

Subhash Chand vs State Of Haryana & Ors on 16 December, 2010

Equivalent citations: AIR 2011 SUPREME COURT 409, 2010 (14) SCC 343, 2011 AIR SCW 3874, (2011) 2 LANDLR 135, (2011) 1 LANDLR 778, (2011) 1 CAL HN 86, (2010) 13 SCALE 394, (2011) 1 RECCIVR 663, (2011) 101 ALLINDCAS 2 (SC), AIR 2011 SC (CIVIL) 360, AIR 2011 SUPREME COURT 349, 2011 (2) SCC 715, 2011 AIR SCW 504, AIR 2011 SC (CRIMINAL) 300, 2011 (2) AIR JHAR R 799, (2011) 2 PAT LJR 9, (2010) 13 SCALE 454, (2011) 2 MH LJ (CRI) 358, (2011) 1 ALLCRIR 1089, 2011 CRILR(SC&MP) 49, (2011) 2 MAD LJ(CRI) 540, 2011 CALCRILR 1 295, (2011) 1 ALLCRILR 42, (2011) 1 CRILR(RAJ) 49, (2011) 72 ALLCRIC 235, 2011 (2) SCC (CRI) 689, (2011) 2 KCCR 83, (2011) 48 OCR 397, (2011) 1 UC 332, (2011) 1 CURCRIR 71, (2011) 2 MARRILJ 58, (2011) 1 DMC 1, (2011) 97 ALLINDCAS 29 (SC), (2010) 4 DLT(CRL) 895, (2011) 1 RECCRIR 338, 2011 CRI LJ (SUPP) 407 (SC), 2011 CRILR(SC MAH GUJ) 49, (2011) 1 CHANDCRIC 158, (2011) 2 ALD(CRL) 42, 2011 (1) CRIMES 62 SN, 2011 (3) GLH UJ 2

Author: A. K. Patnaik

Bench: A. K. Patnaik, R. V. Raveendran

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1857 OF 2003

Subhash Chand

... Appellant

Versus

State of Haryana & Ors.

... Respondents

JUDGMENT

A. K. PATNAIK, J.

This is an appeal against the order dated 04.03.2002 of the Division Bench of the High Court of Punjab & Haryana dismissing Civil Writ Petition No.3733 of 2002. During the pendency of this appeal respondent No.4 Ramesh Chand Girdhar died on 09.12.2009 and I.A. No.2 of 2010 has been filed to bring on record his legal heirs namely, Smt. Kiran Girdhar (wife), Shri Rajeev Girdhar (son), Shri Sandeep Girdhar (son) and Smt. Ruchi (daughter). This I.A. No. 2 of 2010 is allowed. I.A. Nos. 5 and 6 of 2010 have been filed by appellants claiming to be brothers and sisters of the appellant and they have prayed to be impleaded in the appeal. As the appellant represents the interest of the appellants, if any, in the suit property, we reject the prayers in I.A. Nos.5 and 6 of 2010.

2. The facts of this case very briefly are that the mother of the appellant filed an application for recovery of rent and ejectment of the respondent No.4 before the Assistant Collector, First Grade, Ballabgarh, Faridabad. She stated in the application that she was the owner of agricultural land Rectangle No.49, Killa No.8 and 15 measuring 16 Kanals at Mauja Baselwa Tehsil in district Faridabad and the respondent No.4 was a tenant in respect of this land and the respondent No.4 had not paid rent for the land for five years from Kharif 1977 to Rabbi 1982. She prayed that the respondent No.4 be evicted from the land and a decree for recovery of rent for 3 years from Kharif 1979 to Rabbi 1982 totalling to Rs.63/- be passed. The Assistant Collector issued summons to the respondent No.4 and the respondent No.4 filed a written statement in which he pleaded that he had filed a suit for declaration of occupancy rights in respect of the suit land which had been decreed in his favour and therefore he was not liable to pay rent. After considering the evidence led by the parties and after hearing the arguments of learned counsel for the parties, the Assistant Collector in his order dated 10.03.1995 found that the respondent No.4 had been declared occupancy tenant by the Assistant Collector by order dated 07.04.1981 but on appeal being filed by the mother of the appellant, the Collector had remanded the case to the Assistant Collector by order dated 10.11.1981 and thereafter the Assistant Collector again declared the respondent No.4 as the occupancy tenant by order dated 12.11.1982, but on appeal the Collector set aside the order dated 12.11.1982 and held that the respondent No.4 had ceased to be an occupancy tenant by order dated 15.06.1983. The Assistant Collector further found that the respondent No.4 carried an appeal to the Commissioner who dismissed the appeal by order dated 31.01.1986 and the respondent No.4 thereafter filed a revision which was also dismissed by the Financial Commissioner by order dated 22.07.1986. In his order dated 10.03.1995, however, the Assistant Collector held that as no notice in Form 'N' had been served on the respondent No.4 and the rent had been paid by the respondent No.4 on 05.06.1986 the application of the mother of the appellant was not maintainable.

3. The mother of the appellant then filed an appeal before the Collector, Faridabad, who dismissed the appeal. She filed a revision before the Commissioner, Gurgaon Division and the Commissioner in his order dated 18.02.2000 held that if the suit had been filed under the Punjab Security of Land Tenures Act, 1953 (for short 'the 1953 Act') then notice in Form 'N' was required to be given but as the suit had actually been filed under Section 77(3) of the Punjab Tenancy Act, no such notice in Form 'N' was required to be given. The Commissioner further held that it was clear from the records of the Assistant Collector, First Grade, Ballabgarh, Faridabad, that the respondent No.4 had admitted in his written statement that he had not paid the rent and had deposited the rent after the suit was filed by the mother of the appellant for recovery of rent and for eviction and accordingly set aside the orders of the Assistant Collector and the Collector by his order dated 18.02.2000. The

respondent No.4 filed a revision before the Financial Commissioner, Haryana, and the Financial Commissioner by his order dated 14.08.2001 allowed the revision and restored the order of the Collector. The appellant challenged the order of the Financial Commissioner before the High Court in Civil Writ Petition No.3733 of 2002 and the High Court dismissed the writ petition by the impugned order.

4. Mr. Manoj Swarup, learned counsel for the appellant, submitted that Section 9(1)(ii) of the 1953 Act provides that a tenant is liable to be ejected if he "fails to pay rent regularly without sufficient cause." He submitted that in *Mrs. Raj Kanta v. The Financial Commissioner, Punjab and Others* [(1980) 3 SCC 589] this Court has held that the words "fails to pay rent regularly without sufficient cause" in Section 9(1)(ii) mean that the tenant should pay rent punctually and consistently without any break or breach and even a single default in the payment of rent committed by the tenant would make him liable for eviction under Section 9 (1)(ii) of the 1953 Act. He argued that in the present case there was a clear default on the part of the respondent No.4 to pay rent for the period from Kharif 1979 to Rabbi 1986 and therefore he was liable to be evicted under Section 9 (1) (ii) of the 1953 Act. He contended that under Section 14-A (i) a landowner desiring to eject a tenant under the Act can apply to the Assistant Collector, First Grade and the Assistant Collector will thereafter follow the summary procedure in Section 10(2) of the 1953 Act and eject a tenant. He vehemently argued that a plain reading of Section 14-A(i) would show that notice in Form 'N' was not required to be served where the application was for ejectment on any of the grounds mentioned in Section 9(1) of the 1953 Act. He submitted that since the application of the mother of the appellant before the Assistant Collector, First Grade, was for ejectment for non-payment of rent, notice in Form 'N' under Section 14-A(ii) of the 1953 Act was not required to be sent to the tenant and therefore the Assistant Collector, the Collector, the Financial Commissioner and the High Court have taken an erroneous view that the application was liable to be rejected because notice in Form 'N' had not been served on the tenant. He submitted that this a fit case in which this Court should set aside the impugned order of the High Court and direct eviction of the respondent No.4 on the ground that he has failed to pay rent for a period of five years.

5. In reply, Mr. R.F. Nariman, learned senior counsel appearing for the legal heirs of respondent No.4, submitted that a plain reading of the application filed by the mother of the appellant before the Assistant Collector would show that it was an application for recovery of arrears of rent for the years 1978-1980, 1980-1981, 1981-1982 amounting to Rs.63/- and Section 14-A(ii) of the 1953 Act read with Rule 22 of the 1956 Rules made it clear that a notice in Form 'N' had to be served on the tenant to deposit the rent and it is only on failure on the part of the tenant to deposit the rent that the tenant is liable to be evicted by the Assistant Collector. Mr. Nariman argued that the Assistant Collector, the Collector and the Financial Commissioner were, therefore, right in coming to the conclusion that as no notice in Form 'N' for payment of arrears of rent had been served on the respondent No.4, the application for eviction of the respondent No.4 for non- payment of rent was not maintainable. In support of this contention, he cited the decision of this Court in *Kapur Chand Jain v. B. S. Grewal & Ors.* [(1965) 2 SCR 36]. He further submitted that in any case a tenant will have to be given a reasonable opportunity to clear arrears of rent, if any, before he is evicted for non-payment of rent. He explained that in this case the respondent No.4 had taken a plea in his written statement filed before the Assistant Collector that he had not been paying rent because his

occupancy rights in respect of the land had been declared by the Assistant Collector. He submitted that as soon as the respondent No.4 found that his claim for occupancy rights in respect of the land was not acceptable to the authorities, he deposited the rent before the Assistant Collector, Second Grade, Faridabad. He submitted that the respondent No.4 therefore had sufficient cause for not paying the rent earlier and he was not liable to be evicted under Section 9(1)(ii) of the 1953 Act. He submitted that the mother of the appellant had actually filed a suit under Section 77 of the Punjab Tenancy Act, 1887 and the Assistant Collector had also recorded oral evidence of witnesses and had not followed the summary procedure laid down under Section 10(2) of the 1953 Act. He submitted that under Section 39(1)(c) of the Punjab Tenancy Act, 1887 a tenant could be evicted for failure to pay rent only when a decree for an arrear of rent in respect of his tenancy had been passed against him and such decree had remained unsatisfied. He submitted that in the present case there is no decree for arrear of rent in respect of the tenancy of the respondent No.4 and, therefore, he was not liable to be evicted under Section 39 of the Punjab Tenancy Act, 1887.

6. Mr. Swarup, learned counsel for the appellant, however, submitted that the Assistant Collector by recording oral evidence adduced on behalf of the parties had not caused any prejudice to the respondent No.4. He cited the decision of the Punjab and Haryana High Court in *Manohar & Ors. v. Financial Commissioner, Haryana & Ors.* [2000 (2) PLJ 460] in which a Division Bench of the High Court has held that by following a lengthy procedure of framing issues, recording evidence and considering the factual and legal aspects, a tenant does not suffer any prejudice whatsoever, rather he has a better opportunity to prove his case.

7. Sections 9(1)(ii), 10(2) and 14-A of the 1953 Act, on which the counsel for the parties have relied upon, are quoted hereinbelow:

"9(1)(ii) - Liability of tenant to be ejected.--(1) Notwithstanding anything contained in any other law for the time being in force, no land-owner other than a land-owner, who is a member of the Armed Forces of the Union or a Non-Resident Indian shall be competent to eject a tenant except when such tenant--

(i)

(ii) fails to pay rent regularly without sufficient cause.

..... 10(2) - Restoration of tenant ejected after the 15th of August, 1947.-

(1)

(2) On receipt of an application the Assistant Collector shall, after giving to the parties notice in writing and a reasonable opportunity to be heard, determine the dispute summarily and shall keep a memorandum of evidence and a gist of his final order with brief reasons therefor.

14-A. Procedure for ejectment and recovery of arrears of rents etc. - Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of Section 9-A,--

(i) a landowner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of Section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenant's rights to compensation and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected;

(ii) a landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice in the form prescribed, to the tenant either to deposit the rent or value thereof , if payable in kind or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice.

Where, after summary determination, as provided for in sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent he shall eject the tenant summarily and put the landowner in possession of the land concerned;

(iii) (a) If a landowner refuses to accept rent from his tenant or demand rent in excess of what he is entitled to under this Act, or refuses to give a receipt, the tenant may in writing inform the Assistant Collector, Second Grade, having jurisdiction of the fact;

(b) On receiving such application, the Assistant Collector shall by a written notice require the landlord to accept the rent payable in accordance with this Act, or to give a receipt, as the case maybe, or both, within 60 days of the receipt of the notice."

8. The first question which arises for decision in this case whether the Commissioner who decided the revision in favour of the appellant was right in holding that the suit for ejectment of the respondent No.4 was under Section 77(3) of the Punjab Tenancy Act. Clause (i) of Section 14-A makes it clear that notwithstanding anything to the contrary contained in any other law for the time being in force, where the land-owner desires to eject a tenant under the Act, he has to apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in Section 10(2) of the 1953 Act. Clause (ii) of Section 14-A states that notwithstanding anything to the contrary contained in any other law for the time being in force, where a land-owner desires to recover arrears of rent from a tenant he has to apply in writing to the Assistant Collector, Second Grade, who shall thereupon send a notice in the form prescribed, to the tenant either to deposit the rent or value thereof or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give

a receipt and after summary determination in accordance with Section 10(2) of the Act if the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the land-owner in possession of the land concerned. Hence, for ejectment of a tenant under the 1953 Act or for recovery of arrears of rent from a tenant, the procedure laid down in Section 14-A read with Section 10(2) of the Act has to be followed. The application of the mother of the appellant, in the present case, was for ejectment of the tenant and for recovery of arrears of rent and was really an application under Section 14-A of the 1953 Act and not a suit under Section 77(3) of the Punjab Tenancy Act, 1887. A reading of Section 10(2) of the 1953 Act shows that under the summary procedure contemplated therein the Assistant Collector is required to give notice to the parties in writing and reasonable opportunity to be heard and he is required to determine the dispute summarily and to keep a memorandum of evidence and a gist of a final order with brief reasons therefor. On an examination of the records of this case, we also find that the Assistant Collector has followed the procedure laid down in Section 10(2) of the 1953 Act. Hence, the Commissioner was not right in holding that the mother of the appellant had filed a suit under Section 77(3) of the Punjab Tenancy Act.

9. The real question which we are called upon to decide in this case is whether the respondent No.4 was liable to be ejected under Section 9(1)(ii) of the 1953 Act. The language of clause (ii) of sub-section (1) of Section 9 would show that the tenant is liable to be ejected if he fails to pay rent regularly 'without sufficient cause'. In *Mrs. Raj Kanta v. The Financial Commissioner, Punjab and Others* (supra), this Court, while interpreting Section 9(1)(ii) of the 1953 Act, observed:

"We might add at the risk of repetition that the use of the words 'without sufficient cause' clearly indicates that the intention of the legislature was that in order to escape ejectment, the tenant must at least be regular in payment of the rent and if he wants to get rid of the consequences of his default, he must prove sufficient cause.
....."

Thus, where the tenant is able to prove that he had sufficient cause for not paying the rent for any period, he can get rid of the consequence of ejectment provided in Section 9(1)(ii) of the 1953 Act.

10. We find that in this case in reply to the application of the mother of the appellant for recovery of arrears of rent and for ejectment filed before the Assistant Collector, First Grade, the respondent No.4 has taken a plea in the written statement that his suit for declaration of occupancy rights in respect of the land had been decreed in his favour by the Assistant Collector and he was not liable to pay rent for the land as a tenant. The Assistant Collector had, in fact, decreed the suit of the respondent No.4 for occupancy rights on 07.04.1981. On appeal by the mother of the appellant, the Collector had remanded the case to the Assistant Collector but the Assistant Collector again decreed the suit on 12.11.1982. The mother of the appellant filed an appeal before the Collector who allowed the appeal on 14.06.1983. Thereafter, the respondent No.4 filed an appeal before the Commissioner, Ambala Division, which was dismissed on 31.01.1986. The respondent No.4 then moved the Financial Commissioner in revision and the Financial Commissioner dismissed the revision on 22.07.1986. In the meanwhile, the respondent No.4 deposited the rent in the Treasury vide Challan dated 05.06.1986. These findings of facts in the order of the Assistant Collector, which have not

been disturbed by the Collector and the Financial Commissioner, clearly establish that the respondent No.4 did not pay rent for the land as he was pursuing his claim of occupancy rights in respect of the land and if his claim was finally allowed he would not be liable for rent. The respondent No.4 had, therefore, sufficient cause for not paying the rent for the land and was not liable to be evicted under Section 9(1)(ii) of the 1953 Act. As we have held that the respondent No.4 was not liable to be ejected, it is not necessary for us to decide whether notice in Form 'N' was required to be given to the respondent No.4 under Section 14-A(ii) of the 1953 Act before ejection of the respondent No.4.

11. We therefore do not find any merit in this appeal and we accordingly dismiss the same. No costs.

.....J. (R. V. Raveendran)J. (A. K. Patnaik) New Delhi, December 16, 2010.