

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1650 of 2014 (O&M)
Date of Decision:- 11.05.2015.

Ajit Singh

.....Appellant

Versus

Joint Development Commissioner, Punjab and others

.....Respondents

CWP No.15786 of 2014 (O&M)

Ajit Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Rupinder Kaur Thind, Advocate for the appellant in
LPA No.1650 of 2014.

Mr. Malkeet Singh, Advocate for the petitioner
in CWP No.15786 of 2014.

Mr. Aman Bahri, Additional A.G. Punjab.

Mr. Vijay Kumar Chaudhary, Advocate for
respondent No.3 in LPA No.1650 of 2014.

SURYA KANT, J. (ORAL)

- 1.) This order shall dispose of Letters Patent Appeal No.1650 of 2014 and CWP No.15786 of 2014 as both the cases have been instituted by Ajit Singh against the Gram Panchayat of his village Gosal Zimindara, Tehsil and District Amritsar.
- 2.) For brevity and ready reference, the facts are being extracted from the Letters Patent Appeal which has been filed along with an application under Section 5 read with Section 12 of the Limitation Act seeking condonation of delay of 1433 days.
- 3.) Since we have heard learned counsel on merits as well, the facts and events are being extracted so as to dispose of the application seeking condonation of delay as well as the main appeal on merits.
- 4.) The appellant filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') seeking declaration of his ownership in respect of land measuring 19 kanal 11 marlas situated within the revenue estate of his village. The Gram Panchayat contested the appellant's claim maintaining that the subject land was *Shamilat Deh* and stood vested in the Gram Panchayat. Though initially the appellant's petition was allowed vide order dated 17.11.1992 but after it was remanded by the Joint Development Commissioner, the

Collector dismissed the same vide order dated 18.09.1997. The appellant filed statutory appeal which was also dismissed vide order dated 16.03.1998. The Appellate Authority, while dismissing the appellant's appeal, also directed his eviction from the suit land.

5.) The appellant did not challenge the above mentioned orders until the Gram Panchayat secured warrant of possession dated 20.08.2008. After a considerable delay of more than 11 years, the appellant approached this Court through CWP No.14616 of 2009 which was allowed in part by the learned Single Judge on September 22, 2010, to the extent that eviction order passed by the Appellate Authority was set aside though the finding qua rejection of the title-claim of the appellant was upheld. Similarly, liberty was granted to the Gram Panchayat to seek eviction of the appellant under Section 7 of the Act through separate proceedings.

6.) The Gram Panchayat, consequently initiated eviction proceedings against the appellant under Section 7 of the Act which was allowed by the Collector vide order dated 18.06.2012 and the appeal preferred against that order has also been dismissed vide order dated 04.07.2013. Both these subsequent orders are under challenge in the connected writ petition at the instance of the appellant.

7.) It is after the passing of eviction order under Section 7 and dismissal of his appeal that the appellant sought review of the order dated 22.09.2010 whereby his writ petition was allowed in part.

Review application No.438 of 2014 was dismissed by learned Single Judge on 29.08.2014. It is pertinent to mention at this stage that the appellant applied for the review on the ground that his application for additional evidence was arbitrarily rejected by the Appellate Authority before dismissing his appeal on 16.03.1998 whereas in a similar circumstanced case, the additional evidence was taken on record to accept the claim. The said plea did not impress the learned Single Judge who dismissed the review application observing as follows:-

“A perusal of the paper book, in the writ petition as well as averments in the present application reveal that the applicant did not file any application for additional evidence before the appellate authority and confined challenge in the writ petition to a plea that while passing an order under Section 11 of the Act, his eviction could not be ordered. The order passed by the appellate authority, in favour of other occupants of 'Shamilat Deh' may or may not be correct but as the applicant did not adduce any evidence to prove possession before 1950 and confined his claim to a plea that while deciding the petition under Section 11 of the Act, an eviction order cannot be passed, order dated 22.09.2010 does not suffer from any error whether of fact or of law as to require reconsideration.”

8.) The original order dated 22.09.2010 of the learned Single Judge, as well as the order passed in the review application dated 29.08.2014 are under challenge in this appeal along with an

application for condonation of delay of 1433 days in filing the appeal.

9.) As may be seen from the facts noticed above, had it been a case where the appellant sought review of the order passed by learned Single Judge within the time limit prescribed for filing the appeal, rejection of such review application on 29.08.2014 would have entitled the appellant to seek condonation of delay on the ground that he was *bonafidely* pursuing the remedy of revision. Even if the period during which the review application filed in the year 2014 remained pending is to be excluded, yet there remains a delay of more than 3 ½ years in filing the accompanying appeal.

10.) The fact that the Appellate Authority erroneously rejected his application for additional evidence, is no valid ground for the appellant to seek condonation of the delay which is *ex facie* fatal to the merits.

11.) The plea that the appellant was ill-advised or that he has been pursuing one or the other remedy as per legal advise would not be sufficient to overlook the years' delay.

12.) The application seeking condonation of delay thus, is liable to be dismissed.

13.) Having held that, we may now turn to the merits of the case.

14.) It is true that the appellant challenged the orders dated 18.09.1997 and 16.03.1998 of the Collector and Appellate Authority, respectively, whereby his claim for declaring him owner of the suit

land was dismissed. However, the appellant did not question before the learned Single Judge the legality of the orders passed under Section 11 of the Act so far as the rejection of his ownership claim over the land is concerned. The only issue raised was whether eviction order could also be passed while deciding the title dispute? The learned Single Judge accepted that contention and allowed the writ petition in part. Having accepted the order rejecting his title the appellant cannot blow hot and cold or take a total summersault that he has been throughout acting under the wrong advice. The appellant allowed the grass to grow under his feet; went into slumber; did not dispute the Gram Panchayat's title before this Court and the subsequent eviction orders being totally incidental thereto, on merits also, we do not find any substance in the appellant's claim.

15.) For the reasons aforestated, the main appeal also fails on merits and is accordingly dismissed.

16.) On the same analogy, the appellant's writ petition challenging the consequential eviction order cannot stand and is liable to be dismissed. In fact on 11.08.2014, itself we sealed the fate of the writ petition as the case was adjourned after considerable arguments only on the limited issue whether the writ petitioner was willing to hand over possession of the Gram Panchayat land so that the question of penalty imposed on him could be sympathetically considered. That order has not been complied with so far. In these circumstances, no case to interfere with the eviction orders is made

out.

17.) Dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

May 11, 2015.
sandeep sethi