Before Vijender Jain, C.J. & Mahesh Grover, J.

SHANTI DEVI AND ANOTHER,—*Appellants*

versus

AMAR SINGH AND OTHERS,—*Respondents*

L.P.A. NO. 38 OF 2006

IN C.W.P. NO. 10982 OF 1999

18th September, 2007

Punjab Security of Land Tenures Act, 1953—Ss. 9(I)(ii) and 14-A(i)—Constitution of India, 1950—Art. 226—Tenants failing to pay Batai/rent for crops—Eviction application—Defence struck off as tenants failing to file written statement—ACIG ordering ejectment of tenants—Collector accepting appeal of tenants—Tenants failing to make good payment of entire amount of rent despite several opportunities even Collector granting them an opportunity—Bounden duty of a tenant to comply with terms of tenancy and benefit of statute can be afforded to him only if his conduct does not violate the same—Right to a landlord to seek eviction of a tenant under the statute is completely independent of his right to seek recovery of arrears of rent-Satisfaction of the recovery proceedings would not diminish or dilute his right to seek eviction of a stubborn, reluctant and an irresponsible tenant—Appeal allowed, judgment of Ld. Single Judge set aside.

Held, that an analysis of Section 14-A(i) of the Act shows that the proviso to Section 14-A(i) casts a duty upon the Assistant Collector to calculate the amount of rent so as to enable the tenant to satisfy the petition of the landlord. This situation would arise if the tenant disputes the claim of the landlord by pleading, exaggerated rent or by saying that he had already paid the amount to the landlord. But, if he, by his conduct, does not even choose to controvert the factual aspect of the landlord's petition and rather chooses to frustrate it by not even filing a reply, then it amounts to subtle acquiescence.

(Para 14)

Further held, that the private respondents who had the opportunity to respond to the application for eviction preferred by the appellants in which the amount of rent due was specified, chose not to come

forward despite the fact that as many as sixteen adjournments were granted to them to file their written statement forcing the ACIst Grade to strike off their defence.

(Para 15)

Further held, that once an application seeking ejectment of the tenant on the ground of non-payment of rent is filed with a specific averment detailing the amount due which had not been paid, it becomes the duty of the tenant to controvert the same in case the situation so warrants and state their case unambiguously, but the private respondents, who were the tenants, chose complete silence at least before the ACIst Grade whose Court was the Court of first instance indicating their acquiescence.

(Para 16)

Further held, that even after the Collector had observed in favour of the private respondents, they made no attempt to get the amount determined if they were dissatisfied with the claim set up by the appellents and rather, they chose a covert and circuitous route through litigation to evade the payment of rent.

(Para 17)

Further held, that the conduct of the private respondent in not making good the payment of rent to the appellants despite several opportunities and knowledge of the same does not, in any way, entitle them to any relief under the law. It is the bounden duty of a tenant to comply with the terms of the tenancy and the benefit of the statute can be afforded to him only if his conduct does not violate the same. Once the ACIst Grade had found that the private respondents were liable to pay the amount, the same should have been paid after passing of the order by the Collector, but they, instead of making attempt to pay the entire amount of rent, chose means to frustrate the rights of the appellants.

(Para 19)

R. S. Mittal, Senior Advocate with Sudhir Mittal, Advocate, for the appellants.

B.L. Gulati, Advocate for respondents No. 1 to 4 and 6.

None for proforma, respondents No. 11 to 14, Respondent No. 5 reported to be dead.

JUDGEMENT

VIJENDER JAIN, CHIEF JUSTICE

(1) The appellants have filed the present appeal under Clause X of the Letters Patent impugning judgment dated 4th January, 2006 of the learned Single Judge passed in C.W.P. No. 10982 of 1999.

(2) Before we advert to the controversy raised in the appeal, we deem it appropriate to notice the facts.

(3) The appellants are the owners of the land measuring 144 kanals and 8 marlas situated within the revenue estate of village Saatrod, District Hisar. On the said land, the private respondents were inducted as Gair Mumkin tenants on 1/3rd Batai. Since they did not pay the Batai for the crops from Rabi, 1987 to Rabi, 1992, which worked out to Rs. 96221.86, despite repeated demands, the appellants moved an application on 29th May, 1992 under Sections 9(1)(ii) and 14-A(i) of the Punjab Security of Land Tenures Act, 1953 (for short, 'the Act') for eviction of the private respondents from the land in question. The Assistant Collector lst Grade Hisar (hereinafter described as 'AClst Grade'),—*vide* his order dated 2nd February, 1993, accepted the application of the appellants and ordered the ejectment of the private respondents on the ground of non-payment of rent/Batai, which resulted in the appeal having been filed before the Collector, Hisar. The said appeal was accepted by the Collector, who observed that AClst Grade had failed to inform the private respondents the amount due on account of rent after calculating the same along with interest so as to enable them to make the requisite payment. This observation was made with specific reference to the proviso to Section 14-A(i) of the Act. The matter was, consequently, remitted back to the AClst Grade. Before parting with the order, the Collector observed as under :—

> "I grant one more opportunity to the appellants for payment of the balance amount and I remand this case with the direction that the lower court after the receipt of the file shall calculate the amount of interest and expenses and will provide an opportunity to the appellants to make the payment within a specific period and if inspite of that

opportunity, the total calculated amount is not paid by the appellants then the ejectment orders will become operative with immediate effect."

(4) Instead of accepting the order of the Collector, both the parties filed appeals against it before the Commissioner, Hisar, who dismissed the same by observing that the impugned order had been passed keeping in view the interest of justice. It was also noticed that both the parties had agreed that out of six cases, in five cases the amount in question had been deposited.

(5) The appellants, who felt aggrieved against the order of the Commissioner, preferred a revision petition before the Financial Commissioner, who upset the orders of the lower revenue authorties and ordered the eviction of the private respondents by holding that since the amount of Batai worked out by ACIst Grade, i.e. Rs. 96221.86 was known to them (the tenant-respondents), they ought to have made the payment of the same and their failure to do so necessarily should result in their ejectment.

(6) The private respondents, thereafter, filed C.W.P. No. 10982 of 1999 which was allowed by the learned Single Judge by the impugned judgment and the same has resulted in the present appeal.

(7) Learned Single Judge, while accepting the writ petition of the private respondents, concluded that proviso to Section 14-A(i) of the Act is pari materia to the proviso to clause (i) Sub-section (2) of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 as well as proviso to Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 and went on to apply the ratio of the judgment of the Supreme Court in **Rakesh Wadhawan and others** *versus* **Jagdamba Industrial Corporation and others, (1)** to hold that it was the duty of the ACIst Grade to calculate the amount of rent/batai, then to make the same known to the private respondents so as to enable them to pay by affording an opportunity to do so and since the said authority failed to do so, the original order of eviction, as also the order of the Financial Commissioner were liable to be set aside, while the orders passed by the Collector and the Commissioner deserved to be upheld.

(1) 2002 (2) P.L.R. 370

(8) Learned counsel for the appellants contended that the learned Single Judge has gravely erred in not noticing the facts before applying the ratio of **Rakesh Wadhawan's case (*supra*).** He argued that the application for eviction was filed before the ACIst Grade in which as many as sixteen adjournments were granted to the private respondents to file their written statement, but they failed to do so and ultimately, their defence was struck off. He further argued that the private respondents were made aware of the amount of rent by way of details provided in the application and once they did not choose to controvert the same, it was incumbent upon them to make the payment of the rent/Batai. Learned counsel for the appellants urged that even before the Collector, the stand of the private respondents was not categoric. Rather, the plea taken up by them was that the amount had been paid, but no proof thereof had been furnished and in the same breath, they pleaded that they did not know about the residential address of the land owners as a result of which they could not make the payment.

(9) Subsequent to the orders of the Collector, the private respondents are said to have made the payment of the rent pursuant to the recovery proceedings initiated by the appellants in separate suits and the same is reflected from Annexures P-3 to P-8 which were attached along with the writ petition, but, even according to these, the private respondents had not satisfied the total amount of rent and arrears on account of rent for Kharif, 91 and Rabi, 1992 still remained to be paid. In view of this, learned counsel for the appellants contended that the observations made by the Financial Commissioner were perfectly valid and that the eviction had rightly been ordered.

(10) Besides, it was contended by the learned counsel for the appellants that the **Rakesh Wadhawan's case (supra)** is not applicable to the facts of the present case.

(11) On the other hand, learned counsel for the private respondents contended with equal vehemence that the judgment of the learned Single Judge was in consonance with the spirit of the judgment in **Rakesh Wadhawan's case (supra)** and once it was

established from the record that proviso to Section 14-A(i) of the Act had not been complied with, the observations made in the aforesaid judgment would apply *mutatis mutandis* to the facts of this case.

(12) We have heard the learned counsel for the parties at some length and have perused the entire record.

(13) Section 14-A(i) of the Act and the proviso thereto, which are relevant for the decision of this appeal, are reproduced below :—

> "**14-A. Procedure for ejectment and recovery of arrears of rents etc.**—Nothwithstanding 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 ;
>
> Provided that if the tenant makes payment of arrears of rent and interest to be calculated by the Assistant Collector, First Grade, at eight per centum per annum on such arrears together with such costs of the applicantion, if any, as may be allowed by the Assistant Collector First Grade, either on the day of first hearing or within fifteen days from the date of such hearing, he shall not be ejected."

(14) An analysis of the above reproduced provisions shows that the proviso to Section 14-A(i) casts a duty upon the Assistant Collector to calculate the amount of rent so as to enable the tenant to satisfy the petition of the landlord. This situation would arise if

the tenant disputes the claim of the landlord by pleading, exaggerated rent or by saying that he had already paid the amount to the landlord. But, if he, by his conduct, does not even choose to controvert the factual aspect of the landlord's petition and rather chooses to frustrate it by not even filing a reply, then it amounts to subtle acquiescence.

(15) In the instant case, the private respondents, who had the opportunity to respond to the application for eviction preferred by the appellants in which the amount of rent due was specified, chose not to come forward despite the fact that as many as sixteen adjournments were granted to them to file their written statement forcing the ACIst Grade to strike off their defence.

(16) Once an application seeking ejectment of the tenant on the ground of non-payment of rent is filed with a specific averment detailing the amount due which had not been paid, it becomes the duty of the tenant to controvert the same in case the situation so warrants and state their case unambiguously, but the private respondent, who were the tenants, chose complete silence at least before the ACIst Grade whose Court was the Court of first instance indicating their acquiescence.

(17) Subsquently, in appeal, their stand was vacillating as, initially, they pleaded that they had paid the amount in question, but then chose to say that they could not pay the rent as they were not having the knowledge about the residential address of the appellants and finally, they admitted their mistake and pleaded that they will pay the entire amount if an opportunity is given to them. Even thereafter, they did not make the payment of rent and rather, they satisfied the claim of the appellants partially and that too in response to the recovery proceedings initiated at the behest of the appellants in the suits for recovery. Even after the Collector had observed in favour of the private respondents, they made no attempt to get the amount determined if they were dis-satisfied with the claim set up by the appellants and rather, they chose a covert and circuitous route through litigation to evade the payment of rent.

(18) The protection of law and the benefit thereof can only be given to the persons, who satisfy the equitable conscience of the

Court. The provisions of law cannot be interpreted in a manner so as to delete justiciable content of a provision to reward a person, who has flouted it willfully.

(19) We are contrained to observe that the conduct of the private respondents in not making good the payment of rent to the appellants despite several opportunities and knowledge of the same does not, in any way, entitle them to any relief under the law. It is the bounden duty of a tenant to comply with the terms of the tenancy and the benefit of the statute can be afforded to him only if his conduct does not violate the same. Once the ACIst Grade had found that the private respondents were liable to pay the amount, the same should have been made good and even if it was not done, the rent should have been paid after passing of the order by the Collector, but they, instead of making attempt to pay the entire amount of rent, chose means to frustrate the rights of the appellants.

(20) The plea of the private respondents that they had satisfied the demand of rent substantially is also without any substance. The appellants had availed themselves of the proceedings under the Act to seek eviction of the private respondents, which were frustrated. Subsequent payment of rent was pursuant to recovery proceedings in the suits filed by the appellants, whose right to recover the arrears of rent cannot be clouded by their right to seek the eviction of an errant and abusive tenant, who knows how to enjoy the property, but knows not his duty to pay for it.

(21) The right of a landlord to seek eviction of a tenant under the statute is completely independent of his right to seek recovery of arrears of rent and satisfaction of the recovery proceedings would not diminish or dilute his right to seek eviction of a stubborn, reluctant and an irresponsible tenant.

(22) On the basis of the above discussion, the Letters Patent Appeal is accepted and the impugned judgment is set aside. As a consequence thereof, the orders passed by the ACIst Grade and the Financial Commissioner stand revived. No order as to costs.

R.N.R.