

**(2001) 01 P&H CK 0222**

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

**Case No:** Civil Writ Petition No. 1170 of 2001

Prithvi Raj

APPELLANT

Vs

Financial Commissioner Haryana

RESPONDENT

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**Date of Decision:** Jan. 24, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Punjab Security of Land Tenures Act, 1953 - Section 14

**Citation:** (2001) 4 RCR(Civil) 330

**Hon'ble Judges:** N.K. Sud, J; Jawahar Lal Gupta, J

**Bench:** Division Bench

**Advocate:** Rakesh Nagpal, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Jawahar Lal Gupta, J.

The petitioners are landowners. An exparte order for the eviction of the respondent-tenant was passed on November 5, 1990. On coming to know, the tenant prayed that the order be set aside. The prayer was accepted. The appeal etc. filed by the petitioner were dismissed. Now, they pray that the orders dated May 2, 2000, August 22, 2000 and September 21, 2000 passed by the Collector, the Commissioner and the Financial Commissioner be set aside. Copies of these orders have been placed on record as Annexures P-5, P-6 and P-8 respectively. The petitioners allege that the three orders are wholly illegal and pray that these be quashed.

2. A few facts as relevant for the decision of this case may be briefly noticed.

The petitioners filed an application u/s 14-A of the Punjab Security of Land Tenures Act, 1953, for the eviction of respondents No. 5 and 6 on the ground that they had not paid the rent for the land measuring 8 Kanals which was in their possession. The

application was accepted by the Assistant Collector by an ex parte order dated November 5, 1990. Copy of this order is at Annexure P-2 with the writ petition. In the year 1998 the respondent-Sucha Singh filed an appeal against the order of the Assistant Collector. It was pleaded that "the impugned order has been procured by the landlord/respondent No. 1 by practising fraud on the Court as well as on the appellant and respondent No. 2". Respondent No. 2 therein was his brother who has been impleaded as respondent No. 6 in this case. In the appeal filed by him the claim was that he had not been served. He had not engaged the counsel who had purported to put in appearance on his behalf. The Memorandum of Appearance had been filed by the counsel without his knowledge or permission. He had not executed any Power of Attorney in favour of Mr. Balbir Chand, Advocate, who had allegedly appeared on his behalf. Thus, the authority had erred in proceeding ex parte. On this basis it was prayed that the order dated November 5, 1990 which has been passed without a trial should be set aside and that he may be permitted to contest the application on merits.

The application was heard by Dr. Mahabir Singh, I.A.S., the Collector. Vide order dated May 2, 2000, a copy of which has been produced as Annexure P-5 with the writ petition it was held that notice of the proceedings was not shown to have been served on the tenant. Thus, the action of the Assistant Collector in proceedings ex parte was illegal. Aggrieved by this order, the petitioner filed an appeal. It was dismissed by the Commissioner vide his order dated August 22, 2000. A copy of this order is at Annexure P-6 with the writ petition. It was found that on the file no summons appear to have been issued to the tenant. Thus, the findings of the Collector were affirmed. Still not satisfied, the petitioners filed a revision petition before the Financial Commissioner. It was dismissed vide order dated September 21, 2000. The findings of the Collector and the Commissioner have been affirmed. A copy of this order has been produced as Annexure P-8 with the writ petition.

3. The solitary contention raised by Mr. Nagpal, learned counsel for the petitioners, is that the authorities below have erred in remanding the case to the Assistant Collector for a fresh decision. He has placed reliance on the decision of a Single Bench of this Court in *Ram Narain v. Gobiml Singh*, 1992 (2) RRR 205: 1992 PLJ 184. On examination of the matter, we find that the contention raised by the learned counsel for the petitioners cannot be accepted.

4. A perusal of the orders passed by the Revenue Authorities shows that they have unanimously come to the conclusion that no notice had been issued or served upon the tenants before they were ordered to be evicted. It was decided to proceed ex parte against them and they were ordered to be evicted. Nothing has been placed on record to show that this finding is not correct. It has not even been suggested that a notice was issued by the Assistant Collector for a particular date and that it had been served on the respondent-tenants. In this situation, it is clear that the respondents had no notice of the proceedings initiated by the petitioners and that

the authority had proceeded ex parte without any justification whatsoever.

5. Mr. Nagpal contends that a counsel by the name of Balbir Chand had filed a Memorandum of Appearance on behalf of the respondent-tenants. Thus, it cannot be said that the respondents had not been served. We are unable to accept this contention. The service of the notice has to precede the filing of the Vakalatnama. It has not been shown that a notice had even been issued much less than served. In this situation, it is not understood as to how a counsel could have filed a Memorandum of Appearance. Still further, it is apparent from the orders passed by the authorities that various opportunities were given to the said Balbir Chand to file the Vakalatnama. The case was periodically adjourned from November 15, 1989 to June 1, 1990. No Vakalatnama was filed. This was sufficient to raise a suspicion that Mr. Balbir Chand had not been authorised by the respondents to put in appearance on their behalf. In fact, it appears that the petitioners were devising methods to obtain an ex parte order against the respondents. We are not surprised that respondent No. 5 in his appeal categorically asserted that the petitioners had played fraud on the tenants as well as the Court. The circumstances of the case clearly support this assertion. In this situation, the authorities had acted in strict conformity with law in setting aside the ex parte order and in directing the trial of the case.

6. Mr. Nagpal relies on the decision in Ram Narain's case (supra) to contend that the authorities could not have ordered the remand of the case. The contention is wholly misconceived. It is based on misreading of the judgment. A perusal of the judgment and particularly paragraph 6 thereof shows that the only point which arose for consideration of the Court was "as to whether the vendee-petitioner had challenged the judgment of the trial Court only for setting aside the ex parte decree there being a default in service or on the merits as well". While considering this matter, the learned Judge had "perused the grounds taken by the vendee in the grounds of appeal before the lower appellate Court". After consideration, His Lordship found that "the vendee-petitioner had challenged the order of the trial Court on merits as well". He had "challenged all the findings which have been recorded by the trial Court". Such is not the position in the present case. A copy of the appeal filed by the 5th respondent has been produced as Annexure P-4 with the writ petition. We have perused all the twelve grounds. The sole challenge of the respondents to the order was based on the fact that he had not been served and that a fraud had been played by the landlord. In fact, it was even asserted that he had not engaged any counsel and that the case had been decided without a trial. There was no challenge to any of the findings on the merits. Thus, the reliance placed by the counsel on the decision in Ram Narain's case (supra) is wholly misconceived. He can derive no advantage therefrom.

7. No other point has been raised.

8. In view of the above, we find that the petition is wholly misconceived. The petitioners are guilty of hoodwinking the Court. They are not entitled to any relief

from this Court in proceedings under Article 226 of the Constitution.

9. The writ petition is accordingly dismissed in limine. It is a fit case for the award of costs against the petitioners. However, since we have not issued any notice to the respondents, we make no order as to costs.

10. Petition dismissed.