

RA-CW-176-2015 in/and
CWP No.14183 of 2011 and
CWP No.4809 of 2012 and
COCP No.2171 of 2013

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Review Application No.176 of 2015 in/and
CWP No.14183 of 2011 (O&M)

Devinder Kaur and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP No.4809 of 2012

Satinder Singh ...Petitioners

Versus

State of Punjab and others ...Respondents

COCP No.2171 of 2013

Devinder Kaur ...Petitioner

Versus

Jasbir Singh Sarpanch and others ...Respondents

Date of decision:29.07.2016

CORAM: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sham Lal Bhalla, Advocate,
for the petitioner(s).

Mr. Rajinder Goyal, Addl. A.G., Punjab.

Mr. B.S.Bali, Advocate,
for the Gram Panchayat.

Rakesh Kumar Jain, J.

In brief, CWP No.14183 of 2011 was filed to challenge the
order dated 29.09.2010 of the Collector, Fatehgarh Sahib, passed on an

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application filed by the Gram Panchayat, Shamsheer Nagar, District Fatehgarh Sahib, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the “Act”) for taking possession from the petitioner therein of shops No.1 and 2, and the order dated 22.06.2011 by which appeal filed by the petitioner therein against the order dated 29.09.2010 was dismissed.

CWP No.4809 of 2012 was also directed against the order dated 29.09.2010 of the Collector, Fatehgarh Sahib, passed on the application filed by the Gram Panchayat under Section 7 of the Act in respect of shops No.7 & 9 for eviction of the petitioner therein. The said order was further challenged in appeal which was dismissed by the Director, Rural Development and Panchayats, Punjab (exercising the powers of the Commissioner under the Act) on 21.12.2011.

CWP No.14183 of 2011 came up for hearing on 05.03.2012, dismissed on that day and the file was kept for dictating the order. Thereafter, on 15.03.2012, CWP No.4809 of 2012, involving similar issue as involved in CWP No.14183 of 2011, came up for hearing and the same was also dismissed, but while dictating the order in CWP No.4809 of 2012, a common order was passed in both the writ petitions as the issue involved in both the writ petitions was the same, whereas formal separate order was required to be passed in CWP No.14183 of 2011 decided on 05.03.2012 instead of passing a common order on 15.03.2012 in both the cases.

When the aforesaid technical error came to the notice of the Court, the Division Bench passed the following order on 12.07.2012:-

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“Vide order dated 15.03.2012, CWP No.4809 of 2012 was dismissed. A similar CWP No.14183 of 2011 was dismissed on 05.03.2012. However, inadvertently, as controversy in both petitions was the same, a common order was dictated whereas we were required to dictate separate orders. We, therefore, exercise our suo motu power or review and issue notices to counsel for the parties for 20.07.2012.”

Thereafter, the matter was adjourned time and again and ultimately, on 30.01.2015, the following order was passed by the Division Bench:-

“The order dated 16.01.2015 shall henceforth be read as under:-

“Counsel for the parties agree that the writ petition may be heard on merits.

In view of the statement made by counsel for the parties, order dated 15.03.2012 is recalled and matter be set down for hearing as per roster after obtaining order in this regard from Hon'ble the Acting Chief Justice.””

Now, the Gram Panchayat has filed Review Application No.176 of 2015 seeking review of the aforesaid order dated 30.01.2015, alleging that while passing the aforesaid order dated 30.01.2015, consent was given by the Gram Panchayat only to rectify the technical error by passing a formal separate order in CWP No.14183 of 2011 decided on 05.03.2012 instead of 15.03.2012 and the Gram Panchayat never consented to fix the case for re-hearing on merits as both the cases have already been dismissed on merits vide order dated 15.03.2012.

It is argued by learned counsel for the Gram Panchayat that the order dated 15.03.2012 is valid in the eyes of law and neither party has ever

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filed any Review Application to recall/review the aforesaid order dated 15.03.2012, whereas the said order was re-called by this Court by exercising its suo motu powers only for the purpose of rectifying the technical error by passing a formal separate order in CWP No.14183 of 2011 decided on 05.03.2012 and, thus, the order dated 31.01.2015, fixing the aforesaid cases for re-hearing on merits, needs to be recalled/reviewed.

Counsel for the non-applicant/petitioner(s) is not in a position to rebut the aforesaid arguments raised by learned counsel for the Gram Panchayat.

After hearing learned counsel for the parties and thoroughly examining the available record, we are of the considered opinion that the Division Bench passed the order dated 12.07.2012 by exercising its suo motu powers only for rectifying the technical error by passing a formal separate order in CWP No.14183 of 2011 decided on 05.03.2012 as the said writ petition had come for hearing on 05.03.2012 and not on 15.03.2012, otherwise the common order passed in both the writ petitions dated 15.03.2012 was legally valid as the issue involved in both the petitions was identical. However, under the garb of the order dated 12.07.2012, counsel for the non-applicant/petitioners persuaded this Court to recall the order dated 15.03.2012 and fix both the writ petitions for re-hearing on merits, whereas both the writ petitions had been dismissed on 05.03.2012 and 15.03.2012 but inadvertently, a common legally valid order dated 15.03.2012 was passed and the only thing which was required to be done was to pass a formal separate order in CWP No.14183 of 2011 decided on

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05.03.2012 in order to rectify the technical error as the said writ petition was taken up on 05.03.2012 and not on 15.03.2012.

Keeping in view the aforesaid facts and circumstances, the Review Application No.176 of 2015 is hereby allowed and the order dated 30.01.2015 passed by this Court is recalled/reviewed. As a result thereof, the order dated 15.03.2012 passed in both the writ petitions i.e. CWP Nos.14183 of 2011 and 4809 of 2012 came into existence and both the writ petitions shall be deemed to have been dismissed by the aforesaid order dated 15.03.2012.

However, in order to avoid confusion in future and to rectify the technical error, referred to above, it is clarified that CWP No.14183 of 2011 shall be deemed to have been dismissed on 05.03.2012 instead of 15.03.2012 as the said writ petition was taken up for hearing on 05.03.2012 and not on 15.03.2012.

Further, with the allowing of the Review Application and dismissal of both the writ petitions, COCF No.2171 of 2013 has become infructuous and is dismissed as such.

(Ajay Kumar Mittal)
Judge

(Rakesh Kumar Jain)
Judge

July 29, 2016
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Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No