

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

146

Civil Writ Petition No.18318 of 2018
Date of Decision: July 26th, 2018

Om Parkash and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kartar Singh Malik, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 11.04.2018 (Annexure P-1) passed by the Commissioner, Rohtak Division, Rohtak-respondent No.2 by which order dated 10.12.2012 (Annexure P-7) passed by the Collector, Meham, whereby an application preferred by the Municipal Committee, Meham, was dismissed, has been set aside.

2. It is the contention of learned counsel for the petitioners that the application for impleading himself as a party by a private person is not maintainable and, therefore, even an appeal preferred by a private person against the order of the Collector, is not sustainable. He, however, could not dispute the fact that the Municipal Committee had also filed an application before the Collector and it is on the basis of the said application that the order was passed by the Collector rejecting the same. Admission has also been made by learned counsel for the petitioners that an appeal was preferred by the Municipal Committee, Meham, also before the Commissioner, Rohtak Division, Rohtak, which was considered and decided by order dated 11.04.2018 (Annexure P-1). That apart, counsel contends that the application itself is not maintainable before the Collector as no notice was given to the petitioners nor was any document attached

along with the application to support that the petitioners were in unauthorised possession of the land of the Municipal Committee and, therefore, the petition under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, was not maintainable. That apart, he states that there was no resolution passed by the Municipal Committee for initiating proceedings against the petitioners. In support of these contentions, he has placed reliance upon the judgments passed by this Court in *Jaipal Versus State of Haryana and others* 2005(2) PLR 109, *Dr. Kanshi Nath Verma and another Versus Sub Divisional Officer (Civil)-cum-Collector, Narnaul and others* 2017(4) PLR 354 and *Pritam Kaur Versus Commissioner, Rohtak Division, Rohtak and others* 2008(9) R.C.R. (Civil) 134. He on this basis contends that the order of remand passed by the Commissioner, Rohtak Division, Rohtak, cannot sustain as the well reasoned order passed by the Collector, Meham, has been set aside by the Appellate Authority and the case remanded back to the Collector by the Commissioner without any justification or authority.

3. Having considered the submissions made by learned counsel for the petitioners, perusal of the order dated 07.09.2012 (Annexure P-4) passed by the Collector, Sub Division, Meham, would show that there were two demarcation reports available on the record which were referred to in the said order. It is not in dispute that in the appeal which has been preferred, this very aspect was also highlighted that there were two different demarcation reports which were available on the record. Without coming to the conclusion with regard to the authenticity of any one of the two demarcation reports, especially when there were different areas mentioned therein with regard to the area of the house of the petitioners,

the Collector has wrongly proceeded to dismiss the petition of the Municipal Committee, Meham. These observations, in the considered view of this Court, cannot be said to be without any basis as it is apparent from both the reports that the areas in these reports are not the same. The remand of the case, therefore, by the Commissioner, Rohtak Division, Rohtak, to the Assistant Collector Ist Grade for fresh decision after getting the demarcation afresh with regard to the land in question, cannot be faulted with as it would both be in equity and in the interest of justice that the said exercise be carried out. The Naib Tehsildar and Tehsildar have been directed to demarcate the land in the presence of the parties and to prepare a detailed demarcation report in accordance with law in the presence of witnesses including inspection staff and the land is also mentioned and shown therein. This Court, therefore, is in agreement with the order dated 11.04.2018 (Annexure P-1) passed by the Commissioner, Rohtak Division, Rohtak. The judgments, which have been relied upon by learned counsel for the petitioners, would be taken into consideration by the Collector at the time of disposal of the application on reconsideration.

4. The writ petition stands disposed of accordingly.

July 26th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No