

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CWP No.12717 of 2011
DECIDED ON: 1.8.2016

MS WALIA

.. Petitioner

VS.

CHANDIGARH ADMINISTRATION, U.T. CHANDIGARH
THROUGH ESTATE OFFICER AND OTHERS

.. Respondents.

CORAM: HON'BLE MR. JUTICE P.B.BAJANTHRI

Present: Mr. O.P. Goyal, Advocate
for the petitioner.

Ms. Monika Sharma, Advocate
for the respondents.

P.B.BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioner has questioned the show cause notice dated 19.12.2005 (Annexure P-2), Estate Officer dated 8.2.2007 (Annexure P-6), order dated 9.2.2007 under Section 7(I) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Annexure P-9), order dated 13.2.2007 passed by Estate Officer (Annexure-P-8) the order dated 15.4.2011 passed by the appellate authority (Annexure P-11) under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and further sought for a direction to hold a multi-level enquiry etc.

The petitioner while working as a member of the Punjab Public Services (Judicial), he was dismissed from service in the

month of March, 2003. On the allegation of corruption for which parallel proceedings were initiated pursuant to disciplinary proceedings, petitioner was punished with the penalty of dismissal from service and insofar as the criminal proceedings is concerned, it is pending consideration. Pursuant to the order of dismissal from service, eviction of government accommodation was undertaken by the respondents by issuing show cause notice and also for recovery of Rs.2,60,280/- vide (Annexure P-2). The petitioner remained ex parte before the Estate Officer consequently. Petitioner suffered an order before the Estate officer and so also before the Additional District Judge. Petitioner sought setting aside the ex parte order dated 8.2.2007 before the Estate Officer. The same was not entertained consequently he preferred miscellaneous appeal before the District Judge, Chandigarh under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. His appeal was also rejected mainly on the ground of limitation. Para 16 of the order reads as follows:-

“16. Now, coming to the point of limitation, the present appeal is apparently barred by limitation. As per section 9(2)(b) of the Public Premises Act, the appeal was required to be filed within 12 days from the date of communication of the impugned application before the Estate Officer-respondent No.2 on 09.02.2007 seeking setting aside of the ex parte proceedings and the order dated 08.02.2007. He himself has stated in the said

application that he came to attend the Court of Estate Officer-respondent No.2 late on 08.02.2007. Thus, on 08.02.2007, the appellant was very much aware of the passing of the impugned order impugned order dated 08.02.2007. If for the same of arguments it is deemed to be correct that the order dated 08.02.2007 was communicated to the appellant on 20.02.2007 even then the appeal is barred by limitation by one day. No application for condonation of delay has been moved on behalf of the appellant. Thus, the present appeal is also liable to be dismissed on this ground.

17. As a result of my above discussion, I find no illegality or irregularity in the impugned order dated 08.02.2007 and 09.02.2007 of the Estate Officer-respondent No.2 warranting any interference. Hence, the appeal stands dismissed with costs. Trial Court record along with a copy of judgment be sent back. Appeal file be consigned to the record room.”

Thus the present petition has been filed questioning various proceedings initiated for overstay in the government accommodation like issuance of show cause notice, recovery and orders.

Learned counsel for the petitioner submitted that all the

proceedings undertaken by the respondents are without giving an opportunity and ex parte order has been passed by the Estate Officer and thereafter failed to recall order of ex parte. The district court rejected the appeal only on the ground of limitation, therefore, the matter is required to be heard afresh by the Estate Officer.

Annexure P2 is the show cause notice which is one of the document is under challenge. It is evident that there is no infirmity in issuing show cause notice. No ground has been made out to challenge Annexure P-2. Show cause notice can be questioned only on the ground of violation of any provisions of law or by incompetent authority. Both the grounds are not available to the petitioner and he has also not raised such contention. In respect of other annexures which are under challenge are concerned, the petitioner remained ex parte before the Estate Officer, therefore even though the petitioner was given sufficient opportunity. He has not utilized the opportunity to adduce evidence before the Estate Officer. The ex parte orders should have been recalled as and when application was made, however on technicalities, the authority has refused to recall the order. District Court, with reference to limitation clause, rejected the miscellaneous appeal. There is a delay of only one day as per the District Court order.

In view of these facts and circumstances, the orders dated 8.2.2007 (Annexure P-6), order dated 9.2.2007 (Annexure P-9) and appellate authority orders dated 15.4.2011 (Annexure P-11) are set aside. The petitioner be heard afresh from the stage of receipt of reply/objection to show cause notice dated 19.2.2005. The

respondent-authorities are directed to complete the process within a period of six months from today. The above exercises shall be taken up subject to payment of cost of Rs.25,000/- by the petitioner to the Chandigarh Administration, Union Territory, Chandigarh (Estate Department)-Ist respondent. Reasons for imposing cost is that the petitioner failed to co-operate in the eviction proceedings and the entire matter was prolonged for more than a decade. If the petitioner refused to deposit Rs.25,000/- cost within a month, the proceedings initiated earlier holds good.

August 01, 2016
SwarnjitS

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasoned:- **Yes / No**

Whether Reportable:- **Yes / No.**