and for the years when the proceedings are still pending. It has been held in *Gajjan Singh v. State of Punjab*, 1998(1) PLJ 441, 1997(2) RCR (Civil) 702 that the period of limitation for the claims of the State under Public Premises Act is 30 years. The amounts shall be tendered within a period of four weeks from the date of receipt of copy of this order to the Government before the Collector. If the amounts are not deposited, the Collector shall be at liberty to conclude the assessment regarding mesne profits on the basis of records available and produced before this Court and recover the same in accordance with law.

13. The writ petitions are allowed as above. The parties shall appear before the Collector, Muktsar on 08.08.2011 for enquiry regarding mesne profits.