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

**Civil Revision No.1242 of 2015
Date of Decision: 29.05.2018**

UMED SINGH

.....Petitioner

Vs

**STATE OF HARYANA THR COLLECTOR ROHTAK AND ANR
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. D.K. Tuteja, Advocate with
Mr. Dishant Tuteja, Advocate
for the petitioner.

Mr. Harkesh Kumar Yadav, A.A.G., Haryana
for respondent No.1.

Mr. Sanjiv Kumar Aggarwal, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition under Article 227 of the Constitution of India against the order dated 03.05.2012 passed by the Sub-Divisional Officer Civil-cum-Collector, Rohtak and order dated 13.02.2013 passed by the Commissioner Rohtak Division, Rohtak.

[2]. Brief facts are that eviction of the petitioner was sought by resorting to Sections 5 and 7 of the Public Premises Act (for

short 'the Act') by respondent No.2. An application was filed for appointment of Local Commissioner which was allowed. Prem Nath Mehta retired Naib Tehsildar was appointed as Local Commissioner, who demarcated the site in question and submitted his demarcation report dated 25.02.2002 to the Court of Sub-Divisional Officer-cum-Collector.

[3]. Objections were filed to the aforesaid report of Local Commissioner on the ground that Local Commissioner has not carried out the demarcation after affixing three *pucca* points as per rules. The report of Local Commissioner was discarded by the Sub-Divisional Officer-cum-Collector and Tehsildar Rohtak was appointed as new Local Commissioner after fixing his remuneration vide order dated 11.06.2002. The said Local Commissioner did not demarcate the site in question. The Collector, Rohtak passed an order dated 09.05.2011 in the aforesaid context and had noticed that report of demarcation was awaited. Reminder was issued to the Local Commissioner. Thereafter what has happened is the matter of record.

[4]. The Sub-Divisional Officer-cum-Collector instead of calling report from the Tehsildar relied upon the old demarcation report of the year 1994 pertaining to the property in question and accepted the same in the evidence of present case. The case was adjourned for 16.05.2012 for arguments. The said

order was passed on 03.05.2012.

[5]. Petitioner went in appeal against the aforesaid order before the Commissioner Rohtak Division, Rohtak and the same was dismissed vide order dated 13.02.2013. That is how the present revision petition came to be filed before this Court.

[6]. Learned counsel for the petitioner vehemently submitted that order dated 03.05.2012 is only an interlocutory order and does not fall under the ambit of Section 5 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971, therefore, the said order was not appealable in view of Section 9 of the Act. The filing of appeal against the said order was ill advised, therefore, the order passed by the Commissioner Rohtak Division, Rohtak is also without jurisdiction as the same has been passed in an appeal which was not maintainable in view of Section 9 of the Act.

[7]. Learned counsel by relying upon **Sarjiwan Tiwari vs. Punjba State Electricity Board, 1998(2) R.C.R. (Civil) 2** contended that the remedy against the order dated 03.05.2012 is only by way of filing revision petitioner in the High Court because the said order does not fall under the ambit of Section 5 of the Act. In **Sarjiwan Tiwari's** case (supra), the High Court after framing two questions for consideration held that the

expression “every order of the Collector’ must have its connotation under the provisions of Sections 5 and 7 of the Act. It may be every order of the Collector which is appealable under Section 9 of the Act but necessarily such order must have been passed either under Section 5 or 7 of the Act.

[8]. Perusal of the order dated 03.05.2012 would show that the case was adjourned for 16.05.2012 for arguments, therefore, the said order was not a final order under Section 5 of the Act and hence the same is revisable. Earlier demarcation report dated 25.02.2002 by the Local Commissioner was discarded by the Collector. Newly appointed Local Commissioner i.e. Tehsildar never submitted his demarcation report.

[9]. In view of above, reliance upon demarcation report of the year 1994 was wholly unwarranted as the same was never the subject matter at the time of appointment of Local Commissioner. Faced with situation, the order dated 03.05.2012 is declared to be illegal and consequent order dated 13.02.2013 passed by the Appellate Authority in appeal filed by the petitioner against interlocutory order is also held to be illegal.

[10]. The period spent by the petitioner in availing non-existent appellate/forum has to be deducted while computing

the period in filing the present revision petition. Though there is no such limitation prescribed for invoking extra judicial supervisory jurisdiction of the High Court, but in order to escape the delay and latches, the period availed in wrong forum is to be construed to be the period *bonafidely* spent by the petitioner.

[11]. In view of above, this revision petition is accepted. Impugned order dated 03.05.2012 passed by the Sub-Divisional Officer-cum-Collector, Rohtak and order dated 13.02.2013 passed by the Commissioner Rohtak Division, Rohtak are hereby set aside. However, respondent No.2 would be at liberty to proceed further to evict the petitioner in accordance with law.

May 29, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No