

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.6871 of 2016

Date of Decision: April 12, 2016

Chhajju Ram and others

....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.

Present: Mr.D.S.Gurna, Advocate, for the petitioners.
Mr.Rajesh Bhardwaj, Additional AG, Punjab.
Mr.Hardip Singh, Advocate, for respondent No.4-
Caveator.

:-

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?

Surya Kant, J. (Oral)

Notice of motion.

On our asking, Mr.Rajesh Bhardwaj, learned Additional Advocate General, Punjab, accepts notice on behalf of respondent Nos.1 to 3 and Mr.Hardip Singh, Advocate, accepts notice on behalf of respondent No.4-Gram Panchayat who is on caveat.

Let three copies of the writ petition be supplied to learned State counsel during the course of day failing which this order shall be automatically recalled and the writ petition shall be deemed to have been dismissed for non-prosecution.

In view of the nature of order which we propose to pass, it is not necessary to call upon proforma respondent No.5 or to seek any counter-reply from the contesting respondents at this stage.

[2] The petitioners seek quashing of the orders dated 29.12.1989, 27.03.1991, 27.5.1994 and 02.12.2015. These orders have been passed by the authorities under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act'). The last order dated 02.12.2015 has been passed by the Commissioner-cum-Appellate Authority under the 1961 Act, whereby the appeal preferred by the petitioners against the order dated 27.05.1994 has been dismissed.

[3] The facts may be noticed briefly.

[4] The proforma-respondent No.5 filed a declaratory petition under Section 11 of the 1961 Act claiming that he was owner in possession of the suit land measuring 15 bigha 5 biswa situated within the revenue estate of village Manuli Surat, Tehsil Rajpura, District Patiala. His suit was decreed by the Collector-cum-DDPO, Patiala vide order dated 29.12.1989. The Gram Panchayat being aggrieved, filed an appeal against the said order which was allowed by the Appellate Authority and the order of the Collector was set-aside by the Appellate Authority on 25.05.1991 remanding the case to the Collector. The Collector-cum-DDPO, Patiala, thereafter dismissed the petition of respondent No.5 vide order dated 27.05.1994.

[5] Regardless of the fact that respondent No.5 lost his title suit and that order was never challenged by him, he sold the suit land to the petitioners by way of a registered sale-deed executed on 11.04.2012. After execution of the above-stated sale-deed, the petitioner filed an appeal on 11.09.2013

against the order dated 27.05.1994 after a delay of almost 19 years. Unfortunately, the Appellate Authority, for the reasons best known to it, condoned the delay in filing the appeal with one stroke of pen without assigning any reason on record.

[6] The Gram Panchayat challenged that order before this Court and its writ petition was allowed; the order condoning the delay in filing the appeal was set-aside and the application was directed to be decided afresh.

[7] Dehors the direction issued by this Court, it appears that the Appellate Authority has not passed any reasoned order for condonation of delay, rather it heard the arguments on merits on 04.11.2015 and vide order dated 02.12.2015, the petitioners' appeal has been dismissed observing that "the appeal is dismissed not being maintainable and the orders of lower court are upheld".

[8] It is thus difficult to ascertain as to whether or not the delay in filing the appeal has been condoned and if so, what was the reason to pursued the Appellate Authority to do so. Similarly, no reason whatsoever has been assigned as to how the petitioners' appeal was not maintainable or that why the appeal is liable to be dismissed. There is even no whisper as to how the remand order passed by the High Court has been complied with. In these circumstances, we are satisfied that the impugned order dated 02.12.2015 as well as the order condoning the delay in filing the appeal, if any, cannot sustain in law. Both these orders are set-aside.

[9] The matter is remanded to the Appellate Authority with the following directions:-

- (i) firstly the application for condonation of delay in filing the appeal by the petitioners shall be

taken-up and shall be decided by passing a reasoned order after hearing the Gram Panchayat. The said application shall be decided within a period of one month from the date of receiving a certified copy of this order;

- (ii) If the delay in filing the appeal is condoned, the main appeal shall be decided within a period of two months thereafter.

[10] Having regard to the fact that the petitioners claim to have stepped into the shoes of respondent No.5 on the basis of the sale deed executed in the year 2012 and any observation by this Court on their status as bonafide purchasers might cause prejudice to either party, we direct the petitioners to furnish cash security of Rs.1.0 lac per acre for the crop years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 within a period of one month, i.e., before their application for condonation of delay in filing the appeal is decided. It is directed that the application for condonation of delay shall be entertained and decided on merits only after the above-mentioned security is furnished by the petitioners.

[11] In case the application for condonation of delay is dismissed, the above-mentioned security amount shall be released in favour of the Gram Panchayat towards damages/ loss suffered by it on account of having deprived of possession of the suit land. Similarly, if the appeal is dismissed, in that event also the above-mentioned security amount shall be released in favour of the Gram Panchayat.

The petitioners shall be at liberty to initiate civil or criminal proceedings against proforma-respondent No.5, if so

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[5]

permissible and maintainable under the law.

Ordered accordingly.

Dasti.

[SURYA KANT]
JUDGE

April 12, 2016
mohinder

[A.B.CHAUDHARI]
JUDGE