IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.20856 of 2015
Date of Decision: December 14, 2016

Nagar Panchayat, Lohian Khas, Jalandhar

...Petitioner

Versus

Deputy Commissioner, Jalandhar & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjeev Soni, Advocate,
for the petitioner(s).

Mr.B.M.Vinayak, DAG, Punjab.

Mr.S.P.Soi, Advocate,
for respondent No.3 in CWP-20856 of 2015.

Ms.Amandeep Kaur, Advocate,
for respondent No.3 (in CWP No.21882-2015).

Mr.Satinder Khanna, Advocate,
for respondent No.3
in CWP Nos.21700, 22273, 21912, 20586, 21617, 21619, 21621, 21623, 21626, 21690, 21691, 21693, 21694, 21695, 21696, 21697, 21881, 21910, 21911, 22090, 22094, 22096, 22097, 22171, 22266, 22268, 22269, 22271, 22272, 22306, 22270, 21679, 21625, 22093, 22095 and 22172 of 2015.

RAMESHWAR SINGH MALIK, J.(Oral)

This bunch of 56 writ petitions bearing CWP Nos.20856 of 2015, CWP No.21424 of 2015, CWP No.21617 of 2015, CWP No.21618 of 2015, CWP No.21619 of 2015, CWP No.21620 of 2015, CWP No.21621 of 2015, CWP No.21622 of 2015, CWP No.21623 of 2015, CWP No.21624 of 2015, CWP No.21625 of 2015, CWP No.21626 of 2015, CWP No.21664 of 2015, CWP No.21679 of 2015, CWP No.21689 of 2015, CWP No.21690 of 2015, CWP No.21691 of 2015,

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CWP No.21692 of 2015, CWP No.21693 of 2015, CWP No.21694 of 2015, CWP No.21695 of 2015, CWP No.21696 of 2015, CWP No.21697 of 2015, CWP No.21698 of 2015, CWP No.21699 of 2016, CWP No.21700 of 2015, CWP No.21701 of 2015, CWP No.21881 of 2015, CWP No.21882 of 2015, CWP No.21909 of 2015, CWP No.21910 of 2015, CWP No.21911 of 2015, CWP No.21912 of 2015, CWP No.21914 of 2015, CWP No.21918 of 2015, CWP No.21919 of 2015, CWP No.21921 of 2015, CWP No.22090 of 2015, CWP No.22091 of 2015, CWP No.22092 of 2015, CWP No.22093 of 2015, CWP No.22094 of 2015, CWP No.22095 of 2015, CWP No.22096 of 2015, CWP No.22097 of 2015, CWP No.22171 of 2015, CWP No.22172 of 2015, CWP No.22266 of 2015, CWP No.22267 of 2015, CWP No.22268 of 2015, CWP No.22269 of 2015, CWP No.22270 of 2015, CWP No.22271 of 2015, CWP No.22272 of 2015, CWP No.22273 of 2015, CWP No.22306 of 2015, is proposed to be decided vide this common order, as all these writ petitions are arising out of same set of facts and raise identical issues. However, with the consent of learned counsel for the parties, facts are being culled out from CWP No.20856 of 2015 (***Nagar Panchyat Lohian Khas Jalandhar vs. Deputy Commissioner Jalandhar & Ors.)***

Feeling aggrieved against the order dated 10.12.2013 (Annexure P-8) passed by Regional Deputy Director-respondent No.2, petitioner-Nagar Panchayat Lohian Khas has approached this Court, by way of instant writ petition under Articles 226/227 of the Constitution of

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India, seeking a writ in the nature of certiorari, for quashing the impugned order.

Notice of motion was issued and in compliance thereof, short reply by way of affidavit was filed on behalf of respondent Nos.1 and 2.

Heard learned counsel for the parties.

It has gone undisputed before this Court that impugned order is appealable before the competent authority under the relevant provisions of law. Learned counsel for the petitioner, despite repeated asking by the Court, could not point out any justified reason not to avail the equally efficacious alternative remedy of appeal against the impugned order. No doubt, availability of an alternative remedy may not be an absolute rule in every given situation for entertaining the writ petition. However, it is also equally true that until and unless, an exceptional case is made out at the hands of the petitioner to ignore and avoid equally efficacious alternative remedy of appeal, this Court would not entertain the writ petition permitting the petitioner to bye- pass the alternative remedy.

The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court, in **United Bank of India v. Satyawati Tondon and others, 2010(8) SCC 110** and **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, 1999(4) SCC 382**, besides a Division Bench judgment of this Court, in **M/s J.M.P. Manufacturing Company v. Union of India, 1997(3) PLR 386.** The Hon'ble Supreme Court, after referring to a plethora of judgments on this

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point, made the following observations in para 18 of its judgment in **United Bank of India's case (supra)**, which can be gainfully followed in the present case:-

> *"While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations*

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towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters."

Similarly, a Division Bench of this Court, in **M/s J.M.P. Manufacturing Company's case (supra),** while following to the judgments of the Hon'ble Supreme Court, observed as under:-

"The principle laid down in ***Titaghur Paper Mills Co. Ltd. v. State of Orissa, AIR 1983 Supreme Court 603****, has been reiterated in* ***Asstt. Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd., AIR 1985 Supreme Court 330.*** *The Supreme Court lamented on the practice of the High Courts to entertain writs and to pass orders of stay against the recovery of taxes and observed:-*

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the vires of the statute is in question or where private or public wrongs are so in-extricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters

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> *involving the revenue where statutory remedies are available are not such matters. The Supreme Court can take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.*"

Respectfully following the law laid down by the Hon'ble Supreme Court as well as Division Bench of this Court, referred to here-in-above, it is unhesitatingly held that the petitioner was under legal obligation to exhaust its alternative remedy, available to it, before filing the present writ petition. Admittedly, the petitioner has not availed its alternative remedy and that too without any reason, much less cogent reasons thereof.

In the instant case, as recorded above, learned counsel for the petitioner could not make out a special or exceptional case permitting the petitioner to ignore and avoid the equally efficacious alternative remedy of appeal against the impugned order.

In view of the above, instant bunch of writ petitions is disposed of relegating the petitioner to avail its equally efficacious alternative remedy by way of its statutory right of appeal against the impugned order, at the first instance. However, it is made clear that since the petitioner was pursuing its remedy before this Court under a bonafide wrong impression, respondents shall not raise the plea of limitation against the petitioner, if the appropriate appeal is filed within a period of

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one month from today and the appellate authority shall decide the appeal on merits, after granting due opportunity of being heard to all the would be affected parties.

With the abovesaid observations made and directions issued, present petition stands disposed of.

December 14, 2016 **(RAMESHWAR SINGH MALIK)**
seema **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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