

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

CWP No. 17949 of 2016 (O&M)
Date of decision : 5.4.2017

Mann Singh

.. Petitioner

versus

State of Punjab and and others

.. Respondents

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

Present: Mr. Parvez Akhtar, Advocate for
 Mr. Mohd. Yousaf, Advocate, for the petitioner.

 Mr. P.S. Bajwa, Additional Advocate General, Punjab.

 Mr. V.K. Sandhir, Advocate, for respondent No.4.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 16.9.2015 (Annexure P-3) passed by the Joint Development Commissioner (IRD) (for short, 'the Commissioner'), exercising the powers of Commissioner under Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act'). The order was passed in Appeal No.245 of 2013 against the order dated 14.6.2010 passed by the District Development and Panchayat Officer-cum-Collector, Sangrur in the petition filed under Section 7 of the Act. Along with the appeal filed by respondent No.5 before the Commissioner, an application seeking condonation of delay of 1,133 days in filing was also filed.

The contention raised by learned counsel for the petitioner is that without condoning huge delay in filing the appeal, which was required to be filed within a period of 60 days, in terms of the provisions of Section 7(2) of the Act, the appeal was accepted and the matter was remanded.

Learned counsel for the State was requested to summon the original record of the appeal decided by the Commissioner. The same has been produced. A perusal of the file shows that after the appeal along with application seeking condonation of delay was filed on 29.11.2013, upto 20.2.2014, the order sheet notices that the same was pending for consideration of delay. However, thereafter none of the zimini order suggests that application was to be taken up for hearing. Without condoning delay, the appeal was taken up on merits and finally decided on 16.9.2015 and matter remanded back to the Collector-cum-BDPO.

After hearing learned counsel for the parties and perusing the record of the appeal decided by the Commissioner, we are of the view that without dealing with the application seeking condonation of delay of 1,133 days in filing the appeal and accepting the same, the Commissioner could not have dealt with the appeal on merit, however, he has done otherwise, as the application has not at all been decided, whereas the appeal was heard and decided on merit. There being error in exercising the jurisdiction by the Commissioner, the order is set aside. The matter is remanded back to the Commissioner for dealing the application seeking condonation of delay first and thereafter, if need, the appeal on merit. The parties are directed to appear before the Commissioner on 10.5.2017.

Respondent No.5, who was not represented before this Court today, be summoned by the Commissioner for the date fixed.

The petition stands disposed of.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

5.4.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No