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138, 139 and 140

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
 CHANDIGARH**

Date of Decision: 03.02.2025

(I) **CWP-2607-2025 (O&M)**
 Ashwani Kumar MahajanPetitioner

Versus

State of Punjab and othersRespondents

(II) **CWP-2612-2025 (O&M)**
 Varinder Kumar MahajanPetitioner

Versus

State of Punjab and othersRespondents

(III) **CWP-2616-2025 (O&M)**
 Varinder Kumar MahajanPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Sidhi Bansal, Advocate
 for the petitioner(s).

Mr. Nirmaljit Singh Diwana, Senior DAG, Punjab.

Mr. Vikram Preet Arora, Advocate
 for M.C./Panchayat Samiti.



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HARSH BUNGER, J. (Oral)

CM-1747, 1745 & 1672-CWP-2025

These are the applications filed under Section 151 of the Code of Civil Procedure for placing on record the additional affidavit(s) of the petitioner(s).

For the reasons mentioned in the applications, the same are allowed and additional affidavit(s) of the petitioner(s) are taken on record, subject to all just exceptions.

Applications stand disposed of accordingly.

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This order shall dispose of *CWP No.2607 of 2025* titled as Ashwani Kumar Mahajan vs State of Punjab and others, *CWP No.2612 of 2025* titled as Varinder Kumar Mahajan vs State of Punjab and others and *CWP No.2616 of 2025* titled as Varinder Kumar Mahajan vs State of Punjab and others, as all of these cases involve common questions of law and facts.

1.1 In *CWP No.2607 of 2025* titled as “*Ashwani Kumar Mahajan vs State of Punjab and others*”, the property in question is Shop No. 1 situated at Shopping Complex, Bus Stand Kharar, District SAS Nagar, Mohali, from which eviction of petitioner- Ashwani Kumar Mahajan has been sought by the Panchayat Samiti, Kharar; under the provisions of sections 4, 5 and 7 of the Punjab Public Premises and Lands (Eviction and Rent Recovery) Act, 1973 (in short ‘1973 Act’) on account of non-payment of rent/arrears of rent. The demand of rent/arrears of rent sought from the petitioner is for an amount of Rs. 43,82,867/- (as on 30.09.2024).



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1.2 In *CWP No.2612 of 2025* titled as “*Varinder Kumar Mahajan vs State of Punjab and others*”, the property in question is Shop No. 2 situated at Shopping Complex, Bus Stand Kharar, District SAS Nagar, Mohali, from which eviction of petitioner- Varinder Kumar Mahajan has been sought by Panchayat Samiti, Kharar under 1973 Act on account of non-payment of rent/arrears of rent. The demand of rent/arrears of rent sought from the petitioner is for an amount of Rs. 38,99,349/- (as on 30.09.2024).

1.3 Similarly, in *CWP No.2616 of 2025* titled as “*Varinder Kumar Mahajan vs State of Punjab and others*”, the property in question is Shop No. 1+2 upstairs chubara (first floor) situated at Shopping Complex, Bus Stand Kharar, District SAS Nagar, Mohali, from which eviction of petitioner has been sought by Panchayat Samiti, Kharar under 1973 Act on account of non-payment of rent/arrears of rent. The demand of rent/arrears of rent sought from the petitioner is for an amount of Rs. 28,68,760/- (as on 30.09.2024).

1.4 For the sake of convenience, the facts are being derived from *CWP No.2607 of 2025* titled as *Ashwani Kumar Mahajan vs State of Punjab and others*.

2. The said writ petition (CWP-2607-2025) has been filed under Articles 226/227 of the Constitution of India *inter alia* seeking issuance of writ in the nature of Certiorari for quashing order dated 30.05.2022 (Annexure P-5) whereby, learned District Development and Panchayat Officer-cum-Collector, SAS Nagar, Punjab (respondent No.3) while allowing the eviction petition filed by Panchayat Samiti, Kharar (respondent



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No.2) against the petitioner, has upheld the demand of arrears.

2.1 A further prayer has been made for setting aside demand notice dated 05.12.2024 (Annexure P-7) calling upon the petitioner to pay Rs.43,82,867/- being the arrears.

2.2 Another prayer has been made for quashing the order (if any) passed by the learned Joint Development Commissioner, Punjab (exercising the powers of the appellate authority) in appeal No.797 of 2022, preferred by the petitioner.

3. At the outset, it is required to be mentioned that Sh. Vikram Preet Arora, Advocate had appeared on behalf of Panchayat Samiti, Kharar/ Municipal Council, Kharar (in short 'M.C.') and he has handed over a copy of application bearing CM No. 914/2013 in CWP 2524 of 1987 filed on behalf of petitioner's in the abovesaid three cases. He has also handed over a copy of order dated 25.01.2013, whereby the aforesaid CM No. 914/2013 was dismissed. The reference of this application (CM No. 914/2013 in CWP 2524 of 1987) shall be made in the narration of facts below; however, certain orders passed by Division Bench of this Court in CWP 2524 of 1987 are being taken from the aforesaid application and accordingly, mentioned in the factual matrix below.

4. Briefly, the petitioner claims to have been granted lease of shop No.1 in Shopping Complex located at Bus Stand Kharar, District SAS Nagar (Mohali) for a period of three years with effect from April 1987 up to 1990.

4.1 It is stated that earlier the petitioners along with others filed a writ petition bearing CWP No.2524 of 1987 before this Court, *inter alia* challenging Rule 3 (b) (ii) of the Punjab Panchayat Samitis and Zila



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Parishads (Sales, lease and other alienation of property and public places)
Rules, 1964.

4.2 It transpires that in the aforesaid writ petition bearing CWP No.2524 of 1987, an order dated 11.05.2010 was passed, the relevant extract of which reads as under:

“The petitioners shall be communicated by the respondents the arrears of rent by giving break up of the arrears year wise within four weeks from today. The arrears will be calculated after taking into account the permissible increase of 10% as per rules. The petitioners shall bring the amount of arrears payable to M.C. respondent No.2 on the next date of hearing in court by way of bank draft. Respondent No.2 shall file an affidavit containing all details of arrears as indicated above.

List again on 13.09.2010.”

4.3 Further, a perusal of order dated 30.05.2022 (Annexure P-5) would show that in the aforesaid writ petition bearing CWP No.2524 of 1987, an order dated 15.09.2010 was passed, the relevant extract of which reads as under:

“The details of arrears shall be communicated to the petitioners, who shall bring in the Court on the next date of hearing the amount due on account of arrears payable to respondent No.2”

4.4 It appears that subsequently, another order dated 02.02.2011 was passed by this Court in CWP-2524-1987, the relevant extract of which is as follows:

“Learned counsel for the petitioners seeks leave to withdraw this writ petition on the ground that the matter has been settled out of the Court, Learned counsel for the Panchayat Samiti, Kharar has disputed the aforesaid



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settlement. That apart the petitioners, who continue to be in possession of the properties under the orders of the Court, would be liable to pay the arrears of rent. In such circumstances, leave to withdraw is refused. The petitioners will deposit the arrears amount on account of rent, as ordered by this Court earlier, In the registry of this court within seven days from today.

List again 09.03.2011.”

4.5 It is revealed from CM No.914/2013 that the petitioner(s) herein challenged the above extracted order dated 02.02.2011 along with certain previous orders passed in CWP-2524-1987, by filing Special leave to Appeal (Civil) CC 17463-17466 of 2012, which was dismissed by Hon’ble Supreme Court vide order dated 04.12.2012, the relevant extract of which reads as under:

“Heard. No merit.

The Special Leave Petitions are dismissed on the ground of delay as also on merit.

However, the time to deposit the amount is extended by four weeks.”

4.6 In terms of above extracted order dated 04.12.2012, although Hon’ble Supreme Court extended the time to deposit the amount by four weeks, however, the petitioner(s) did not deposit the amount and rather filed an application (CM No.914 of 2013 in CWP No. 2524 of 1987) before this Court, wherein a prayer was made to permit petitioner(s) to deposit the amount of arrears of rent by way of installments. However, the aforesaid prayer of the petitioner(s) was rejected by Division Bench of this Court vide order dated 25.01.2013, the relevant extract of which reads as under:

“The prayer in this application, if allowed, would amount to modifying the order dated 4.12.2012 passed by the Supreme



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Court.

Dismissed.”

4.7 Apparently, the interim orders calling upon the petitioners to pay the arrears of rent/ due amount were not complied with by the petitioner(s). Ultimately, the aforesaid writ petition (CWP-2524-1987) came to be finally decided by this Court vide order dated 02.07.2013 (Annexure P-1), the relevant extract of which reads as under:

“Learned counsel for the petitioners sought to withdraw the writ petition on 2.2.2011, but leave to withdraw was refused as the petitioners had been enjoying interim orders and they had not deposited the amount in terms of the interim orders.

We are informed that 14 out of 31 petitioners have since deposited the amount in Court while qua others, no action has been taken.

In view of the aforesaid facts and circumstances, we consider it appropriate to pass the following order :-

(i) The writ petition is permitted to be dismissed as withdrawn.

(ii) The amount deposited in this Court be released to respondent No.2.

(iii) Such of the petitioners, who have not deposited the amount alongwith interest, as applicable, in Court in terms of the interim orders, can be proceeded against by respondent No.2, seeking recovery of amount from petitioners/their legal heirs, which was required to be deposited, having enjoyed the benefit of the interim orders.

(iv) All interim orders stand vacated.”

4.8 It is interesting to note that although a specific direction was issued by the Division Bench of this Court in CWP-2524-1987 that such of the petitioners who had not deposited the amounts along with interest



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(as applicable) in the Court in terms of interim orders, they or their legal heirs can be proceeded against for seeking the recovery of amount; even then, the Panchayat Samiti, Kharar did not take any action against the petitioner(s) herein until the filing of an eviction petition in the year 2018 under the provisions of Sections 4, 5 and 7 of the 1973 Act on account of non payment of arrears of rent.

4.9 It is a matter of record that the present petitioner appeared in the aforesaid eviction proceedings and submitted reply, *inter alia* stating that the Panchayat Samiti, Kharar was not the owner of the shop and therefore it had no locus to file the eviction petition(s).

4.10 The learned Collector, Mohali upon consideration of the matter in detail, passed order dated 30.05.2022 (Annexure P-5), directing the petitioner to deposit the due amount into the account of the Panchayat Samiti within a period of 30 days. A further direction was also issued to the petitioner to vacate shop No.1, by observing as under:

“On perusal of the above it is found that many times notices were sent to the respondent to deposit the due amount in writing. According to the calculation sheet of respondent, till dated 31.03.2022, including simple interest of 18%, which was levied on the due recovery amount alongwith interest is a defaulter of Rs.41,21,209/- (Rupees Forty One Lakh Twenty One Thousand Two Hundred Nine).

After perusal of the above argument/documents, I have come to the conclusion that Panchayat Samiti Kharar’s Shop No.1, which the petitioner has shown in yellow color in the attached map and the respondent has not paid dues, it is proved illegal possession. Therefore while exercising the power of section 1 sub section 5 of Punjab Public Premises Act 1973 and Notification No.5/12/2005-J-1/95 dated 08.12.2009 ordered that



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the above due amount be deposited in the account of the petitioner within 30 days of the issuance of this order. The respondent party Shri Ashwani Kumar son of Shri Bua Dutt should vacate the shop No.1. For this work, if necessary, you can take help of Executive Officer, Kharar, Police help alongwith ladies police. Petition is allowed.”

4.11 Similar orders were passed in other cases as well. Feeling aggrieved against the Collector’s order dated 30.05.2022 (Annexure P-5), the petitioner(s) preferred their respective appeals under Section 9 of the 1973 Act before the learned Joint Development Commissioner, Punjab (respondent No.4).

4.12 It transpires that in the meanwhile, impugned demand notice dated 05.12.2024 (Annexure P-7) was issued to the petitioner indicating that an amount of Rs.43,82,867/- was outstanding against the petitioner. Similar demand notices were issued in other cases as regards amount due from them.

5. In the aforementioned circumstances, the petitioners have filed the instant Writ Petition(s) before this Court for the reliefs as noticed above.

6. During the pendency of the instant writ petition, the petitioner filed an application bearing CM No.1747 of 2025 for placing on record an additional affidavit of the petitioner, which has been taken on record. Similar additional affidavits have been filed in other cases also.

6.1 The relevant extract of the additional affidavit filed on behalf of the petitioner in CWP-2607-2025, reads as under:

“2. That vide the said notice dated 05.12.2024 (Annexure P.7) the deponent was directed to pay an amount of Rs.43,82,867/- inclusive of 12% interest, being the alleged arrears by 31.01.2025 in lieu of execution of the eviction order. The Respondent have further appended calculation sheet upto



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September, 2024 with the said impugned notice.

3. *That even going as per the calculation of the Respondent although not accepted, the deponent is infact liable to pay a sum of Rs.25,52,331/- upto 31.03.2025 and not the sum of Rs.43,82,867/- as had been calculated by Respondent No.2. In this regard, the deponent is placing on record his calculation sheet as Annexure A.1.*

4. *That perusal thereof reveals that calculation sheet supplied with the impugned notice dated 05.12.2024 (Annexure P.7) cannot be relied upon for the following reasons:*

i. As per the calculation sheet of Respondent No.2, the rent for the year 1987-88 has been calculated at the rate of Rs.6390/-, whereas as per the terms of the Agreement, the rent for the said period had to be Rs.6300/-. Still further, owing to the said anomaly, the rent for subsequent years calculated by the Respondent after taking into account 10% enhancement ipso facto becomes wrong.

ii. For the period from 2006-2007 till 2010-2011, the annual rent increments had to be calculated at 5% p.a., as per Notification No.9/63/05-Bulge 2/7899 dated 16.12.2005 (Annexure A.2) issued by Respondent No. 1. Per contra, the calculation sheet of Respondent No.2 reveals that the rent for the said period had been enhanced at the rate of 10% p.a.

5. *That accordingly, without prejudice to the submissions made in the captioned petition, the deponent in order to show his bona fides, is ready and willing to pay an amount of Rs. 10,20,933/- upfront and the remaining sum in three equal monthly instalments.”*

7. On the other hand, learned counsel for M.C./Panchayat Samiti has opposed the submissions made on behalf of petitioner(s) by *inter alia* submitting that the petitioner(s) have not come to this Court with clean



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hands as they have concealed material facts as regards various interim orders passed by the Division Bench of this Court in CWP-2524-1987, which are duly reflected in the application (CM No.914 of 2013 in CWP-2524-1987). It is submitted that the plea of the petitioner(s) that a wrong calculation of arrears of rent has been done by taking into account 10% enhancement; is totally misplaced as the Division Bench of this Court vide order dated 11.05.2010 passed in CWP-2524-1987 had clearly directed that the arrears be calculated after taking into account the permissible increase of 10% as per rules. It is submitted that since the petitioner(s) had failed to pay the arrears of rent in terms of order dated 02.07.2013 (Annexure P-1), accordingly an eviction petition was filed against the petitioner(s) wherein a direction has been issued by the learned Collector vide order dated 30.05.2022 (Annexure P-5) to pay the outstanding dues and the petitioner(s) have been further directed to vacate the shop in question. Accordingly, prayer for dismissal of the writ petition has been made.

8. Heard.

9. In the present case, concededly the petitioner along with others had approached this Court by way of CWP No.2524 of 1987 titled as "*Khushal Chand and others vs. State of Punjab and another*", wherein vide an order dated 11.05.2010, the petitioners were directed to pay the arrears of rent and the arrears were directed to be calculated after taking into account the permissible increase of 10% as per rules.

10. Apparently, the said order dated 11.05.2010 and subsequent orders directing petitioner(s) to pay the arrears of rent, were not complied with, consequently, the Division Bench of this Court passed an order dated



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02.02.2011 in CWP-2524-1987, whereby the prayer of the petitioner(s) therein to withdraw the said writ petition was declined and at the same time, a further direction was issued that the petitioner(s) therein would be liable to pay the arrears of rent and also that the petitioner(s) will deposit the arrears amount on account of rent as was ordered earlier.

11. Thereafter, petitioner(s) in the said writ petition (CWP-2524-1987) challenged order dated 02.02.2011 passed in CWP 2524 of 1987 by filing a Special Leave to Appeal before Hon'ble Supreme Court; which was dismissed on 04.12.2012, however, the time for deposit of amount was extended by Hon'ble Supreme Court by four weeks.

12. Despite extension of time by Hon'ble Supreme Court to deposit amount, petitioner(s) failed to pay rent/arrears of rent and rather filed an application (CM No.914 of 2013 in CWP No. 2524 of 1987) seeking permission from this Court to pay arrears of rent in installments, however, the said prayer was rejected by this Court vide order dated 25.01.2013.

13. Ultimately, the writ petition bearing CWP No.2524 of 1987 came to be finally decided vide order dated 02.07.2013 (Annexure P-1), wherein again while permitting the writ petition (CWP-2524-1987) to be withdrawn, it was directed that such of the petitioner(s) who have not deposited the amount along with the interest in terms of the earlier interim orders passed by this Court, those petitioner(s) and/or their legal heirs can be proceeded against for seeking recovery of amount from them.

14. It is not disputed before this Court that despite the aforesaid directions issued by the Division Bench of this Court, the petitioner has failed to clear the arrears of rent payable by the petitioner.



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15. It is a matter of record that the Panchayat Samiti in the year 2018 sought eviction of the petitioner from shop No.1 on account of non payment of rent/arrears of rent, which came to be allowed by the learned Collector, SAS Nagar, Mohali vide impugned order dated 30.05.2022 (Annexure P-5).

16. Although, the petitioner challenged the Collector's order by filing an appeal before the learned Joint Development Commissioner, however simultaneously, the demand notice(s) (Annexure P-7) was raised against the petitioner(s). Concededly, the petitioner has not paid the demanded amount.

17. Before this Court, the only contention raised by learned counsel for the petitioner is that the Panchayat Samiti has wrongly calculated the arrears of rent by taking the enhancement at the rate of 10% and that they are not liable to pay the demanded amount(s).

18. I have considered the aforesaid submissions raised on behalf of learned counsel for the petitioner(s), however, I find no merit in the same. Apparently, in the earlier writ petition (CWP-2524-1987), upon directions of this Court, the petitioner(s) were called upon to clear the arrears of rent and vide order dated 11.05.2010, the Panchayat Samiti/M.C. was directed to convey the due amount to the petitioner(s) therein by calculating the arrears after taking into account the permissible increase of 10%; which was duly conveyed to the petitioner(s).

18.1 Therefore, once the Division Bench of this Court in CWP-2524-1987 had directed the Panchayat Samiti / M.C. to calculate the arrears after taking into account the permissible increase of 10% as per rules;



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accordingly, it does not lie in the mouth of the petitioners to now contend that the Panchayat Samiti / M.C., has wrongly calculated the arrears of rent by taking the enhancement at the rate of 10%.

18.2 Even otherwise, in case, the petitioners had any grievance as regards the wrong calculation of rent/arrears of rent, then they should have raised such plea in the earlier writ petition (CWP-2524-1987). However, no recourse was taken by the petitioners.

18.3 That apart, the Division Bench of this court vide order dated 02.02.2011 passed in CWP-2524-1987 had directed that the petitioners therein (which also included the present petitioners) to deposit the arrears of rent in the registry of this court within seven days. That order dated 02.02.2011 was challenged by petitioner(s) before the Hon'ble Supreme Court by filing a special leave to appeal, which was also dismissed vide order dated 04.12.2012, however, the time period for payment of arrears of rent was extended by the Hon'ble Supreme Court by four weeks; even then the petitioner(s) did not pay the arrears of rent. Thereafter, petitioner(s) herein filed an application (CM No.914 of 2013 in CWP No. 2524 of 1987), wherein a prayer was made to permit petitioner(s) to deposit the amount of arrears of rent by way of installments; however, the aforesaid prayer of the petitioner(s) was rejected by Division Bench of this Court vide order dated 25.01.2013. Therefore, in essence, by making a prayer before this Court to make payment of arrears of rent in installments; the petitioner(s) accepted the calculation of arrears of rent.

18.4 Thus, in my considered view, at this stage, the petitioner(s) cannot be permitted to take up the plea that the Panchayat Samiti / M.C., has



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wrongly calculated the rent/arrears of rent. This plea is therefore, rejected.

19. During the course of hearing of these petitions, learned counsel for the petitioner(s) was asked as to whether the petitioner(s) are ready and willing to clear all the arrears of rent. In response, it was stated by learned counsel for the petitioner(s) that the petitioners are ready to pay as per the calculation made by them (as stated in the additional affidavits filed by petitioners). The aforesaid stand of petitioner(s) is not acceptable to this court.

20. Rather, the averments made by petitioner(s) in their additional affidavit(s) clearly reflects their act and conduct to retain the possession of the property without paying the arrears of rent, which were ordered to be paid by this Court way back in the year 2013 while deciding CWP No. 2524 of 1987. The petitioner(s) have enjoyed that property without paying the due rent/ arrears of rent and in the aforementioned circumstances, I feel that there is no equity in favour of the petitioner(s) as they have failed to comply with the orders passed by this Court in CWP No. 2524 of 1987. Therefore the petitioner(s) are not entitled to any indulgence by this Court.

21. In view of what has been discussed above, the instant writ petition(s) fail and the same are accordingly dismissed.

22. All pending application(s), if any, shall also stand closed.

23. Photocopy of this order be placed on the files of connected cases.

03.02.2025
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
 Whether reportable:

Yes/No
 Yes/No