

117

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-12107-2023

Date of Decision : 30.05.2023

RAM NIWAS

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J. (Oral)

1. One Bhag Singh instituted a petition under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961, thus for seeking the eviction of one Ram Niwas, the petitioner herein, a purported encroacher, over the panchayat lands. The above petition was filed before the learned Assistant Collector First Grade, Assandh (Karnal). The said petition became assigned case No. 3/VCLA. Through a decision made thereons, on 29.08.2022 (Annexure P-2), the learned Assistant Collector concerned, decreed the said petition for eviction, and, ordered for the eviction of respondent No. 1- Ram Niwas, petitioner herein, from the panchayat land.

2. The aggrieved therefrom plaintiff Ram Niwas, reared thereagainst a statutory appeal bearing No.11/D.C./R.I./2023. However, the said raised statutory appeal before the competent Appellate Authority concerned, was time barred, as such a separate application along with the said statutory appeal, hence cast under Section 5 of the Limitation Act, thus became appended therewith. The learned Appellate Authority concerned, without initially deciding the said application, as cast under Section 5 of the Limitation Act, and, that too without inviting pleadings

from the contesting litigants, and, thereafter without striking issues on such pleadings, and, obviously without permitting the litigants concerned, to adduce evidence thereons, rather, has within the said statutory appeal, after refusing to condone the delay, thus proceeded, to make a decision, thus concurring with the decision, as became initially recorded by the learned Assistant Collector concerned, through Annexure P-2. It is but the above failure of exercising jurisdiction, on the application cast under Section 5 of the Limitation Act, as became appended along with the statutory appeal, which thus has caused gross miscarriage of justice.

3. Therefore, for undoing exercising of jurisdiction, thus with a material illegality, and, gross impropriety, this Court deems it fit, and, appropriate to quash Annexure P-4, and, to thereafter make an order of remand, upon the competent Appellate Authority concerned, to after inviting pleadings from the contesting litigants, on the application, as, cast under Section 5 of the Limitation Act, to thereafter frame issues thereon, and, subsequently permit the litigants concerned, to adduce evidence thereon. After a lawful decision becomes made on an application, as, cast under Section 5 of the Limitation Act, the learned Appellate Authority concerned, may thereafter proceed to restore, the appeal to its original number, and, thereafter may proceed to pass a fresh decision thereons, but in accordance with law.

4. All the above exercise(s) be done within four months from today. The parties are directed to record their appearance(s) either personally or through their authorized counsel before the competent Authority on 12.06.2023.

5. Disposed of accordingly.

6. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

30.05.2023
kavneet singh