

(2011) 01 P&H CK 0456

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Radha Kishan

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: Jan. 13, 2011

Acts Referred:

- Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 - Section 2, 3, 6, 7
- Haryana Public Premises and Land (Eviction and Rent Recovery) Rules, 1973 - Rule 7

Citation: (2011) 162 PLR 802

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The Petitioner rather has been very entrepreneur. Though he was allotted a shop by the Market Committee, Bhattu Kalan in District Faridabad but he constructed another shop unauthorisedly by occupying the bachat land. When the Market Committee came to learn about the same, they sought his ejection, which has now been ordered by the Collector. Besides, the Collector has also directed me Petitioner to pay damages @ Rs. 20,000/- per year since 1988 till the date of handing over of the possession to the Market Committee.

2. Tills order was passed on 3.3.2003. The Petitioner filed an appeal against the same, which was dismissed by the Collector on 3.3.2009. In this manner, the Petitioner has successfully retained his unauthorised occupation of the shop constructed in an illegal manner.

3. Though counsel for the Petitioner did make an attempt to show that this shop could not be termed as one which is unauthorisedly constructed but soon lost his breath in this regard. It would emerge from the impugned order passed by the

Collector and of the Commissioner that unauthorised construction of shop and its occupation is rather conceded. While appearing before the Collector, a submission was made on behalf of the Petitioner that he was ready to pay the price of the disputed shop. The Collector noticed that as per the report, Exhibit P-2, it was proved that the Petitioner had constructed an unauthorised shop measuring 85" x 11"-6" in between shop No. 109 and 110 on the disputed land. This finding of fact was also not seriously disputed by the Petitioner in the written statement filed, revealing that he had constructed a shop on bachat land. This aspect was even considered by the Appellate Authority and so also the prayer of the Petitioner that he was ready to pay the price of the shop. In fact, the Petitioner had moved an application before the Appellate Authority that he, on his own, wanting to pay a sum of Rs. 2 lacs to the Market Committee for this shop, if the Market Committee was prepared to get the registry done of half of the portion of the shop in his name. This was construed to be an indicative of the fact that the Petitioner had been in an illegal and unauthorised occupation of the shop. In this regard, reference was also made to Sections 2 and 3 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short, "the Act"). Section 3 reads as under:

3. Unauthorised occupation of public premises.- For the purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises-

(a) Where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) Where he, being an allottee, lessee or grantee, has by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or

(c) XXX

4. The appeal of the Petitioner was accordingly dismissed. The Petitioner has confined his submissions, to those submissions which he had raised before the Collector and before the Appellate Authority.

5. There is a clear evidence that the Petitioner had constructed this shop in unauthorised and illegal manner. This illegality can not be permitted to perpetuate. Even before me, counsel for the Petitioner made a submission that the Petitioner is prepared to pay the market value of the shop, as per the prevailing rates. Counsel for Market Committee is justified in not accepting this offer. The Petitioner has first committed an illegality and on that basis has been able to occupy this land unauthorisedly since 1988. His eviction was ordered in the year 2003. He has been successful in avoiding his eviction till date. Obviously, he has enjoyed the fruit of his illegal action far too long. This must be brought to an end.

6. The Collector, while directing eviction of the Petitioner, had also awarded damages @ Rs. 20,000/- per year from 1988 till the date of handing over of the possession of the shop to the Market Committee. Counsel for the Petitioner refers to the provisions of Section 7 of the Act, which regulates the power to direct recovery of rent and damages in respect of public premises as arrears of land revenue. This Section give power to the Collector to adopt such principles of assessment of damages, as may be prescribed and then assess the damages on account of the use and occupation of such premises by way of an order requiring the person to pay the damages within such time and in such instalments as may be specified in the order. No order under this Section is to be passed, unless a notice is issued in writing to the person calling upon him to show cause within such time as may be specified in the notice, as to why such order should not be made and until his objections, if any, and the evidence he may wish to produce and the same is considered by the Collector. Counsel also refers to Rule 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Rules, 1973, which, to an extent, gives out how the damage is to be assessed. This Rule reads as under:

7. Assessment of damages. [Section 6].- In assessing damages for unauthorized use and occupation of any public premises, the Collector shall take into consideration the following matters, namely:

- (a) the purpose and the period for which the public premises were in unauthorized occupation.;
- (b) the nature, size and standard of the accommodation available in such premises;
- (c) the rent that would have been realised if the premises had been let on rent for the period of unauthorized occupation to a private person;
- (d) any damage done to the premises during the period of unauthorized occupation;
- (e) any other matter relevant for the purpose of assessing the damage.]

7. Accordingly, while assessing the damage for unauthorized use and occupation of the public premises, the Collector is required to take into consideration the period for which the public premises have remained in unauthorized occupation, nature, size and standard of the accommodation available, the rent that would be realised, if the premises had been let on rent for the period of unauthorized occupation and any damage done to the premises during the period of unauthorized occupation or any other matter relevant for the purpose of assessing the damage.

8. The counsel may be justified in saying that while assessing the damage for use and occupation of this shop by the Petitioner in an unauthorized manner, the considerations which were relevant and were required to be taken into account, were not considered by the Collector. However, that is no ground to permit the Petitioner to continue to occupy the shop in an unauthorized and illegal manner.

9. The writ petition filed by the Petitioner is, therefore, dismissed. The Petitioner is given one month's time to vacate the shop. If the Petitioner vacates the shop within this period, then that part of the order passed by the Collector, assessing damages @ Rs. 20,000/- per year since 1988 shall be kept in abeyance. The Collector would be at liberty to issue notice to the Petitioner and reassess the damages in terms of the provisions of the Act and the Rules noted above and pass a fresh order accordingly. The Petitioner may invoke any remedy against any such order so passed, awarding damages for use and occupation of this shop from the date it was occupied till the date he vacates. If, on the other hand, the Petitioner does not vacate this shop within the stipulated period, the order passed by the Collector, awarding damages of Rs. 20,000/- per year since 1988 shall be put into effect and the Respondent-Market Committee shall be at liberty to recover these damages as land revenue. The Market Committee shall take immediate action to evict the Petitioner from the shop and in this regard, necessary police or other help, if needed, shall be asked for and provided by the State.