

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

CWP No. 16867 of 2016 (O&M)

Date of decision: 16.3.2017

Kashmir Singh

.. Petitioner

vs

State of Punjab and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Meharpreet, Advocate for
Ms. Gursharan K. Mann, Advocate, for the petitioner.

Ms. Munisha Gandhi, Addl. Advocate General, Punjab with
Mr. Sandeep Kumar Bansal, Asstt. Advocate General, Punjab,
for respondent nos. 1 to 3.

Mr. J. S. Thind, Advocate, for respondent no. 4.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 7.10.2015 (Annexure P-6) passed by the Collector (Panchayat Lands), Amritsar, whereby the application filed by the petitioner under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act'), was dismissed.

The petition filed by the petitioner was dismissed on 22.4.2015, in the absence of the counsel as well as the petitioner. The application for restoration was filed on 5.8.2015 stating that on the date when the petition was dismissed, the petitioner was in custody in FIR No. 150 dated 9.12.2008, registered under Section 302 IPC at Police Station Kathunangal, District Amritsar, hence, he could neither appear himself before the Collector nor he could contact his counsel. Even on the date of filing of the application, he was in custody. Though the aforesaid facts have been noticed by the Collector in the impugned order, however, still he did not

find this to be a good ground for restoration.

After hearing learned counsel for the parties and considering the fact that the date on which the petition filed by the petitioner under Section 11 of the Act, was dismissed in default, he was in custody, hence, his absence cannot be said to be willful. It was the reason for his non-appearance before the Collector. The delay in filing the application for restoration is also not fatal, as even on the date of filing thereof, the petitioner was still in custody, as has been stated by him in the application for restoration.

Considering the aforesaid factual matrix, in our opinion, the impugned order dated 7.10.2015, dismissing the application for restoration of the petition filed under Section 11 of the Act, deserves to be set aside. Accordingly, the order dated 22.4.2015, dismissing the petition in default is set aside. The petition filed under Section 11 of the Act is restored. The parties shall appear before the Collector on 21.4.2017.

The matter shall be decided by the Collector without being prejudice by the subsequent proceedings, which had been initiated by the petitioner for the same relief, wherein the application was dismissed vide order dated 18.1.2016 noticing the fact that the earlier petition for the same relief has already been dismissed. It is for the reason that the earlier proceedings have now been revived.

(Rajesh Bindal)
Judge

16.3.2017
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No