

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

CWP No.8694 of 2015

Date of Decision.20.01.2017

Bachan Lal son of Dharam Chand

.....Petitioner

Vs

State of Punjab and others

.....Respondents

Present: Mr. Deepak Arora, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

None for respondent Nos.7 and 8.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner is aggrieved of the entertainment of the appeal (Annexure P-13) along with application (Annexure P-14) seeking condonation of delay in filing the appeal under Section 18 of the Punjab Land Reforms Act, 1972 at the instance of the private respondents against the order dated 09.06.2014 whereby the District Revenue Officer exercising the powers of Collector Pathankot, allotted the balance piece of land to him along with Madan Lal, brother, being successors in interest of Dharam Chand whereby without condoning the delay, status quo order dated 17.11.2014 (Annexure P-15) has been passed.

Mr. Deepak Arora, learned counsel appearing on behalf of the petitioner submits that Dharam Chand, deceased father of the petitioner and respondent No.6-Madan Lal, was originally a tenant on land measuring 13 Kanals 6 marlas bearing khasra No.18/14(5-6), 18/23(8-0) situated in village Hajipur, Tehsil and District Pathankot under one Wadhawa Ram.

provisions of Section 14 and 9 of the Punjab Security of Land Tenures Act. The eviction order was passed on 21.01.1974 (Annexure P-1) whereby Dharam Chand was ordered to be ejected from the land in dispute only if the land to the same extent be allotted to him in lieu of the land in dispute and the possession would not be delivered to the landlord until he is settled on an equivalent surplus area.

After passing of the aforementioned orders, possession of the land measuring 13 kanals 6 marlas was delivered to land owners vide daily diary entry dated 23.09.1977 in the roznamcha register of the Halqa Patwari. During the life-time of Dharam Chand he was not allotted with alternative land and unfortunately, he died on 06.10.1994. The petitioner and respondent No.6 submitted an application dated 13.11.2006 (Annexure P-2) for allotment of land measuring 132 kanals 18 marlas by giving description therein. The Deputy Commissioner vide order dated 30.11.2010 (Annexure P-3) ordered for ascertainment of the value of the land measuring 13 kanals 6 marlas where it was found that Dharam Chand, predecessor-in-interest of the petitioner, had vacated 0.66 hectares of land and ordered to deposit the amount within 7 days.

As per the order of Sub Divisional Magistrate, Pathankot dated 03.02.2011, the petitioner and his brother made the necessary deposit on 10.02.2011 vide Annexure P-6 but, however, prior to that, had also moved an application dated 03.01.2011 for allotment of more area as the value of the land vacated by deceased-Dharam Chand was more than the one to be allotted by taking the benefit of Section 10(c)(iv) of the Punjab Utilization of Surplus Area Scheme, 1973. The department recommended allotment of 24 kanals 19 marlas of land out of land measuring 26 kanals, which is

evident from the letter dated 23.06.2011 issued by the SDM, Pathankot to District Collector, Gurdaspur vide Annexure P-8.

Owing to the non-action of the respondent, the petitioner filed writ petition bearing No.3121 of 2013 before this Court and this Court vide order dated 13.02.2013 (Annexure P-11) directed the Department to consider the claim within a specified period by passing the speaking order. Resultantly, vide order dated 09.06.2014 (Annexure P-12), the District Revenue Officer exercising the power of Collector held the petitioner and the private respondent No.6 entitled to 92 kanals 19 marlas on the premise that value of the land in dispute of their predecessor-in-interest was much more.

However, the aforementioned order has been challenged in appeal accompanying with application for condonation vide Annexures P-13 and P-14 by the private respondent by invoking the provisions of Section 18 of the Punjab Land Reforms Act and the Commissioner vide impugned order dated 17.11.2014 without condoning the delay had issued the notice for 19.01.2015 and also ordered status quo to be maintained till further orders.

He submits that the appeal of the respondents was not maintainable and they have no locus standi. Moreover, the status quo order in the absence of any date on the application seeking condonation of delay could not have been passed, much less, not maintainable in the eyes of law, thus, there is material irregularity while entertaining the said appeal. There is no provision for applicability of Limitation Act. They were never parties to the proceedings. If at all, they were aggrieved, they should have gone to some other Court. The appeal was not accompanied by any document to

establish that they had some interest in the property allotted to the petitioners vide order dated 09.06.2014 (Annexure P-12), thus, urges this Court for rejecting the grounds of appeal and application, much less, the status quo order.

He also submits that owing to the status quo order, the petitioner and his brother are not able to cultivate the land. Even the appeal filed under Section 18 of the Punjab Land Reforms Act is not maintainable. The provisions of Section 18 reads as under:-

“18. Appeal, review and revisions -- The provision in regard to appeal, review and revision under this Act shall, so far as may be, the same as provided in sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1987 (Act XVI of 1887)”

In fact, the provisions of Punjab Tenancy Act would apply and as per the provisions of Section 81 of the aforementioned Act declaring surplus area of land, it is only the landlord who has right to file the appeal within the prescribed time limit and if it was not filed with the prescribed period, the time limit cannot be extended.

Though respondent Nos.7 and 8 have put in appearance through K.K. Rajput, Advocate but have not filed the reply despite number of adjournment have been taken. There is no representation for respondent Nos.7 and 8 today when this Court heard the argument i.e. on 20.01.2017. Accordingly, I proceeded to decide the writ petition.

I have heard learned counsel for the parties, appraised the paper book. As per the provisions of Order 41 Rule 3-A CPC, there cannot be any order of stay unless and until the delay in filing the appeal is not condoned. Similar analogy is also applied to the present appeal.

The impugned order (Annexure P-15), which reads as under, does not even advert to the application seeking the condonation of delay

(Annexure P-14):-

“Heard. Issue notice to the respondents for 19.01.2015. Record of lower court be also requisitioned. Meanwhile, parties shall maintain status quo till further orders.”

In my view, the status quo order is prejudiced to the right of the petitioner, though he could have approached the aforementioned authority by raising all possible pleas. Instead of adhering to the prayer of the petitioner for quashing the appeal and application for condonation of delay, I deem it appropriate by granting liberty to the petitioner to move an application before the Commissioner in case he has put in appearance and if otherwise, also bring all these facts for seeking the vacation of stay, much less, locus standi and maintainability of the appeal and in doing so, the Commissioner shall decide the application within a period of one month from the date of receipt of certified copy of this order. While deciding the same, all the points raised above shall be taken care of by the Commissioner.

With the aforementioned observations, the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

January 20, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No