
Ashwani Kumar Vs State of Punjab and Others

Civil Writ Petition No. 14547 of 2001

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 1, 2002

Acts Referred:

Limitation Act, 1963 " Article 137#Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 " Section 5(2)

Citation: (2003) 135 PLR 235 : (2003) 3 RCR(Civil) 76

Hon'ble Judges: V.K. Bali, J; Satish Kumar Mittal, J

Bench: Division Bench

Advocate: Sanjay Majithia and S.C. Pathela and Mansoor Ali, A.A.G. for appearing Parties, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Bali, J.

Limitation is pleaded as a bar for putting the rightful owner, i.e.. Improvement Trust. Pathankot, fourth respondent herein,

pursuant to an order of eviction passed against the predecessor-in-interest of petitioners and pro-forma respondents dated 17.9.1982. Is the plea

of limitation in putting the rightful owner in possession in execution of warrant of possession justified, is the only question that needs determination in

the present petition.

2. Brief facts, as projected in the petition reveal that Gurdas Mal, predecessor-in-interest of petitioner and proforma respondents 5 to 11 was in

possession of land measuring 16 kanals 17 inarlas situated in the revenue estate of Pathankot. The fourth respondent filed an eviction application

against said Gurdas Mal u/s 5 of the Punjab Public Premises (Eviction and Rent Recover) Act, 1973 (here-in-after referred to as the "Act of

1973"). The Collector, Gurdaspur, respondent No. 3 herein ordered eviction of Gurdas Mal vide orders dated 17.9.1982. Appeal filed by

Gurdas Mal before the Commissioner, Jalandhar Division. Jalandhar, was dismissed on 10.2.1986. It is the case of petitioner that fourth

respondent, for the first time, filed an execution application on 25.8.1993 before Collector. Gurdaspur, to which objections were filed by Gurdas

Mal on 16.12.1993. Vide orders dated 25.4.1997 execution application filed by the fourth respondent was dismissed in default. The fourth

respondent filed an application for restoration of the execution application which was restored vide order dated 1.10.1997. Respondent No. 3

dismissed the execution application 22.9.1999 on the ground that the same is barred by time. Constrained, fourth respondent filed an appeal

before the learned Commissioner, Jalandhar Division, Jalandhar, alongwith an application for condonation of delay. During the pendency of the

said appeal, Gurdas Mal expired on 4.3.2001 and petitioner and proforma respondents were brought on record as his legal heirs. Vide order,

dated 14.8.2001 respondent No. 2 allowed the appeal. It is this order dated 14.8.2001 which has been challenged in the present petition on the

sole ground that execution of the order dated 17.9.1982 would be barred by provisions contained in Article 137 of the Limitation Act which

would be applicable in the instant case and which in turn provides limitation for a period of three years only.

3. In response to notice issued by this Court, fourth respondent has filed reply wherein it has, inter-alia, been pleaded that Gurdas Mal was

unauthorised occupant of the public premises and the learned Collector vide order dated 17.9.1982 ordered his eviction from the land in dispute.

The order of Collector was upheld by this Court. The Collector, Gurdaspur, vide order dated 13.11.1985 issued warrant of possession of land in

dispute in favour of the Improvement Trust which order was challenged by Gurdas Mal before the Commissioner, Jalandhar Division, Jalandhar,

who vide order dated 10.2.1986 dismissed the appeal and ordered implementation of warrant of possession against Gurdas Mal. It is the case of

respondent-Improvement Trust that from orders dated 13.11.1985 and 10.2.1986 passed by the Collector and Commissioner respectively, it

would be clear that execution proceedings pertaining to order dated 17.9.1982 had been initiated prior to 13.11.1985. i.e.. within less than three

years. It is then pleaded that in view of the provisions contained in Section 5(2) of the Act of 1973, the Collector was authorised to take

possession of the public property in the event of failure of the order having been complied with by the person in unauthorised occupation. Thus,

even in the absence of any execution application. Collector was competent to take possession of the land in dispute and deliver the same to the

Improvement Trust.

4. Mr. Majithia. learned counsel for the petitioner vehemently contends that provisions contained in Article 137 of the Limitation Act would be

applicable to an application for executing the warrant of possession and inasmuch as, application for execution of order of eviction was filed far

beyond three years, same has to be held as barred by limitation. In support of the contention aforesaid, reliance has been placed on The Kerala

State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , Hari Narain and Others Vs. Subhash Chander and Others, , Sardari Lal Sat Pal and

Others Vs. Amritsar Improvement Trust, . Inder Singh v. Financial Commissioner, Punjab and Ors. 1977(1) P.L.J.52, Sardara Singh v. Smt.

Guryani Brij Bhallabh Kaur Trust, Kartarpur 1997(2) P.L.J. 60 (F.C.) and Gram Panchayat Vs. Commissioner, Ferozepur Division, .

5. We have heard learned counsel for the parties and examined the records of the case. In considered view of this Court, the only contention

raised by Mr. Majithia, as noted above, is devoid of any merit. From the facts, as given in the written statement, to which there is no rebuttal as no

replication has been filed, it is rather apparent that order of eviction was passed by the Collector on 17.9.1982. Warrant of possession to execute

the order of eviction was issued on 13.11.1985. This order of issuance of warrant of possession was challenged by Gurdas Mal in an appeal

before the Commissioner which was dismissed on 10.2.1986. The present is, thus, not a case where application for executing order of eviction

might have been filed for the first time after lapse of three years from the date order of eviction was passed. Quite to the contrary, the warrant of

possession was issued on 13.11.1985 in the execution proceedings initiated before the expiry of three years. However, the order could not be

executed either for the reason that execution application was dismissed in default or that the Improvement Trust had not taken any further steps in

executing the same. Once, warrant of possession was issued, limitation, if any, in considered view of this Court, had stopped running.

6. The warrant of possession having been issued in the execution proceedings initiated earlier to expiry of three years, as held on facts apart, we

are further of the view that in a case, like the one in hand, there was no necessity at all to move an application for execution and if that be so, there

would be no limitation for putting the rightful owner in possession of a public premises occupied by an unauthorised occupant. Section 5 of the Act

of 1973, which authorises the Collector to evict the unauthorised person, reads thus:-

5. Eviction of unauthorised persons:- (1), If, after considering the cause if any, shown by any person in pursuance of a notice u/s 4 and any

evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the

public premises are in unauthorised occupation, the Collector may make an order of a eviction for person to be recorded therein, directing that the

public premises shall be vacated on such date as may be specified in the order, by all persons, who may be in occupation thereof or any part

thereof and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises or of the estate in

which the public premises are situate.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of its publication under Sub-section (1) the Collector or any

other officer duly authorised by him in this behalf may evict that person from and take possession of the public premises and may, for that purpose,

use such force as may be necessary".

7. Under the provisions of Sub-section (1) of Section 5, the Collector, after following the procedure as envisaged there, order eviction from the

public premises whereas under Sub-section (2) of Section 5 he alone or any other officer duly authorised by him is under a duty to evict the person

and to take possession of the public premises. The very-reading of Sub-section (2) of Section 5 would make it clear that no application for

execution as such is at all required to be filed, as the Collector is duty bound to evict the person in unauthorised occupation and take possession of

the public premises. While doing so, he is authorised to even use such force as may be necessary. In some what similar situation, in Sulakhan Singh

v. State of Punjab and Ors., C.W.P. No. 733 of 2002, decided on 3.9.2002 we have held likewise. The relevant observations in Sulakhan

Singh's case (supra) read thus:-

The contention of the petitioner that the objections should have been considered and decided by the authorities under the Act in the manner as the

objections are considered and decided under Order 21 Rules 97 to 100 of the Code of Civil Procedure, cannot be accepted. These provisions of

the CPC are not applicable to the proceedings under the Act.

8. Same plea of limitation raised by the petitioner in the said case, pertaining to an application under the Act of 1973, was under consideration by

this Court.

9. In view of the what has been said above, and in particular, on facts that warrant of possession had since been issued in the execution

proceedings initiated before three years, no necessity at all arises to deal with the judicial precedents cited by learned counsel for the petitioner, as

noted above. However, we may hasten to add that none of the judgments cited by learned counsel is in any way relevant on the facts of the case in

hand, but for the one rendered by the Financial Commissioner in Sardara Singh's case (supra). All that has been discussed by the Financial

Commissioner in said case was as to whether it is Article 136 of the Limitation Act which shall govern the period of limitation which is 12 years of

Article 137 which prescribes limitation for three years by pre-supposing that the limitation is applicable. The question as to whether limitation

would at all apply in evicting an unauthorised occupation under the Act of 1973, was not even remotely considered.

10. In view of the discussion made above, this petition is dismissed in limine, leaving, however, the parties to bear their own costs.

Sd/- Satish Kumar Mittal, J.