
(2011) 07 P&H CK 0089
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13296 of 2011

Surjan

APPELLANT

Vs

Financial Commissioner, Revenue, Haryana and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 2(2), 2(9), 9

Citation : (2012) 1 ILR (P&H) 891 : (2011) 164 PLR 534

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—Private respondents herein filed a petition u/s 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act) on Form K-1 for ejectment of the petitioner from the land in dispute, inter-alia, on the ground that the private respondents are small landowner and need the land for self cultivation.

2. Their petition was dismissed by the Assistant Collector First Grade, on 19.01.2004 holding that private respondents (petitioners therein) are residing at Delhi and it is not possible for them to cultivate the suit land. Order of the learned Assistant Collector was confirmed by the District Collector and Commissioner, Gurgaon, however, learned Financial Commissioner vide impugned order dated 04.03.2011 has directed the ejectment of the petitioner from the suit land. Learned Financial Commissioner in the order impugned has observed that private respondents herein are the small landowners; Ejectment cannot be refused on the ground that small landowners are residing at Delhi to earn their livelihood.

3. Learned counsel for the petitioner has vehemently argued that u/s 9 of the Act, small landowner, who intends to cultivate the land himself, can only eject the tenant and landowner who is not doing cultivation himself cannot evict the tenant. Section 9 of the Act reads as under:-

9. Liability of tenant to be ejected- (1) Notwithstanding anything contained in any other law for the time being in force, no land-owner other than a land-owner who is a member of the Armed Forces of the Union or a Non-Resident Indian shall be competent to eject a tenant except when such tenant -

(i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner; (or)

(ii) fails to pay rent regularly without sufficient cause; (or)

(iii) is in arrears of rent at the commencement of this Act; (or)

(iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situate; (or)

(v) has used, or uses, the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it; (or)

(vi) has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part; (or)

(vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application Explanation - For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent.

(2) Notwithstanding anything contained herein before a tenant shall also be liable to be ejected from any area which he holds in any capacity Whatever in excess of the permissible area:

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option only if the area of his tenancy under the land-owner concerned is in excess of the area from which he can be ejected by the said land-owner.

Provided further that if the tenant holds land of several land-owners and more than one land-owner seeks his ejectment, the right to ejectment shall be exercised in the order in which the applications have been made or suits have been filed by the land-owners concerned, and in case of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest land-owner.

Explanation - where a tenant holds land jointly with other tenants, only his share in the joint tenancy shall be taken into account in computing the area held by him.

4. From the perusal of Section 9(1) of the Act, a tenant of a small land-owner can be evicted by the small land-owner. Section 9 nowhere contemplates that before eviction of the tenant, small land-owner is to prove that he needs the land for self cultivation. Not only this, word "small land-owner" is defined u/s 2(2) and "self cultivation" is defined u/s 2(9) of the Act as under:-

2(2) "Small land-owner" means a land-owner whose entire land in the State of Punjab does not exceed the "permissible area".

2(9) "Self-cultivation" means cultivation by a land-owner either personally or through his wife or children, or through such of his relations as may be prescribed, or under his supervision.

5. From the combined reading of Section 2(2) and Section 2(9) of the Act, it can safely be said that landowner whose entire land in the State does not exceed the permissible area shall be small land-owner. Self- cultivation means cultivation by a land-owner either personally or through his wife or children or through his relative or under his supervision. If land-owner intends to cultivate the land under his supervision by his employees then of course, it would amount to self cultivation. Merely because small landowner is not residing in the village and for his livelihood has started living in the city, does not lose the character of the small land-owner. As discussed above, Section 9 of the Act contemplates that land-owner should be a small landowner to evict the petitioner. As per Section 9 of the Act, there is no need to prove that he himself intends to cultivate. If small landowner intends to get the land cultivated under his supervision, then also it would amount to self-cultivation.

6. I find no illegality in the impugned order passed by the learned Financial Commissioner.