
(2006) 08 P&H CK 0227

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No"s. 16148 and 49 of 2005 in C.W.P No. 5733 of 2003

Khushal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 11, 2006

Hon'ble Judges: Viney Mittal, J; H.S. Bhalla, J

Bench: Division Bench

Advocate: Alok Jain, for the Appellant; Puneet Jindal, for the Respondent

Judgement

Viney Mittal, J.

C.M. No. 16148 of 2005

1. Prayer made in the application is allowed.

2. For the reasons stated in the application, the order dated January 13, 2005 is recalled. The main case is restored back to its original number.

C.M No. 16149 of 2005

3. Prayer made in the application is allowed.

4. Legal heirs of the petitioner Khushal Singh (now deceased) is taken on record.

C.W.P No. 5733 OF 2003

5. The petitioner is aggrieved against the order dated March 20, 2001 passed by the Estate Officer (Annexure P-9) and the order dated August 5, 2002 passed by the District Judge, Ferozepur Cantt. (Annexure P-14) in proceedings under the Public Premises (Eviction of unauthorised occupants) Act, 1971.

6. The primary grievance raised by the petitioner is that the petitioner had challenged the title of the Railways with regard to the property in question and had specifically stated that it had no concern with the said property. Additionally, the petitioner had set up a title of the said property in himself. On that basis, it has been

pleaded by the petitioner that the Estate Officer as well as the learned District Judge had completely erred in law in putting the entire onus upon the petitioner, when it has been observed that the petitioner has failed to prove his title to the aforesaid property.

7. Mr. Alok Jain, learned Counsel for the petitioner has contended that for succeeding in proceedings under the Act and for seeking the eviction of the petitioner it was obligatory for the Railways to have first proved their title to the suit property and it was only thereafter that they could have sought the eviction of the petitioner.

8. After perusal of the orders, Annexures P-9 and P-14, we are satisfied that the grievance made by the petitioner is wholly justified. Both the authorities below have completely shifted the burden of proof upon the petitioner when it has been observed that the petitioner had failed to prove his title to the suit property. Even if the petitioner had failed to prove his title to the suit property, it was for the Railways to have proved their title to the suit property for seeking the eviction of the petitioner.

9. Consequently, we allow the present petition and quash the order dated Annexure P-9 and Annexure P-14 and remit the matter back to the Estate Officer to redetermine the controversy between the parties. For this purpose, the Estate Officer shall provide an opportunity of hearing to both the parties in accordance with law. Fresh orders shall be passed by the Estate Officer, without being influenced by the earlier eviction orders. Parties are directed to appear before the Estate Officer, Northern Railways, Ferozepur Cantt.-respondent No. 4 on October 24, 2006 at 10:00 A.M.

10. At this stage, Mr. Alok Jain, learned Counsel appearing for the petitioner says that the civil suit filed by the petitioner may be deemed to have been withdrawn by the petitioner. In view of the statement of the learned Counsel, the civil suit filed by the petitioner, pending before the trial Judge at Ferozepur, shall be deemed to have been withdrawn. Copy of the order be given dasti on payment of the usual charges.