

Before J. M. Tandon, J.

CANTONMENT BOARD,—Appellant

versus

INDER SINGH—Respondent.

Regular Second Appeal No. 865 of 1968.

November 22, 1978.

Cantonments Act (II of 1924)—Sections 191 and 259—Board seeking to recover rent or compensation for unauthorised period of occupation—Coercive process prescribed in section 259—Whether available—Continued occupation of Board's property under stay order granted by a Court—Such occupation—Whether permissive in terms of section 191.

Held, that the mode of recovery by making an application to the Magistrate under section 259 of the Cantonments Act, 1924 can be adopted where the amount sought to be recovered is arrears of any tax, rent on land and building or any other amount recoverable by the Board under the Act. The word "recoverable" in the context obviously means "claimable" for section 259 itself provides for the manner of recovery. Therefore, action for recovery can be taken under this section with respect to land and buildings provided such rent is claimable by the Board under the Act or the rules framed thereunder. Section 259 of the Act does not apply for the recovery of rent or compensation sought to be recovered from an unauthorised occupant because it is not recoverable under the Act. (Para 6)

Held, that unauthorised occupation of property belonging to the Board sustained under the stay orders of the Court could not be described as permissive in terms of section 191 of the Act. (Para 7)

Regular Second Appeal from the decree of the Court of Shri Diali Ram Puri, District Judge, Ferozepore, dated the 17th of February, 1968, affirming with costs that of Shri Krishan Kumar Garg, Sub-Judge III Class, Ferozepore, dated the 31st August, 1967, passing a decree as prayed for in favour of the plaintiff and against the defendant and leaving the parties to bear their own costs.

B. N. Aggarwal, Advocate, for the appellant.

H. L. Sarin, Advocate, and K. G. Chaudhary, Advocate, with him.
for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) The Cantonment Board, Ferozepur Cantt. (hereinafter called the Board) having found that the respondent had made encroachment on their property issued a notice to him under section 187 of the Cantonments Act, 1924 (hereinafter called the Act), directing him to remove it. As the respondent did not remove the encroachment, another notice was given to him on October 4, 1962, under section 256 of the Act directing him to remove the encroachment within a week or it will be removed at his expense. On October 12, 1962, the respondent filed a suit for permanent injunction against the Board claiming that he was the owner of the property on which he had allegedly encroached upon. His suit was dismissed on October 31, 1963. His appeal also failed in 1966.

(2) The Board then issued a demand notice to the respondent on September 15, 1966, calling upon him to pay Rs. 8,512 as ground rent for unauthorised occupation. The defendant filed a suit for perpetual injunction praying that the Board be restrained from realising Rs. 8,512 or part thereof from him on the various grounds like the Board has no power to issue such a demand notice and it did not show how the amount had been assessed.

(3) The Board contested the suit and the trial Court framed the following issues:—

1. Whether the demand notice in question dated September 15, 1966, served by the defendant Board on the plaintiff is illegal, void, *ultra vires*, malicious, arbitrary and inoperative for the reasons stated in paragraph No. 8 of the plaint?
2. Whether the suit is premature?
3. Whether the suit is not properly valued for purposes of Court fee and jurisdiction?
4. Relief.

(4) Issues Nos. 1 and 2 were found in favour of the respondent and he was granted the decree prayed for by the trial Court. The Board

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preferred an appeal which was dismissed by the District Judge on February 17, 1969. It is against this order that the present regular second appeal is directed by the Board.

(5) The learned counsel for the respondent conceded during arguments and rightly so that the Board can maintain a suit for the recovery of the amount against the respondent for the latter having remained in alleged unauthorised occupation of the Board's property. It has been so held by the trial Court and the first appellate Court. The dispute between the parties is about the right of the Board to effect recovery of the amount in dispute from the the respondent by coercive process as prescribed in section 259 of the Act. Sub-section (1) of section 259 of the Act which deals with the method of recovery reads as under:—

“Method of recovery.—(1) Notwithstanding anything elsewhere contained in this Act, arrears of any tax, rent on land and buildings and any other money recoverable by a Board or a Military Estates Officer under this Act or the rules made thereunder may be recovered together with the cost of recovery either by suit or on application to a Magistrate having jurisdiction in the cantonment or in any place where the person from whom such tax, rent or money is recoverable may for the time being be residing by the distress and sale of any moveable property of or standing timber or growing crops belonging to, such person which is within the limits of such Magistrate's jurisdiction, and shall, if payable by the owner of any property as such, be a charge on the property until paid.”

(6) The mode of recovery by making an application to the Magistrate under this section can be adopted where the amount sought to be recovered is arrears of any tax, rent on land and building or any other amount recoverable by the Board under the Act. It was held in *The Cantonment Board, Ambala v. Pyare Lal* (1) that the provisions of section 259 can be utilised for realisation of arrears of rent on land and buildings provided that such rent is recoverable by a Board under the Act or the Rules made thereunder. The word “recoverable” in the context obviously means “claimable” for section 259 itself provides for the manner of recovery. Therefore, action

(1) A.I.R. 1966 S.C. 108.

for recovery can be taken under section 259 with respect to land and buildings provided such rent is claimable by the Board under the Act or the Rules framed thereunder. The contention of the learned counsel for the appellant is that in the instant case the recoveries sought to be made from the respondent is not that of contractual rent but rent or compensation from the respondent having remained in unauthorised occupation of the Board's property. The ratio of the Supreme Court authority which pertains to the recovery of the rent cannot be made applicable to the present case. There is no merit in this contention. Section 259 of the Act does not apply for the recovery of rent because it is not recoverable under the Act. Similarly, the rent or compensation sought to be recovered by the appellant from the respondent is not under the Act. Even otherwise it is difficult to conceive that section 259 will not apply for the recovery of the rent where the possession of the occupant is permissive but would apply for the recovery of rent or compensation from an unauthorised occupant.

(7) The learned counsel for the appellant has then contended that under section 191 of the Act the Board can permit temporary occupation of any land vested in it for the purpose of depositing any building materials or making any temporary excavation therein or erection thereon on payment of fee. In this case, the respondent remained in an unauthorised occupation of the Board's property under the stay orders issued by the Courts in the previous suit filed by him which amounts to the permission of the Board under section 191 for which the respondent is liable to pay fee. The recovery of amount from the respondent would thus be under section 191 and covered by section 259. This contention is without force. The unauthorised occupation by the respondent sustained under the stay orders of the Court would not be turned permissive in terms of section 191 of the Act.

(8) The last contention of the learned counsel for the appellant is that the suit filed by the appellant is liable to be dismissed on the ground that it was premature. The appellant issued a notice to the respondent on September 15, 1965, calling upon him to pay Rs. 8,512 as ground rent for his unauthorised occupation within 10 days and no further steps had been taken when the present suit was filed. In the absence of exercise of option by the Board to make recovery from the respondent by coercive process the suit filed by the appellant for perpetual injunction was premature and liable to be dismissed on this ground. I see no force in this contention. The trial

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Court held that the appellant could seek remedy against the respondent in the Civil Court if so advised. The appellant did not feel satisfied and filed appeal asserting their right to make recovery by coercive process under section 259 of the Act. The same right has been asserted in this second appeal. It being the case the appellant cannot justifiably raise the plea of prematurity.

(9) The respondent had prayed for a perpetual injunction restraining the Board from realising Rs. 8,512 or any part thereof from him on account of land rent for the unauthorised period of occupation. The trial Court granted the decree prayed for in spite of holding that the Board could seek remedy in the civil Court if so advised. The District Judge in appeal also held likewise but dismissed the appeal of the Board upholding the decree of the trial Court. The decree of the trial Court as upheld in appeal by the learned District Judge debars the Board from realising Rs. 8,512 from the respondent which means either by filing a civil suit or by adopting coercive process. It was neither the intention of the trial Court or of the appellate Court to restrain the Board from effecting recovery of Rs. 8,512 or any part thereof from the respondent by filing a civil suit against him. It being the case, the decree granted to the respondent by the trial Court and upheld in appeal by the learned District Judge requires modification. The decrees of the lower Courts are accordingly modified to the extent that the Board is restrained from realising Rs. 8,512 or any part thereof from the respondent on account of land rent for the unauthorised period of his occupation by coercive process provided in section 259 of the Act. The appellant shall otherwise be competent to maintain a suit for the recovery of the amount from the respondent. The parties are left to bear their own costs.

H.S.B.

Before M. R. Sharma, J.

RANBIR SINGH—*Petitioner*

versus

THE CANE COMMISSIONER, HARYANA and others—*Respondents.*

Civil Writ Petition No. 1315 of 1977.

November 22, 1978.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 26, 27 and 85 (XXXVIII)—Employment Exchanges (Compulsory Notification of Vacancies) Act (XXXI of 1959)—Section 2(2)(f) (3)—Co-operative Society registered under the 1961 Act—Whether