

(1996) 03 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4970 of 1984

Smt. Jito

APPELLANT

Vs

Financial Commissioner
(Appeals) and Others

RESPONDENT

Date of Decision: March 14, 1996

Acts Referred:

- Punjab Security of Land Tenures Act, 1953 - Section 14A, 9(1)

Citation: (1996) 113 PLR 301

Hon'ble Judges: T.H.B. Chalapathi, J

Bench: Single Bench

Advocate: Ravinder Chopra and R.S. Chauhan, for the Appellant; Balraj Bahl, for the Respondent

Final Decision: Allowed

Judgement

T.H.B. Chalapathi, J.

This writ petition is filed invoking the certiorarial jurisdiction of this Court under Article 226 of the Constitution of India to quash the order of the Financial Commissioner dated September 7, 1984 (Annexure P-5).

2. The petitioner is the daughter of Smt. Palo. In view of lands lost by her in Pakistan, Palo, an evacuee had been allotted land of 84 kanals 8 marlas in the revenue estate of village chak Bhangewala. After the death of Palo, the petitioner being her only daughter succeeded to her property. She filed an application u/s 9 read with Section 14-A(ii) of the Punjab Security of Land Tenures Act, 1953, for eviction of the respondents Udham and Arjan Singh. According to her, the respondents Udham Singh and Arjan Singh are her tenants and they agreed to pay the rent at 1/3rd of the produce and as they failed to pay the rent, they made themselves liable to be evicted u/s 9(1) (ii) read with Section 14-A(ii) of the Punjab Security of Land Tenures Act, 1953. The said application was allowed by the

Assistant Collector First Grade vide his order dated October 7, 1981 (Annexure P-2) who ordered ejectment of the respondents from the land. The respondents Udham Singh and Arjan Singh preferred an appeal to the Collector, who dismissed the appeal by his order dated February 12, 1982. The revision filed by them before the Additional Commissioner was also unsuccessful. Thereafter the respondents filed a further revision before the Financial Commissioner u/s 24 of the Act, who allowed the Revision Petition vide impugned order dated September 7, 1984, and remanded the matter to the Assistant Collector, to decide the question as to whether the land revenue has been paid by the respondents Udham Singh and Arjan Singh or not. Challenging the said order of the Financial Commissioner the petitioner has filed this writ petition. In the written statement filed by the respondents before the Assistant Collector, the respondents took the plea that there exists no relationship of landlord and tenant between the petitioner and the respondents and that they being the near relations of the petitioner have been giving some gifts to her in lieu of share of produce from time to time.

3. The evidence on record clearly shows that the respondents are the tenants of the land. The respondents are not claiming the land in their own right. Therefore, the denial of relationship of landlord and tenant is without any basis. Further in the earlier proceedings taken by the petitioner for declaration by filing a suit in the Civil Court, the Civil Court has concluded that the respondents are the tenants of the petitioner.. Further in the order of the Financial Commissioner dated February 24, 1977, in a proceeding taken by the petitioner for recovery of rent, it has been clearly held that the respondents are tenants of the petitioner and, therefore, there cannot be any doubt that there exists the relationship of landlord and tenant between the parties.

4. The next question to be decided is whether there is an agreement to pay the rent and whether there is failure or default in payment of rent by the respondent. Though the petitioner claimed that the rent payable is 1/3rd of the produce the said contention was negatived in the earlier proceedings by the Financial Commissioner in his order dated February 24, 1977. The said order has been attached to the written statement as Annexure R-I. In column 9 of the jamabandi for the year 1955-56, it was recorded as "Hasab Parta deh Bawajah Rishtedari" which admittedly means that the rent payable is equivalent to the land revenue. The Financial Commissioner in his impugned order has clearly stated that the entry in the jamabandi means that the rent payable is equivalent to the land revenue. Therefore, it is clear that the landlord-petitioner is entitled to receive the amount which is equivalent to the land revenue payable on the land. From the order of the Financial Commissioner dated February 24, 1977 and also from the impugned order of the Financial Commissioner it can be seen that the land revenue payable is Rs. 15.67 per year. There is no evidence on record to show that the respondents have paid even this amount to the landlady. Further in the written statement, the respondents clearly stated that they have been giving gifts to the respondents in lieu of her share

in the produce. That means that the alleged "gift" is not without consideration and a voluntary payment. The so-called "gift" is in lieu of payment of rent or in lieu of the share of the produce payable to the landlady. Thus, it is clear that some amount of rent is payable to the landlady in lieu of her share in the produce. No evidence has been adduced by the respondents that they paid any amount even the amount equivalent to land revenue of Rs. 15.67 to the landlady. The payment of land revenue to the Government cannot be taken as payment of rent to the landlady. Further, the rent even according to the Jamabandi entry is the amount equivalent to the amount of land revenue. Therefore, the rent is to be paid separately from the land revenue. The payment of land revenue to the Government does not amount to payment of rent by the respondents to the landlady. Thus there is a clear default in payment of rent. Due to this default in payment of rent, provisions of Section 9 of the Punjab Security of Land Tenures Act are applicable and therefore, the landlady is entitled to seek eviction of the tenant u/s 14-A of the said Act. The Financial Commissioner has set up a new case for the respondents which has not been pleaded by them. It is not the case of the respondents that they paid the land revenue to the Government and it amounts to payment of rent to the landlady. That was not the stand taken by the respondents in their written statement. In fact, the land revenue is quite different from the rent. The rent as can be seen from the Jamabandi entry is the amount equivalent to the land revenue. Rent is defined in sub-section 3 of Section 4 as follows :-

"Rent means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of the land held by him."

It is thus clear when any person is holding land of another as tenant, he is liable to pay the rent for the use and occupation of the land. It is also clear from the definition that the rent does not include the payment of land revenue. Thus, the tenants are liable to pay not only the land revenue but also the same amount to the land lady as rent. Admittedly, the respondents have not paid even the amount of Rs. 15.67 which is equivalent to the land revenue. Thus, there is a clear default in payment of rent. The Financial Commissioner, in my view, has thoroughly erred in holding that the payment of land revenue amounts to payment of rent to the landlady. As already observed even this case has not been set up by the respondents in their written statement. Therefore, I am of the opinion that the order of the Financial Commissioner is liable to be set aside.

5. Accordingly, I allow the writ petition set, aside the order of the Financial Commissioner dated September 7, 1984 and restore the orders of the Additional Commissioner dated October 18, 1982 and that of the Collector dated February 12, 1982, confirming the orders of the Assistant Collector dated October 7, 1981. The respondents are liable to be evicted from the land. However, there will be no order