

in our view, is not a case where any order for reinstatement of the appellant could properly be made. Counsel for the first respondent-company has rightly contended that it is a clear case of loss of confidence in the employee on the part of the Management and compensation would be adequate relief."

(14) In view of the above discussion, I am of the considered view that respondent No. 1 out-stepped his jurisdiction ordering reinstatement of the workman. His dismissal, in the circumstances, was fully justified. The plea for backwages on behalf of the respondent falls through as a necessary corollary to this conclusion.

(15) Consequently, I allow C.W.P. No. 2149 of 1985 filed on behalf of the employer and quash the award Annexure P. 1 of the Tribunal to the extent it directs reinstatement of the workman. At the same time, I dismiss C.W.P. No. 3767 of 1985 filed on behalf of the workman holding that his dismissal being justified his reinstatement as ordered by respondent No. 1 was without jurisdiction and he is not entitled to backwages. There shall be no order as to costs.

R.N.R.

Before G. C. Mital, J.

SIRI CHAND,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 1429 of 1979

August 20, 1986.

Punjab Tenancy Act (XVI of 1887)—Sections 77(3)—Punjab Security of Land Tenures Act (X of 1953)—Sections 9 and 14A(ii)—Landowners' suit for eviction for arrears of rent—Order for ejection passed against tenant under Section 77(3) of the Tenancy Act—Procedure for ejection prescribed by Section 14A(ii) of the Land Tenures Act not followed—No notice issued to tenant in form 'N' to make deposit of arrears within one month—Order of eviction—Whether beyond the jurisdiction of the authorities under the Tenancy Act—Said order—Whether liable to be quashed.

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Held, that Section 9 of the Punjab Security of Land Tenures Act, 1953, provides the grounds on which ejection can be sought and Section 14 thereof provides the procedure for seeking ejection. Clause (ii) of Section 14A of the Land Tenures Act permits a landowner to apply in writing to the Assistant Collector to recover arrears of rent from a tenant and on receipt of an application a notice in the prescribed form is to be sent to the tenant either to deposit the rent or to give proof of having paid it or of the fact of the landowner's refusal to receive the same or to give a receipt within the period specified in the notice, in form 'N' which has been prescribed in the rules. A reading of form 'N' shows that the amount has to be deposited within a month of the receipt of notice unless the tenant is able to prove that he has paid the rent or is able to prove that the landlord refused to receive the rent or give a receipt for it. An order of eviction passed under Section 77(3) of the Punjab Tenancy Act, 1887 without complying with the provisions of Section 14A(ii) of the Land Tenures Act and issuing form 'N' in which notice had to be issued to the tenant, is beyond the jurisdiction of the statutory authority under the Tenancy Act and as such the order is liable to be quashed.

(Para 3)

Writ Petition under Article 226 of the Constitution of India praying that :

- (a) *that the records of the case be summoned and after perusal of the same, an appropriate writ in the nature of Certiorari quashing the impugned orders contained in Annexure p-3 to p-6 be issued;*
- (b) *that any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case may be issued;*
- (c) *that the suit of the landowners-respondent No. 6 to 9 for eviction and recovery of Rs. 300 be dismissed with costs;*
- (d) *that issuance of notice of motion to the respondents be dispensed with;*

It is further prayed that during the pendency of the writ petition the operation of the impugned orders be stayed.

Sunil Gaur, Advocate, for the Petitioner.

Aman Dahiya, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) On 5th August, 1975, Ram Phal and other landowners filed a suit against Siri Chand tenant for eviction and recovery of rent of Rs. 300 for the crops from Kharif 1972 to Rabi 1975 at the rate of Rs. 100 per year for the agricultural land measuring 11 Bighas 14 Biswas. The suit was filed under section 77(3) of the Punjab Tenancy Act, 1887 (for short 'the 1887 Act'), before the Assistant Collector 1st Grade, Sonapat. On coming to know of the suit, the tenant immediately deposited the amount of Rs. 300,—*vide* Exhibit D4 on 27th November, 1975. But in the written statement he took a plea that he had paid rent from Kharif 1972 to Rabi 1974 and for Kharif 1974 and Rabi 1975 he had sent Rs. 100 by money order on 24th June, 1975 but the landowners refused to take the Money Order as they wanted to evict him. The Assistant Collector by order Annexure P 3 dated 1st April, 1976 ordered the eviction and also found that Rs. 300 were due and the deposited amount was ordered to be paid to them. The tenant's appeal to the Collector, further revision to the Commissioner and the Financial Commissioner remained unsuccessful and, thereafter, this petition under Article 226 of the Constitution of India was filed, to impugn those orders.

(2) The Statutory authorities have found that the tenant had not paid rent from Kharif 1972 to Rabi 1974. However, it was found that the tenant had sent Rs. 100 by Money Order for the last two crops, but observed that there was no provision provided under the Act to send rent through Money Orders. It was also observed that the refusal on the part of the landowners to accept the Money Orders was not proved from Exhibits D1 to D3 as there was no note of refusal thereon.

(3) The learned counsel appearing for the tenant has argued that the 1887 Act is over-ridden by the provisions of section 9 read with section 14-A of the Punjab Security of Land Tenures Act, 1953 (for short 'the 1953 Act'), because of the following non-obstante clause:—

“Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject a tenant except when such tenant—”

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Section 9 provides the grounds on which ejectment can be sought and Section 14-A provides the procedure for seeking ejectment. Clause (ii) of section 14-A of the Act permits a landowner to apply in writing to the Assistant Collector to recover arrears of rent from a tenant and on receipt of an application a notice in the prescribed form is to be sent to the tenant either to deposit the rent or to give proof of having paid it or of the fact of the landowner's refusal to receive the same or to give a receipt within the period specified in the notice. The form has been prescribed in the Rules and the relevant form for our purpose would be form 'N'. A reading of form 'N' shows that the amount has to be deposited within a month of the receipt of notice unless tenant is able to prove that he has paid the rent or is able to prove that the landlord refused to receive the rent or gives a receipt for it. In the present case, since the suit was filed under section 77(3) of the 1887 Act, and not under the 1953 Act, the procedure prescribed by section 14-A (ii) of the 1953 Act was not followed nor notice in form 'N' was given. In spite of not following the prescribed procedure the tenant did not take the risk and deposited Rs. 300 on 27th November, 1975, on coming to know of the suit. It is not disputed that in case notice in form 'N' had been issued to him and he had deposited Rs. 300 within a month of the receipt of notice, order of ejectment could not be passed against him. For the failure to proceed in accordance with law, the tenant cannot be penalised and since he has deposited the amount of Rs. 300, no case for ejectment was made out and all the Statutory Authorities have gone beyond their jurisdiction in passing the order of ejectment under section 77(3) of the 1887 Act and in remaining oblivious of the provisions of section 14-A(ii) of the 1953 Act, and also form 'N', in which notice had to be issued to the tenant. Because of this fundamental error in the procedure, which goes to the very root of the jurisdiction of the authorities concerned, as well as to the root of the controversy, the impugned orders cannot be sustained.

(4) For the reasons recorded above, this petition is allowed with costs and the order of ejectment passed by the Statutory Authorities is hereby quashed. However, the order for payment of the deposited amount of Rs. 300 to the landowners is hereby maintained. The amount must have been paid to the landowners and in case it is not paid, it may be paid to them now.

R. N. R.