

cannot said to be a non-resident by the only fact that she has married to a person living in another village. In my view, she shall be allowed to be treated as resident of the village of her birth place where she lived till her marriage and she cannot be disqualified by the only fact that she had been married and her husband resides elsewhere. A marriage does not constitute an uprooting ties of her natural family and it would be too harsh and unrealistic in the present days that a woman could be treated as chattel of the husband and she would lose her domicile by getting married to a person of another village. Residential status is principally one of fact, but the element of intention of where the person treats such status to be is not irrelevant. If a married woman intends to treat her parental home, where she grew up as her residence, for the purpose of claiming LPG dealership, there is nothing wrong in the Corporation accepting such a claim. It is again not unheard of that a woman retains his maiden name and does not adopt her husband's surname, even after marriage. There is no other objection relating to the selection made by the petitioner in this writ petition.

(3) For the reasons set forth aforesaid, the petitioner cannot obtain favourable consideration. The writ petition is dismissed.

A.K. Jain

Before K. Kannan, J.

KRISHAN KUMAR,—Petitioner

versus

**COMMISSIONER, AMBALA DIVISION
AND OTHERS,—Respondents**

CWP No.2472 of 2010

17th November, 2011

Constitution of India - Art. 226 - Punjab Panchayat Samiti and Zila Parishad (Sales, Lease and other alienation of property and Public places) Rules, 1964 - RI.3(b)(ii) - Public Premises Act - Petitioner lessee had paid rent up to the expiry of lease - Eviction order passed by authorities under Public Premises Act as the ground that lease had expired - Petitioner willing to pay enhanced rent as

per Rule 3(b)(ii) - Order of eviction quashed - tenant can continue in occupation of land leased to him by Panchayat Samiti/Zila Parishad etc, even after the expiry of the lease, if he is willing to pay enhanced rent as contemplated under Rule 3(b)(ii) -Petitioner directed to pay enhanced rent together with arrears.

Held, That learned counsel appearing for the respondents states that the tenant has not been paying rent without addressing the point that the rent had been tendered upto 30.04.2005 when the petition was filed. In any event, learned counsel for the respondent relies on the judgment of Division Bench of this Court in Punjab State Electricity Board Vs. State of Punjab 2003(1) R.C.R. (Civil) 48 that dealt with the issue of continuance in possession after the expiry of the lease period and where the Court held that the tenant will be considered as an unauthorized occupant if a further extension of lease is not granted by the authority. Learned counsel also refers to yet another judgment of this Court in C.W.P. No.13142 of 2008 and batch of other cases where the Court has held that after the expiry of the period of rent, the Panchayat Samiti will be competent to apply for an eviction. I find that the Division Bench has not had an occasion to consider the effect of the relevant Rule, which I have extracted above. I cannot, therefore, take the above cited decision as an authority for every action by the Panchayat Samiti for eviction.

(Para 4)

Further Held, That the order of eviction made by the authorities under the Public Premises Act cannot be sustained and it is quashed. The petitioner shall be allowed to retain his possession provided he pays rent at the enhanced rates prescribed under the Rules and which the petitioner claims that he was always prepared to pay undertaken before this Court. All the arrears calculated at an enhanced amount of 10% over the existing lease as on 30.04.2005 and the further escalation reckoned for each year are paid within four weeks from today.

(Para 6)

Rajinder Goyal, Advocate, *for the petitioner (s)*.

Kriti Singh, DAG, Haryana for respondent Nos.1 and 2.

Sonia G. Singh, Advocate, for respondent No.3.

K. KANNAN J. (ORAL)

(1) The petitioner in C.W.P. No.2472 of 2010 challenges the order passed by the authority under the Public Premises Act where the claim was made for eviction on the ground that the Audit had raised an objection as to how the tenant was allowed to continue after the initial period of lease of one year had come to an end and when there was no fresh lease made. The petition had been filed on 17.05.2005 and it is an admitted case that the tenant had paid rent upto 30.04.2005 i.e. upto the month before when the petition came to be filed. The eviction has, however, been ordered on the ground that the tenant had not paid the rent and that the period of lease had expired.

(2) Learned counsel for the petitioner would contend that as far as the issue of non-payment of rent is concerned, the default did not arise at all, for the rent had been paid upto 30.04.2005 and therefore, on the date of filing of petition, there had been no default. As far as the contention that the period of lease had expired, the petitioner makes reliance on the Punjab Panchayat Samitis and Zila Parishad (Sales, lease and other alienation of property and public places Rules), 1964 and contends that it is not necessary for the Panchayat to lease out a property afresh in case where the tenant offers to pay rent at additional 10% for every year. The relevant rule is reproduced as under:-

“3.(a) A Panchayat Samiti or a Zila Parishad may lease out any property or public place with the prior permission of the Deputy Commissioner.

(b) All leases shall be by auction after giving publicity as laid down in rule 5 and shall be for a period not exceeding five years.

(Provided that the auction shall not be necessary for the grant of leave for property or public place if.

(i) such property or public place is proposed to be leased out to the Central Government, State Government, a Corporation or a Board owned or controlled by the Government or to a Mahila Mandal and in such a case the amount of lease money shall be assessed by the Executive Engineer, Panchayati Raj working in

the Department of Rural Development and Panchayats in accordance with the principles being followed by the Department of Public Works in assessing the rental value of the property;

- (ii) the person to whom the property or public place is initially leased out by auction agrees, three months prior to the expiry of the lease period to enhance the lease money by ten per cent of the amount of existing lease money per year.”

(3) According to him, he was always prepared to pay the additional rents for every year commencing from the date when the petition was filed. If there are rules, which allow for extension of lease beyond the initial period and if the tenant is willing to pay the additional rent as required under the Rules, he cannot be treated as an unauthorized occupant to justify an action for eviction.

(4) Learned counsel appearing for the respondents states that the tenant has not been paying rent without addressing the point that the rent had been tendered upto 30.04.2005 when the petition was filed. In any event, learned counsel for the respondent relies on the judgment of Division Bench of this Court in **Punjab State Electricity Board versus State of Punjab (1)** that dealt with the issue of continuance in possession after the expiry of the lease period and where the Court held that the tenant will be considered as an unauthorized occupant if a further extension of lease is not granted by the authority. Learned counsel also refers to yet another judgment of this Court in C.W.P. No.13142 of 2008 and batch of other cases where the Court has held that after the expiry of the period of rent, the Panchayat Samiti will be competent to apply for an eviction. I find that the Division Bench has not had an occasion to consider the effect of the relevant Rule, which I have extracted above. I cannot, therefore, take the above cited decision as an authority for every action by the Panchayat Samiti for eviction.

(5) Learned counsel appearing for the respondents would contend that several other tenants of the same landlord had been evicted and the petitioner alone cannot obtain a benefit. I would take this to be a strange argument, for when the Court had ordered eviction of other tenants and

(1) 2003 (1) RCR (Civil) 48

if a particular point of law has not been addressed and considered by this Court, it cannot bar a petitioner, who is not party to the proceeding to contend for such a position.

(6) The order of eviction made by the authorities under the Public Premises Act cannot be sustained and it is quashed. The petitioner shall be allowed to retain his possession provided he pays rent at the enhanced rates prescribed under the Rules and which the petitioner claims that he was always prepared to pay undertaken before this Court. All the arrears calculated at an enhanced amount of 10% over the existing lease as on 30.04.2005 and the further escalation reckoned for each year are paid within four weeks from today. If the petitioner commits default for the same, the order of eviction, which is already passed by the authorities shall stand restored and the respondents will be at liberty to enforce the order in the manner known to law.

(7) In C.W.P. No.2473 of 2010, both the counsel agree that the case addresses the very same legal submission contained in the above case. I am not, therefore, reproducing the reasoning and I would adopt what I have said in the other judgment to be applicable to this case as well.

(8) The writ petition in C.W.P. No.2473 of 2010 is allowed on the same terms.

P.S. Bajwa

Before K.Kannan, J.

BALDEV RAJ AND OTHERS,—Petitioners

versus

**FINANCIAL COMMISSIONER, HARYANA AT CHANDIGRAH,
AND OTHERS,—Respondents**

Civil Writ Petition No.286 of 1986

6th December, 2011

Constitution of India, 1950 - Punjab Security of Land Tenures Act, 1953 - Ss.5-B, 10-A(b), 18, 18(4) - Dispute between transferee from land owner and tenant - Financial Commissioner vide order dated 26.6.1974 held that rights of a tenant under S.18 of the Punjab