

(2008) 08 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2054 of 1987

Union of India

APPELLANT

Vs

Surjit Singh

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2009) 1 ILR (P&H) 242 : (2009) 5 RCR(Civil) 909 : (2009) 1 RCR(Rent) 126

Hon'ble Judges : Ajay Tewari, J

Advocate : Mr. Kamal Sehgal, Advocate. None., Advocates for appearing Parties

Judgement

Ajay Tewari, J.—This petition has been filed challenging the order dated 22.11.86 whereby the Appellate Authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the Act"), allowed the appeal filed by respondents No.1 and 2 against the order dated 18.11.85 passed by the Defence Estate Officer, Jalandhar Circle, Jalandhar Cantt, ordering the eviction of the said respondents under the Act.

2. A lease of defence land measuring 7.39 acres in Jalandhar Cantt was granted to the father of respondents No.1 and 2 for a period of five years on 1.6.58 to 31.5.63. From time to time its lessee had handed over certain portion of the said land to the petitioners on their demand and the lease was also extended from time to time. Admittedly the lease was not extended beyond 31.5.1975 even though the respondents continued in possession. Ultimately by letter dated 10.5.83 the respondents were asked to hand over vacant possession of the land. Subsequently by letter dated 6.4.84 they were asked to deposit a sum of Rs.7500/ as damages from 1.6.1975 to 31.5.1983. A notice under Section 4 (1) of the Act was issued to the respondents on 22.4.1985 and later in due course order of eviction was passed against them on 18.11.1985. Against the said order the respondents filed appeal which was allowed by the impugned order.

3. Sh. Kamal Sehgal, attacking the Appellate order, urged that the learned Appellate Court fell into error in holding that the petitioners had continued

accepting the rent from the respondents No.1 and 2 and that the fact that they had surrendered a portion of the land after the expiry of the original lease period on the asking of the petitioner showed that qua the rest of the land the lease stood renewed, As per Mr. Sehgal, the demand for and the acceptance of damages could not give rise to the inference that rent was being accepted. He has relied upon the case of Jafar Saddique and others v. DDA reported as 2003(2) RCR 381 whereby the Delhi High Court held as follows:

?The payment of damages itself under the PP Act cannot create a right in favour of the petitioner as it only implies that the petitioner is in unauthorised occupation of the land for which he is being charged. It has been held so in the case of Aisha Jalal (supra).?

4. In my opinion the above mentioned judgment clearly negatives the finding that the acceptance of money would necessarily imply that rent was being accepted and not damages.

5. The second finding is that by demanding surrender of a portion of the land it would be held that the lease had been renewed for the remaining land. In my opinion this finding is clearly wrong. The lease could be created only in the name of the President of India by the competent authority and had to be for a specified period and at a specified rent. The same would not be created by implication as has been sought to be held by the Appellate Authority. No lease having been created after 1975, the respondents were clearly in unauthorised occupation. In this regard a Division Bench of this Court in Tej Kaur v. Union of India and others reported as 2003(3) RCR (Civil) 129, held as follows:

?The Estate Officer thereafter discusses the definition of the expression "unauthorised occupation" as contained under Section 2(g) of the Public Premises Act. It has been held that the aforesaid expression is in two parts. The first part relates to the occupation by any person of the public premises without authority for such occupation. It implies and includes occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. It has been further held that the second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In our view, the case of the petitioners squarely falls within the aforesaid definition. Undoubtedly, the lease by virtue of which the petitioners were in occupation of the land stood determined with effect from 31.5.1979. The request for future renewal of the lease was turned down by the competent authority on 29.8.1995. The petitioners have clearly been in an unauthorised occupation of the public premises.?

It would be noticed that in the present case also the predecessor in interest of respondents No.1 and 2 had applied for further extension of lease beyond 31.5.1975 but the Station Head Quarters refused to issue No Objection

Certificate on the ground that the land was required for the construction of accommodation for various units in the station. The aforementioned judgment also thus covers the present case.

6. In the circumstances, this writ petition is allowed. The judgment of the Appellate Authority dated 22.11.86 is set aside. The order of the Estate Officer dated 18.11.85 directing the eviction of respondents No. 1 and 2 is upheld. No order as to costs.