

CWP No.12036 of 2011

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

**CWP No.12036 of 2011
Date of decision:16.09.2015**

Narinder Nath Sharma

...Petitioner

Versus

Commissioner, Ambala Division, Ambala and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Lalli, Advocate,
for the petitioner.

Mr. Rajesh Sheoran, Addl. A.G., Haryana.

Mr. Sushil Bhardwaj, Advocate,
for respondent No.3.

Rakesh Kumar Jain, J.

The petitioner, who was in possession of Shop No.2 of the Panchayat Samiti Raipur Rani, Sub-Tehsil Raipur Rani, Tehsil and District Panchkula, was ordered to be evicted by the Collector on an application filed by respondent No.3 under Sections 4, 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (hereinafter referred to as the "Act") but in the absence of details of the arrears of rent, no order was passed for its recovery. However, liberty was granted to respondent No.3 to recover the arrears of rent as per rules. The order of eviction passed by the Collector dated 08.04.2003 was upheld in appeal by

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the Divisional Commissioner vide its order dated 17.12.2003 and possession of the shop in question was recovered by respondent No.3 in November 2003.

Thereafter, respondent No.3 again filed an application on 27.05.2004 before the Collector under Section 7 of the Act for recovery of arrears of rent w.e.f. 01.11.1991 to October, 2003 as well as damages, total amounting to ₹2,34,716/-. The said application was allowed by the Collector vide its order dated 12.12.2008 and ordered recovery of the amount of ₹1,39,750/- as rent and ₹94,966/- as damages through land revenue. The petitioner assailed the validity of the said order in appeal filed before the Divisional Commissioner under Section 9 of the Act. However, the said appeal met with the same fate on 29.05.2009. Hence, the present writ petition.

The only argument raised by learned counsel for the petitioner is that respondent No.3, being a local body, is not entitled to recover the rent beyond a period of three years and has relied upon a judgment of the Supreme Court in the case of **New Delhi Municipal Committee vs. Kalu Ram and another**, AIR 1976 Supreme Court 1637. It is also submitted that the said judgment was also pressed before the Collector but he had opined that the said decision would be applicable to the Municipal Corporation, Delhi and cannot be applied to the State of Haryana as it has a separate Act.

On the other hand, counsel for respondent No.3 has relied upon a Division Bench judgment of this Court in the case of **M/s Northern India Catrers Pvt. Ltd. vs. The District Judge, Chandigarh and others**, 1983

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PLR 457 to contend that the limitation for the purpose of recovery in the case of respondent No.3 is 30 years as Article 112 of the Limitation Act, 1963 (hereinafter referred to as the “Limitation Act”) is applicable and not Article 52 of the Act. He has also referred to another decision of this Court in the case of **Gajjan Singh vs. State of Punjab**, 1997(2) R.C.R. (Civil) 702.

I have heard learned counsel for the parties and examined the available record.

The entire case of the petitioner is that the arrears of rent beyond a period of three years cannot be recovered by respondent No.3 and has relied upon a decision of the Supreme Court in **New Delhi Municipal Committee's case (supra)** in his support.

In order to appreciate his argument, it would be relevant to refer to the facts of the said case. In the said case, Kalu Ram, a displaced person, was allotted a stall on Irwin Road in the year 1950 on a monthly license fee of ₹30/-. Many of the allottees were in arrears of license fee. The Municipal Committee did not take any step to recover the dues till December 1960 when it demanded the entire amount in arrears from May 1950 to April 1957 and asked the Estate Officer, appointed under Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958, to take steps to recover the amount of arrears. The Estate Officer passed the order on 28.09.1961, rejecting the objections of Kalu Ram that the recovery is barred by limitation. The appeal filed by Kalu Ram was also dismissed by the Additional District Judge. He then filed a writ petition before the

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Circuit Bench of the Punjab High Court at Delhi, in which one of the grounds of challenge was that Section 7 could not be resorted to for recovery of the sum as the claim was time barred. The High Court allowed the petition. Against the order of the High Court, the matter was taken to the Apex Court in the case which is being discussed. The question which cropped up for adjudication was as to whether Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 create a right to realize arrears of rent without any limitation of time? It was observed that under Section 7, the Estate Officer may order any person who is in arrears of rent payable in respect of any public premises to pay the same within such time and in such installments as he may specify in the order. It was further observed that the word 'payable' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. 'Payable' generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realization of rent in arrears and does not constitute a course or foundation of a right to claim a debt otherwise time barred. It was held that *“we are clear that the word “payable” in Section 7, in the context in which it occurs, means “legally recoverable”.*

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Admittedly a suit to recover the arrears instituted, on the day the order under Section 7 was made would have been barred by limitation. The amount in question, was therefore irrecoverable.”

On the other hand, in **M/s Northern India Catrers Pvt. Ltd.'s case (supra)**, relied upon by learned counsel for respondent No.3, there were four questions framed in which question No.3 was as to whether the recovery proceedings beyond three years were barred by limitation because the proceedings were in the nature of execution and not a suit and, therefore, limitation of 30 years would not apply. While deciding question No.3, the Division Bench referred to the decision of the Supreme Court in **New Delhi Municipal Committee's case (supra)** and the following observations were made:-

“.....A reading of the above would show that the Estate Officer under Section 7 can order payment of the damages if the claim made is otherwise not time barred. It is not disputed that if a suit for recovery of damages were to be filed by the Chandigarh Administration, the limitation was 30 years under Article 112 of the Limitation Act, 1963. The sole argument of the learned counsel for the petitioners is that the present proceedings are not a suit but an application and limitation of three years provided under Article 87 of the Limitation Act would be applicable. While Article 87 would apply to a suit by a plaintiff other than the State/Central

Government, but for a similar suit by the State/Central Government the limitation would be 30 years in view of Article 112. Moreover, the underlined observations of the Supreme Court quoted above, clearly go to show that the limitation under the Law of Limitation has to be taken notice of and if a suit would be barred on the date an application under Section 7 is filed, then the arrears will become irrecoverable. As a corollary, if a suit would be within time, then the claim cannot be denied merely because it is sought to be recovered under Section 7.....”

As per Article 52 of the Limitation Act, the period of limitation is three years from the date when the arrears become due and Article 112 of the Act provides that to file any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir, the period of limitation would be thirty years. Admittedly, in this case the application under Section 7 of the Act for recovery of arrears of rent is not filed by the State of Haryana but by the Panchayat Samiti, a local body, therefore, the judgment in **M/s Northern India Catrers Pvt. Ltd.'s case (supra)** would not be of any help to respondent No.3 as in that case, the Punjab Government had constructed Mountview Hotel, Chandigarh and leased it out w.e.f. 25.09.1953 to M/s Northern India Catrers Pvt. Ltd. for a period of six years at an annual

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rent of ₹72,000/-, which was later on reduced to ₹50,000/-. A formal lease deed was executed on 21.03.1959 and on 27.08.1959, the Punjab Government offered to sell the hotel to the lessee for ₹12,00,000/-. Since the negotiations were going on, the lease was extended upto 31.12.1959. However, since the negotiations for the sale of the hotel failed because the lessee did not pay the agreed amount and also did not vacate the premises, therefore, the Estate Officer-cum-Collector, Capital Project, Chandigarh, started eviction proceedings under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. Those proceedings were challenged on the ground that the relevant provisions of that Act were unconstitutional being violative of Article 14 of the Constitution of India. The plea of the lessee failed in the High Court but succeeded in the Supreme Court and while the appeal was pending before the Supreme Court, Chandigarh was declared a Union Territory and the properties belonging to the Punjab Government became the properties of the Central Government by virtue of the States Reorganization Act, 1966 and as a result thereof, the hotel came to be owned by the Central Government. The Chandigarh Administration again offered to sell the hotel to the lessee but the matter could not be finalized. Thereafter, the Chandigarh Administration started eviction proceedings and recovery of the damages from 01.01.1960 to 30.11.1968. Since it was the proceedings initiated by the Central Government, therefore, Article 112 of the Limitation Act, 1963 was made applicable, which is not the situation in the present case in which the petition under Section 7 of the Act has been filed by the Panchayat Samiti, a

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local body, and not by the Government much-less the Central/State Government.

In view of the aforesaid discussion, I am of the considered opinion that the case of the petitioner is covered by the decision of the Supreme Court in **New Delhi Municipal Committee's case (supra)** and, thus, it is held that respondent No.3 cannot claim arrears of rent beyond a period of three years from the petitioner.

The petition is disposed of accordingly.

September 16, 2015
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(**Rakesh Kumar Jain**)
Judge