

## Harjeet Kaur Vs State Of Haryana And Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 21, 2020

**Acts Referred:** Haryana Urban (Control Of Rent And Eviction) Act, 1973 " Section 12, 13  
Constitution Of India, 1950 " Article 226, 227

**Hon'ble Judges:** Manjari Nehru Kaul, J

**Bench:** Single Bench

**Advocate:** Nikhil Chopra, Sumit Gupta, Pankaj Bali

**Final Decision:** Disposed Of

### Judgement

Manjari Nehru Kaul, J

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The petitioner has approached this Court under Articles 226/227 of the Constitution of India, seeking a writ of Certiorari, for quashing of the impugned

order dated 16th May, 2020 (Annexure P-15), whereby, respondent No.3 had ordered the ejection of the petitioner from House No. 325, Sector 14,

Urban Estate Karnal. Further, petitioner has also prayed for a writ of Mandamus, for directing the respondents to restore the possession of the

petitioner over the house in question. Besides above, certain other prayers have also been made.

The case of the petitioner in a nutshell is that she is a 53 years old widow. She had been residing in House No. 325, Sector 14, Urban Estate, Karnal

(hereinafter referred to as 'house in question'), as a tenant since the year 2005-06, after taking the house in question on rent from Smt. Bhago Devi,

mother of Bishambar Dass (respondent No.7), for which she had been regularly paying rent to the respondent landlord. After the death of her

husband in a motor vehicular accident in the year 1995, she was compelled to sell off her husband's house due to financial constraints and she also

filed a claim before the Motor Accident Claims Tribunal, for which she was awarded and received compensation of ` 25.00 lakhs in the year 2016.

Her son, who is based in U.K. has also been financially supporting the petitioner. Respondent No.7 - landlord was well aware of the above facts and

hence he offered to sell the house in question to the petitioner by telling her that she could make the payment towards purchase of the house as per

her convenience. The petitioner accepted the offer to purchase the house in question and started gradually making payment to respondent No.7. Over

a period of time, she paid ` 40.00 lakhs and requested the respondent landlord to transfer the house in her name as already settled between them.

However, respondent No.7 refused to do the needful. Rather, an application was moved against her by respondent No.7 alleging therein that she had

not been paying the rent to them and went ahead and got the electricity disconnected in the house in question. Respondent No.7 thereafter tried to

forcibly dispossess the petitioner from the house in question with the help of unknown persons. In this background, left with no other choice, the

petitioner filed a civil suit for permanent injunction against respondents No. 7 & 8 (Annexure P-2). Respondents No.7 & 8 filed their written statement

in the said suit (Annexure P-4). Liberty was granted to the petitioner by the Civil Court concerned to apply for a new electricity connection in her

name as a tenant of the suit property. In the meanwhile, respondent No.7 also filed a petition under Sections 12 & 13 of the Haryana Urban (Control

of Rent & Eviction) Act, 1973 (Annexure P-5), for the ejectment of the petitioner from the house in question. The petitioner appeared before the Rent

Controller in the aforementioned petition and filed her written statement (Annexure P-6). Despite the civil proceedings pending between the parties,

the respondents continued to extend threats to the petitioner to vacate the house in question or else face dire consequences, for which she repeatedly

made representations to respondent No.5 - Superintendent of Police, Karnal, for the protection of her life and liberty and for taking action against the

landlord-respondents, but in vain. On 05.03.2020 an attempt to dispossess the petitioner from the house in question was made by the private

respondents, wherein, the petitioner was manhandled and threatened to be killed. Even though the police authorities were duly informed about the

occurrence, instead of coming to the rescue of the petitioner, they started pressurizing her to compromise the matter with the private respondents and

vacate the premises. As if that was not enough, on 09.03.2020, the private respondents along with some persons again forcibly entered the house in

question, where she had been residing all alone, after breaking the lock and threatened her that in case she refused to vacate the premises, she would

be killed (In support of her allegations, photographs Annexures P-10 & P-11 have been annexed with the instant petition). The petitioner yet again

approached the police authorities for taking appropriate action against the private respondents and others for trespassing into the house, but the police

again pressurized her to enter into a compromise with the private respondents. Left with no other choice, the petitioner filed CRM-M-10848-2020 in

this Court for the protection of her life and liberty. This Court vide order dated 19th March, 2020 (Annexure P-12), directed the respondent State to

look into the alleged threat and thereafter, the case was adjourned to 31.03.2020. However, due to the lockdown imposed on account of outbreak of

pandemic COVID-19, the case was adjourned to 01.07.2020. Meanwhile, the respondent landlord submitted a complaint to respondent No.2 &," Deputy Commissioner, Karnal,

to register a case against the petitioner for being in unauthorized possession of his house and not

paying the rent to him regularly. Respondent No.2 &," Deputy Commissioner, Karnal, directed the SDO(C) to conduct an inquiry into the matter and

to submit his report within three days. The petitioner was called by the SDO(C) and she filed a detailed reply (Annexure P-14), wherein, she

mentioned about the pendency of civil and rent proceedings between the parties. However, despite the petitioner having brought all these facts to the

the notice of SDO(C), respondent No.2 &," Deputy Commissioner, Karnal passed the impugned order dated 16.05.2020 (Annexure P-15), vide which

respondent No.3 &," Tehsildar, was directed in his capacity as Duty Magistrate to get the house in question vacated from the petitioner.

Learned counsel for the petitioner has vehemently contended that the impugned order has been passed in utter violation of the principle of natural

justice. Neither was any notice nor any intimation given to the petitioner prior to the action taken pursuant to the impugned order dated 16.05.2020

(Annexure P-15), which on the face of it, is patently illegal. The mala fides on the part of the official respondents is writ large as the impugned order

was passed and also executed on a Saturday, which was a holiday. The belongings and other articles of the petitioner were thrown out of her house,

as a result of which she had to take shelter in a relative's house. Moreover, she could not even resort to any legal remedy, on account of the conditions

prevailing due to COVID-19. Learned counsel while making his submissions, has referred to some of the photographs annexed with the present

petition as Annexure P-16, which reflect the inhuman behaviour of the respondents, wherein, all the personal belongings along with other articles of

the petitioner are shown strewn in the open on the roadside. The learned counsel while drawing the attention of this Court to the complaint (Annexure

P-13) made to respondent No.2 - Deputy Commissioner, Karnal, has submitted that respondent No.2 - Deputy Commissioner, Karnal, went much

beyond his jurisdiction and power, as in the said complaint only a request had been made to respondent No.2 to register a case against the petitioner,

however, respondent No.2 - Deputy Commissioner, Karnal, instead ordered her eviction from the house in question despite the fact that it was well

within his knowledge that the matter was subjudice before a Civil Court and there were litigations pending between the parties. The learned counsel

has further urged that the mala fides on the part of respondent No.2 - Deputy Commissioner, Karnal, are clearly discernible from the fact that it was

he himself, who had passed an order dated 31st March, 2020 (Annexure P-18), wherein, it had been directed that as per the directions issued by

Chairperson, National Executive Committee, Govt. of India, Ministry of Home Affairs, New Delhi, no landlord would forcibly evict his tenant during

the lockdown period. Hence, the impugned order was not only, illegal, but also violative of the order dated 31.03.2020 (Annexure P-18), in which

punishment of 2 years of imprisonment was prescribed for its violation under the National Disaster Management Act.

A short reply by way of an affidavit of respondent No.2 "Deputy Commissioner, Karnal, on behalf of respondents No.1 to 3 was filed. It would be

apposite to reproduce para Nos. 4, 5 & 6 of the said reply:-

4. That it is submitted that since respondents No.7 & 8 are retired from a dignified Govt. Services, their only son has been died and they were

struggling for getting possession of their own house for last one year in such an old age of 80 years. Therefore, they got social support from the public

in this respect and agitations were being carried out by them with social elements from the day they moved application (Annexure P/13) before the

deponent for taking possession of the house in question. Due to such agitations, situation of law & order were being faced by the administration during

Covid-19 and routine work of Civil Courts was also suspended from the last two months. Therefore, to maintain law and order situation and to contain

the possibility of spreading of infection of Covid-19 among the people, and considering the fact came in the report of Sub Divisional Officer (C),

Karnal that petitioner wants to occupy the house in question melefidelity, deponent passed the orders dated 16.05.2020 (annexure P-15) in the interest

of justice bonafidely. Photographs of agitation are annexed herewith as Annexure R-2 to R-4 for kind perusal of this Hon'ble Court.

5. That it is pertinent to mention here that there was no malafide intention on the part of the deponent while passing the impugned order and the same

has not been passed under the Senior Citizen Act but purely in administrative capacity therefore, the authority relied upon by the counsel for the

petitioner is not applicable to the facts of the present case.

6. That the present petition is misconceived of facts and liable to be dismissed because there is no lapse on the part of the deponent which could be

presumed as biased, arbitrary, illegal or violation of fundamental/legal rights of the petitioner, rather the deponent has discharged his official duty with

due diligence. Therefore, present petition is liable to be dismissed on this score alone.

I have heard learned counsel for the parties and perused the material on record.

In the affidavit filed by respondent No.2 - Deputy Commissioner, Karnal, it has been unabashedly stated that there was no lapse on his part, which

could be termed or presumed as being arbitrary, illegal or violative of the fundamental and legal rights of the petitioner. Neither the affidavit filed by

respondent No.2 nor the impugned order disclose under what provisions of law it had been passed and the learned State counsel too has not been able

to refer to any provisions of law under which the impugned order was passed.

The learned State counsel has urged that the impugned order was not passed with any mala fide intent, much less, any bias, however, he has

miserably failed to satisfy this Court qua the legality of the impugned order passed by respondent No.2 - Deputy Commissioner, Karnal. On a query

put to the learned State counsel, he has conceded that once the Civil Court and the Rent Controller were seized of the matter, an application for

eviction before respondent No.2 "Deputy Commissioner, Karnal, was not maintainable and respondent No.2 - Deputy Commissioner, Karnal, could

not have ordered the eviction of the petitioner.

Moreover, in the case in hand, strangely the respondent landlord approached respondent No.2 "Deputy Commissioner, Karnal, only with a

complaint to register a case against the petitioner for being in unauthorized possession of the house in question and irregular payment of rent.

However, the latter in his over enthusiasm and presumably in an effort to please the private respondents, who as per his affidavit is a retiree from a

dignified Government service" ordered an inquiry and thereafter, in a tearing hurry ordered the eviction as well, of the petitioner from the house in

question, despite being well aware and conscious that civil as well as rent proceedings between the parties were pending before the courts concerned.

The action of respondent No.2 - Deputy Commissioner, Karnal, is illegal void ab initio. I am afraid and also constrained to observe that respondent

No.2 "Deputy Commissioner, Karnal, has exhibited total immaturity and ignorance of the basic provisions of law while passing the impugned order.

Respondent No.2 - Deputy Commissioner, Karnal, had no business to enter into a landlord "tenant dispute, which was subjudice before the Civil

Court. Respondent No.2 - Deputy Commissioner, Karnal, would be well advised to be more circumspect in future.

Accordingly, the impugned order dated 16.05.2020 (Annexure P-15) is set aside and it is ordered that the possession of the house in question i.e.

House No. 325, Sector 14, Urban Estate, Karnal, be restored to the petitioner forthwith on or before 01.08.2020. Respondent No.5 "Superintendent

of Police, Karnal, is directed to ensure that the process of handing back the possession of the house in question to the petitioner is smooth and without

any hurdle. Respondent No.5 " Superintendent of Police, Karnal, shall be free to use such reasonable force as may be warranted under the

circumstances.

Coming to the prayer for compensating the petitioner for the losses incurred, she is at liberty to avail of any legal remedy as may be available to her.

Before parting with the matter, it must be emphasized that rule of law is alive in this country and official machinery cannot be permitted to be used for

oppression. However, whatever has been observed hereinabove would not be construed as an expression of opinion on the merits of the cases

pending between the parties before the Civil Court and the Rent Controller.

A copy of this order be communicated without any delay to the authorities concerned including respondent No.5 " Superintendent of Police, Karnal,

for immediate and necessary compliance. Disposed off in the above terms.