

(2005) 04 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Miscellaneous No. 2523 of 2005 in C.W.P. No. 14492 of 1998

Jagdish Chander and Others

APPELLANT

Vs

Karnal Improvement Trust and
Others

RESPONDENT

Date of Decision: April 30, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, 151

Citation: (2005) 141 PLR 740 : (2005) 4 RCR(Civil) 92

Hon'ble Judges: S.N. Aggarwal, J

Bench: Single Bench

Advocate: Ashish Aggarwal, No. 1 and Rajinder Chauhan, for the Appellant; Mahavir Sandhu, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Aggarwal, J.

An application under Order 1 Rule 10 read with Section 151 C.P.C. filed by Pawan Kumar-applicant is coming up for disposal by which the applicant wants to become a party in C.W.P. No. 14492 of 1998.

2. This writ petition was filed by some of allottees including Pushpa Rani for getting quashed the notice of forfeiture dated 6.3.1998 issued to these allottees by Karnal Improvement Trust, Karnal, vide which these plots, price paid and the construction raised therein were forfeited for want of payment by them of the amount outstanding against them. This Court vide interim order dated 11.9.1998, had restrained Karnal Improvement Trust, Karnal from dispossessing the petitioners from the allotted shops on the condition that the petitioners deposit the amount allegedly outstanding against them. All the allottee-petitioners complied with the Court order except Pushpa Rani. Thereafter, Karnal Improvement Trust, Karnal, had filed an application to that effect in this Court, on which this Court vide order dated

13.12.2004 vacated the interim order dated 11.9.1998 relating to the property allotted to Pushpa Rani-petitioner.

3. Through the present application, it was prayed by Pawan Kumar-applicant who claims to be a tenant under Pushpa Rani that he be impleaded as a party in the said writ petition and he be also permitted to deposit the amounts with Karnal Improvement Trust, Karnal on behalf of Pushpa Rani-petitioner.

4. This application was not contested by the co-petitioners. However, Karnal Improvement Trust, Karnal filed to this application and it was seriously contested.

5. Respondent-Karnal Improvement Trust, Karnal has taken the plea that originally the shop in dispute was allotted to the predecessor-in-interest of Pushpa Rani-petitioner. Therefore, Pushpa Rani had only stepped into the shoes of her husband, on his death. The rights of the present applicant are only subservient to the rights of the original allottee/owner/landlord.

6. I have considered the submissions advanced before me by the learned counsel for the parties and have also perused the record.

7. If the allottee ceases to be the owner on his failure to deposit the amount demanded by the respondent-trust, or for any other reason, the tenant-applicant automatically ceases to have any interest in the suit property. It is not that Pushpa Rani or her legal heirs after her death have intentionally failed to deposit the amount demanded by the respondent-trust, only for the purpose of getting evicted Pawan Kumar-applicant. Rather they would suffer more by losing the ownership rights of the suit property. Since Pushpa Rani or her legal representatives, who are the landlords of Pawan Kumar-applicant have not deposited the amount after the demand was made from her by the Karnal Improvement Trust, Karnal, Pawan Kumar-tenant cannot be permitted to take the place of the owner. Neither he is legal heir of Smt. Pushpa Rani nor he is the allottee. He cannot temper with the rights of the allottee nor he can act on their behalf. Therefore, he has no right to deposit the money on behalf of the legal representatives of Pushpa Rani. It may be that legal heirs of Pushpa Rani are intentionally defaulting in depositing the money or that it may be in their interest not to deposit but the applicant cannot be allowed to deposit the money on their behalf to affect the balance of their rights which they know better.

8. I, therefore, come to the conclusion that neither Pawan Kumar-applicant is the necessary party to the present writ petition nor he can be permitted to deposit the money on behalf of his landlord. This application appears to have been filed by him with a mala fide intention.

9. Otherwise also, it may be noticed that the writ petition was filed by Pushpa Rani-petitioner alongwith other allottees in the year 1998 to challenge the order of resumption and dispossession of Plot No. 69 situated in New Retail Cloth/Wholesale

Market, Karnal. Therefore, the Hon"ble Division Bench of this Court vide interim order dated 11.9.1998 had directed the allottee-petitioners to deposit the amount outstanding against them and their dispossession was stayed. All other allottees had deposited the amount demanded by the Karnal Improvement Tcust, Karnal but only Pushpa Rani had failed to do so. On the application of the Karnal Improvement Trust, Karnal the Hon"ble Division Bench vide order dated 13.12.2004 had withdrawn the protection of possession which "was granted in favour of Pushpa Rani allottee-cum-owner of the said shop. The umbrella of protection of possession has already been withdrawn by the Hon"ble Division Bench of this Court. Therefore, the grant of present application filed by Pawan Kumar-tenant, this urt would go counter to the order passed by the Hon"ble Division Bench in this writ "petition.From that angle also this application is not maintainable.

10. In view of the above, this application is dismissed.