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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/11/2019 09:39
I attest to the accuracy and
authenticity of this document

CR-2310-2019 (O/M)
Date of decision : 5.4.2019

Retired Col. Daya Ram Petitioner (s)

Versus

Sub Divisional Engineer-Provincial Sub Division and another
..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Suman Jain, Advocate,
for petitioner.

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-:-

KULDIP SINGH, J. (ORAL)

Petitioner is aggrieved by order dated 7.1.2019 (Annexure-P-7), passed by learned Civil Judge (Junior Division), Palwal, vide which after receipt of report of local commissioner, interim order dated 21.12.2018 (Annexure-P-4), was vacated and case was adjourned for filing of objections (apparently against the report of local commissioner).

It comes out that petitioner has filed a suit for permanent injunction against State of Haryana and Sub Divisional Engineer-Provincial Sub Division, PWD (B and R), Palwal. During the proceedings, the Court, vide order dated 21.12.2018 (Annexure-P-4), appointed a local commissioner for demarcation and till then, defendants were restrained from demolishing the structure of building of plaintiff to the extent of 50.703 sq. yards. Now, after receipt of report of local commissioner regarding encroachment, stay has been vacated. The contention of learned counsel for petitioner is that without deciding objections to report of local commissioner, for which case was adjourned, the stay could not be vacated.

I am of the view that it was only interim measure that stay was granted till the receipt of report of local commissioner. The application

filed under Order XXXIX Rule 1 CPC, 1908, has not been decided. The objections before the local commissioner are to be filed and decided by the trial Court. Therefore, the Court could vacate interim order passed by it without prejudice to main case.

The learned counsel for petitioner further contends that trial Court could not make him remediless. As a result of vacation of stay, part of structure of building will be demolished.

I am of the view, if this is down, petitioner can always claim compensation from the Government.

In view of abovenoted observations, I find no illegality or infirmity in the impugned order. Thus, revision petition is dismissed.

(KULDIP SINGH)
JUDGE

5.4.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No