



2025:HHC:33312

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 206 of 2019

Reserved on: 03.09.2025

Decided on: 22.09.2025

Sudershan and others ... Petitioners

Versus

Divisional Commissioner, Shimla and others ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the petitioners : Mr. Surinder Saklani, Advocate.

For the respondents : Mr. Rajat Chauhan, Assistant Advocate General for respondents No. 1 and 2.

: Mr. Bhupender Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate for respondent No. 3.

Ajay Mohan Goel, Judge

By way of this writ petition, the petitioners have *inter alia* prayed for the following reliefs:-

“That a writ in the nature of certiorari may very kindly be passed for quashing of order dt. 4.9.2018 and 20.09.2007 passed by Respondents No. 1 and 2 respectively as contained in Annexure P-7 and P-5.”

2. The petitioners are aggrieved by the order passed by the Authorities under the H.P. Public Premises (Land Eviction and Rent Recovery) Act, 1971, in terms whereof, the predecessor in interest of

¹ Whether reporters of the local papers may be allowed to see the judgment?

the present petitioners was ordered to be evicted from the premises in issue.

3. Brief facts necessary for the adjudication of this petition are that proceedings were initiated against one Shri Khurana, Proprietor of M/s Himachal Iron Store, Parwanoo, under the H.P. Public Premises (Land Eviction and Rent Recovery) Act, 1971.

4. In terms of order dated 12.03.1999, copy of which is appended with the petition as Annexure P-1, the petition under Section 4 filed by respondent No. 3 herein was disposed of by the Authority by returning the findings that it stood proved by the respondent that the rent was being paid regularly and further as the requisite notice in terms of Section 106 of the Transfer of Property Act was not sent through registered post and the fact that posting and delivery thereof was not proved, therefore, tenancy had not terminated in accordance with law.

5. Feeling aggrieved, the Cooperative Society preferred an appeal and this appeal was disposed of on 24.08.1999 (Annexure P-2), in terms whereof the appeal was dismissed.

6. Thereafter fresh proceedings were initiated against Keshav Ram Khurana, Proprietor of M/s Himachal Iron Store, Parwanoo, under the said Act, on 18.09.2000 on the ground that the tenant was not paying rent and further the premises were required by the Society for its own use. A preliminary objection was taken

with regard to the maintainability of the proceedings *inter alia* on the ground that the tenancy was of a partnership firm, impleaded respondent was only one of the partners and there were two other partners also running the same business.

7. The Authority, vide Annexure P-3, dated 20.09.2007, allowed the petition by holding that the evidence adduced and arguments put forth by the Counsel demonstrated that the petitioner was a registered Society under the relevant statute and was the owner of the property in issue. The premises were allotted to respondent Mr. Khurana on monthly rent of Rs.50/- and on account of non-payment of rent by the respondent, the tenancy of the respondent was rightly cancelled vide petitioner's resolution No. 31.08.1994 Ext. P-1. The Authority further held that the respondent had failed to prove whether there were three partners or not as alleged by placing on record the documents as evidence and the partnership deed Mark-A seem to have been drawn on 01.04.1983 between Keshav Khurana, Krishna Devi and Krishan Kant, whereas the disputed portion was allotted prior to that to respondent Keshav Khurana on 23.11.1982, who had paid rent on 23.11.1982. The Authority also held that the partnership deed was not registered and no evidence was led in support of its authenticity.

8. The relevant portion of the order for the purpose of convenience is being quoted herein below:-

“From the above discussion, evidence adduced and arguments put forth by the counsels of both the parties, it is observed that the petitioner is a registered society under the provisions of Society Act who hold its own property bearing on old Khasra No. 139/98 at village Dangyar, Tehsil Kasauli, District Solan, H.P. and portion/shop No. 5 exists on the above Khasra no was allotted to the respondent Mr. Khurana on monthly rent of Rs. 50/- and due to non-payment of rent by the respondent and requirement of above portion/plot for its own use by the petitioner, the tenancy of the respondent was rightly cancelled vide petitioner's resolution No. 1 dated 31.08.1994 (Ex.P-1) and as per this resolution Shri Bhagat Ram, the Vice President and Shri Amar Nath Sharma the then member was authorized to take legal action to dispossess the respondent for which the petition under Section - 4 of the H.P. Public Premises (Land Eviction and Rent Recovery) Act was previously filed in this court, registered as case No. 4/13 of 1995, which was dismissed on 12.03.1999 on technical grounds with the observation that notices were not sent through registered post and the facts of date of pasting and delivery has not been proved and the tenancy has not been terminated as per the law and the decision passed by this court was upheld by the Id. Commissioner, Shimla Division, whereas in the present petition filed by the petitioner, registered A.D./UPC notice dated 01.12.1999,

acknowledgement Ex.P-3 and UPC Ex.P-5 regarding termination of tenancy was duly served upon the respondent. It is also pertinent to mention it here that on some land a shop/godown was allotted by the petitioner to Bawa Amarjeet Singh, who was dispossessed by this court dated 03.08.1996 and the appeal against this order was filed before the Id. Divisional Commissioner, High Court of H.P. and Hon'ble Supreme Court of India, which was dismissed and Shri Bawa Amarjeet Singh was evicted from the land of petitioner. It has also been observed that the petitioner society wants to expand its sphere of activities in the interest of locality and the resolution No. 1 dated 31.08.1994 Ex.P-1 was passed by the petitioner to evict all the allottees i.e. Bawa Amarjeet Singh, Bansal Roadways, Dr. Sodhi, Shri Prem Chand and the present respondent Mr. Khurana out of which Bawa Amarjeet Singh has been evicted, Dr. Sodhi vacated the shop, Prem Chand and Bansal Roadways have been orders to be evicted from Itin which revealed that the petitioner has intention to improve the activities of the society and to give benefit to the persons residing in the locality. Since the petitioner has been served with proper legal notice upon the respondent as discussed above regarding termination of tenancy of portion/shop No. 5 and his possession on the disputed premises is illegal after 01.12.1999 and he is therefore, liable to pay rent @ Rs. 50/-

per month upto 30.11.1999. As for the version taken by the respondent in his written reply and arguments that the premises in question is situated within Municipal limits, Parwanoo where H.P. Urban Rent Control Act is applicable and the petition under H.P. Public Premises Act is not applicable in the present case, my finding on this point are that the H.P. Urban Rent Control Act 1987 has come into force w.e.f. 17.11.1971, It is an act to provide for control of rent and eviction within the limit of urban area in the State of H.P. The H.P. Public Premises (Land Eviction and Rent Recovery) Act 1971 has been enacted to provide for the eviction of unauthorized occupation from the public premises and for certain incidental matter. Section 2(C) defines public premises to any premises belonging to or take on lease or requisitioned by or on behalf of State Government and includes any premises belonging to or taken on lease by or on behalf of among other things w.e.f. 1983 by virtue of Act 4 of 1983. Any cooperative Societies registered or deemed to have been registered under the H.P. Cooperative Societies Act, 1968 and in view of the above the premises in question would be the Public Premises within the preview of the Public Premises. Moreover the respondent has also failed to prove whether there are three partners of M/S Himachal Iron Store by putting any documentary evidence. However the copy of partnership deed mark 'A' seems to have been drawn on Ist

day of April, 1983 between Shri Keshav Khurana respondent, Smt. Krishana Devi and Krishan Kant whereas the disputed portion was allotted earlier only to the respondent Shri Keshav Khurana and he paid the rent on 23.11.1982 as entry made on page 92 of the cash book by the petitioner from it is evident that the disputed shop was allotted only to the respondent prior to the date of instrument of partnership. Moreover, the partnership deed was not C (registered, which cannot be held good and it is only upto the parties. In context of this instrument of partnership, the respondent did not record the statement of other partners nor lead any evidence in support of its authenticity and without having any base of this document the right of the petitioner to evict the respondent from the un-authorized occupation cannot be deprived only on this sole and unfounded ground. From the perusal of earlier judgement passed by this court in case No. 4/13-A of 1995 decided on 12.03.1999 Ex.P-4 and misc. appeal No. 48/99 decided on 24.08.1999 by the Id. Commissioner, Shimla Division Ex.PX shows that the respondent had never taken the plea that there are three partners of M/S Himachal Iron Store from this it is crystal clear that the hay respondent at this stage taken new point to linger the eviction proceedings, which is purely an afterthought, and same is dismissed as having no merit in this proceeding. Accordingly the respondent is hereby of this

order failing which he shall be evicted from the premises as by using such force as may be necessary. If the respondent will fail to vacate the above premises within one month from the date of this order he will be liable to pay damages @ Rs. 100/- per day till the vacation of the premises alongwith interest arises there upon the damages has been assessed keeping in view the market rate at Parwanoo. A copy of this compliance be reported. The case file of this court be consigned to GRR after due completion.”

9. Feeling aggrieved, an appeal was preferred by the respondent-Keshav Ram Khurana against the said order. Vide Annexure P-5, dated 06.04.2010, the appeal was dismissed being time barred. In the meanwhile, the original respondent died and his legal representatives were brought on record. They preferred CWP No. 2065 of 2010 before this court which was decided vide judgment (Annexure P-6), dated 22.06.2016. In terms of order passed by this Court, the order passed by the Appellate Authority dated 06.04.2010, was set aside and the matter was remanded back to the Appellate Authority to decide the appeal afresh. Thereafter vide Annexure P-7, dated 04.09.2018, the Appellate Authority dismissed the appeal by returning the following findings:-

“5. I have carefully gone through the contents of appeal, record of Ld. Court below and arguments put forth by the Ld. Counsels of the parties. No written objections have been filed

by the respondents. Form perusal of the record, it revealed that the respondent Khadeen Co-operative Society is registered under the provisions of H.P. Co-Operative Societies Act. The Hon'ble High court of H.P. was pleased to pass the following order in CWP No. 2065 of 2010 on dated 22-06-2016.

"In view of the above the writ petition is allowed, the impugned order, dated 6th April, 2010 passed by the Divisional Commissioner, Shimla is quashed and set aside and the parties are relegated to the Divisional Commissioner, Shimla who shall pass the order afresh after hearing the parties. Parties through their counsel are directed to appear before the Divisional Commissioner on 11th July, 2016. The respondents are at liberty to raise all legal objections available to them before the Divisional Commissioner."

From perusal of the partnership deed of M/s Himachal Iron Stores, it revealed that the same is unregistered. To prove the authenticity of the deed, it was incumbent upon the predecessor in interest of present appellants to produce other partners before the Ld. Court below in order to record their statements. The appellants did not get the statements recorded nor lead any evidence in support of its authenticity and thus this document does not form the base to revert the

order of the Ld. Court below. Moreover, the predecessor in interest of the present appellants in Misc. appeal before this court bearing No. 48/99 decided on 24-08-1999 had not taken the plea to the effect that there are three partners of M/S Himachal Iron Store. The Ld. Court below has rightly ordered the predecessor in interest of the appellants to vacate the premises in dispute. Hence, the order of the Ld. Court below requires no interference.

6. *In view of the above discussions, appeal filed by the present appellants is hereby dismissed being devoid of any merit. Misc. application, if any, stands disposed off accordingly.*

A copy of this order be placed on the case file of the Ld. Lower Court and record of the Lower Court be returned back. File of this Court be consigned to the Record Room after due completion."

10. Feeling aggrieved, the petitioners have filed this petition.
11. Learned Counsel for the petitioners argued that the impugned orders are not sustainable in the eyes of law as learned Courts have erred in not appreciating that the tenancy was with the partnership firm and neither the partnership firm was impleaded as party-respondent, nor all the partners were impleaded as party respondents despite the fact that it stood demonstrated from the record that rent was being paid by the partnership firm. Both the

learned Courts below erred in not appreciating that this rendered the proceeding initiated against the predecessor-in-interest of the petitioners *per se* bad. Learned Counsel further argued that in light of the fact that herein the partnership firm was a necessary party and as the said necessary party was not impleaded in the case, the impugned orders were bad. On this count, he strenuously prayed that the petition be allowed and the impugned order be set aside. No other point was urged.

12. On the other hand, learned Senior Counsel for the respondent has argued that there is no infirmity with the orders in issue. As per him, it was a matter of record that the premises were given on rent to Keshav Ram Khurana and he was impleaded as party respondent in the case. He submitted that the Authorities below had dealt with the issue of partnership and they had rightly held that there was no occasion for the Society to have let out the premises in favour of the partnership firm because the tenancy was prior to the coming into existence of the alleged partnership firm. Learned Senior Counsel further submitted that it was a matter of record that no document was placed on record by the respondents to demonstrate that any tenancy was created in favour of the partnership firm. He submitted that because it was the stand of the respondents that tenancy was in the name of the partnership firm, onus was upon them to prove said facts, which they miserably failed

to prove by leading any evidence on record. Learned Senior Counsel further submitted that payment of rent by a partnership firm to the society did not *ipso facto* make the said firm tenant and the tenancy was that of Keshav Ram Khurana only and as it stood proved on record that he had not paid rent in time and was in arrears of rent, his eviction was rightly ordered by learned Court below.

13. I have heard learned Counsel for the petitioners as well as learned Senior Counsel for the respondent-Society. I have also carefully gone through the impugned order as well as the documents appended with the petition.

14. Primarily, the ground on which the impugned orders have been assailed by the petitioners herein is that the authorities erred in not appreciating that the tenancy of the premises was of the partnership firm and not of Keshav Ram Khurana. Now a perusal of the order passed by the First Authority, relevant portion of which has been quoted by me in extensio in this judgment demonstrates that Authority dealt with this issue in detail in its order. Learned Authority held that whereas it was duly substantiated from the evidence that the petitioner-Society was a Society duly registered under the Act in force, it was also established from the record that as the tenant Mr. Keshav Ram Khurana was in arrears of rent, therefore, his tenancy was rightly cancelled vide resolution passed by the Society dated 31.08.1994 (Annexure P-1). Learned Authority

held that the notice dated 01.12.1999 regarding the termination of tenancy was duly served upon the respondent and this was proved from the record. The Authority also held that on some land, shops and a godown was let out by the petitioner to Bawa Amarjeet Singh, who was dispossessed by the Court on 30.08.1986. Appeal against the order was filed before the Divisional Commissioner firstly and thereafter the High Court of Himachal Pradesh and Hon'ble Supreme Court of India, which were dismissed against Bawa Amarjeet Singh, who was evicted from the land of the petitioner. Learned Authority held that as per the petitioner-Society, it wanted to expand its sphere of activities and a resolution stood passed to evict all the allottees of its premises and out of these, few of the tenants stood evicted and a few have already vacated their premises.

15. Learned Authority also observed that the contention of the tenants that the provisions of the Himachal Pradesh Public Premises (Land Eviction and Rent Recovery) Act were not applicable had no force in the eyes of law and it relied upon the definition Clause in section 2(c) of the Act to arrive at the said conclusion. The Authority has also held that respondent therein had failed to prove that whether there were three partners of M/s Himachal Iron Store by placing any documentary evidence on record. It held that copy of partnership deed mark -A seemed to have been drawn on 01.04.1983 between Keshav Ram, Krishna Devi and Krishan Kant

whereas the disputed portion was allotted earlier only to Keshav Ram who had paid rent up to 23.11.1982 and this clearly demonstrated that the shop was allotted to Keshav Ram Khurana prior to the date of the instrument of partnership.

16. The Appellate Authority upheld this order by reiterating that no evidence was led by the party to prove the authenticity of the partnership deed. The appellant did not get the statements recorded nor did they lead any evidence in support of authenticity of the partnership deed. Moreover, the predecessor-in-interest of the appellants in the appeal had not taken the plea to the effect that there were three partners of M/s Himachal Iron Store.

17. It could not be demonstrated by learned Counsel for the petitioner that the findings returned by the Authorities that the property/premises were in possession of Keshav Ram Khurana prior to the date of execution of the partnership firm were perverse. That being the case, obviously, the premises were not let out to the partnership firm but were let out to Keshav Ram Khurana. Therefore, the findings returned to this effect by learned Courts below call for no interference. Further, maybe even if some payments were made by some partnership firm, this does not mean that the said partnership firm automatically stood inducted as a tenant over the suit property. Not only this, it is a matter of record that no evidence was led by the petitioners herein or by their predecessor-in-

interest that there indeed was a partnership firm and that the premises were let out to the said partnership firm. It is also a matter of record that this defence was taken by the petitioners herein after the death of their predecessor-in-interest, who while contesting the proceedings never took this defence. In light of above observations, this Court is of the considered view that in its power of judicial review, there is no occasion for this Court to interfere with the orders under challenge.

18. It is not the case of the parties herein that the procedure prescribed for deciding such proceedings under the H.P. Public Premises Act was not followed by the Authorities. It is also not the case of the petitioners that they were neither heard nor they were not given due and ample opportunity to put forth their case. Therefore, as this Court is not exercising the appellate power, it has to respect the findings of fact returned by the learned Authorities below unless some perversity is demonstrated therein. In the present case, as the petitioner have not been able to demonstrate any perversity in the impugned order and their basic contention that the property was let out to the partnership firm not having been substantiated by any cogent evidence placed on record by them, the findings returned by learned Authorities below call for no interference. The contention of learned Counsel for the petitioner that the factum of the property being let out to the partnership firm

being borne out from the statement of the witnesses of the Society, in the eyes of Court has no force. Their statement cannot be read in the mode and manner in which the petitioner wants them to be read. It was the allegation of the petitioners that the property was let out to the partnership firm and incidentally as the petitioners happen to be the alleged partners of the firm, the onus was upon them to have proved this fact, which they miserably failed to prove. Thus, as observed herein in the above backdrop, as this court finds no reason to interfere with the orders under challenge, this petition is dismissed. Pending miscellaneous applications, if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

September 22, 2025
(*narender*)