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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13413-2018 (O&M)

Date of Decision: October 11, 2018

Faqir Chand

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Ms.Benti Kaur, Advocate for the petitioner.

Mr.Pankaj Gupta, Addl.AG, Punjab.

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RAJESH BINDAL, J.

The petitioner has approached this Court praying for setting aside the order dated 28.03.2018 passed by the District Development and Panchayat Officer-cum-Collector, Jalandhar, Annexure P-6.

Learned counsel for the petitioner submitted that the petitioner is a land-less labourer belonging to weaker section of society and is more than 70 years of age. He being a land-less labourer and a person belonging to weaker section of society, was allotted a plot measuring 2 Marlas 7 Sarsai to enable him to construct his house thereon. He is living in the same for the last about 30 years. He does not have even electric connection, however, water supply is there. To his surprise, he came to know that on March 29, 2016, an ex parte eviction order has been passed against him by the DDPO, Jalandhar on a petition filed by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961. Immediately thereafter, the petitioner filed an application for setting aside of ex parte

order but the same was kept pending. Compelled under the circumstances, the petitioner approached this Court by filing CWP-28755-2017, which was disposed of on 18.12.2017 directing the DDPO, Jalandhar to decide the application for setting aside of ex parte order by passing a speaking order within a period of two months from the date of receipt of a certified copy of the order. Thereafter, the DDPO, Jalandhar though accepted the application filed by the petitioner for setting aside the ex parte order on 28.03.2018 but on the same day by same order restored the earlier order of eviction passed by him. Both the orders are cryptic, non-speaking, hence deserve to be set aside. Interference by this Court is called for as there is complete violation of principle of natural justice.

On the other hand, learned counsel for the respondents submitted that the only grievance of the petitioner when he approached this Court earlier was that before passing the order of eviction, he was not heard by the DDPO. After the direction was issued by this Court, due opportunity of hearing was afforded to the petitioner by the DDPO and thereafter finding no merits in the case set up by the petitioner, the application filed by the Gram Panchayat for eviction of the petitioner was accepted after recalling the ex parte order. The petitioner has effective alternative remedy of appeal against the aforesaid order. Hence, the present writ petition deserves to be dismissed to enable the petitioner to avail of his alternative remedy of appeal.

Heard learned counsel for the parties and perused the paper-book.

Before the arguments of the parties are dealt with, it would be appropriate to extract the orders passed by the DDPO, Jalandhar on 29.03.2016 and 28.03.2018.

“Order dated 29.03.2016:

Petition is hereby accepted, the second party is being evicted from the disputed property and it is instructed that they should hand over possession of the disputed property to the Panchayat after giving up the illegal possession. In case they do not follow the said order. The Panchayat will take legal action against them for not handing over the possession.

The order was pronounced in open Court. File be deposited in the record room.”

“Order dated 28.03.2018:

Sh.Faqir Chand S/o Nathu Ram R/o Village Taggar has presented an application for setting aside the Ex-parte order. The parties were summoned. The Sarpanch of Gram Panchayat Village Taggar came present and made a statement that the Ex-parte order may be set aside and the application be accepted so that the case can be decided on merits. Therefore the application of Faqir Chand for setting side the Ex-parte order be kindly excepted. The second party also filed reply. The counsels present were heard and the record on the file was perused. Resultantly the earlier order dated 29.03.2016 is reinstated and the application filed by Faqir Chand dismissed.

Decision pronounced in open Court.”

A perusal of the order passed on 29.03.2016, which was ex parte, accepting the application filed by the Gram Panchayat for eviction of

the petitioner shows that the same is totally non-speaking. It does not

mention even the facts of the case what to talk of the reasons for accepting the application for eviction filed by the Gram Panchayat. The order starts with the words “Petition is hereby accepted”. Contents have been extracted from the order placed on record.

When the petitioner came to know about the aforesaid ex-parte order passed directing his eviction, he filed application for setting aside of ex parte order, but the same was not decided. The petitioner had to approach this Court by filing CWP-28755-2017, which was decided on 18.12.2017 directing the DDPO, Jalandhar to decide the application within two months by passing a reasoned order. Thereafter the impugned order was passed on 28.03.2018. The application filed by the petitioner for setting aside of ex parte order was accepted. Though it is noticed in the order that reply filed by the petitioner is available on record but still without discussing anything further, earlier order of eviction passed against the petitioner was reiterated. The manner in which the order has been passed by the DDPO, Jalandhar determining the rights of the parties certainly needs to be deprecated.

Assigning reasons in any order passed by an Authority determining the rights of the parties is *sine quo non*. In the absence of facts and the reasons in the order, it is impossible for the higher Court to appreciate as to what weighed the Authority to reach the conclusion arrived at. The application of mind has to be there. Hon'ble the Supreme Court in Kranti Associates Private Limited and another v. Masood Ahmed Khan and others, (2010) 9 SCC 496, while referring to its earlier judgments in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala, AIR 1961 SC

1669; Som Datt Datta v. Union of India, AIR 1969 SC 414; Bhagat Raja v.

Union of India, AIR 1967 SC 1606; Travancore Rayon Ltd. v. Union of India, (1969) 3 SCC 868; Mahabir Prasad Santosh Kumar v. State of U. P., (1970) 1 SCC 764; Keshav Mills Co. Ltd. v. Union of India, (1973) 1 SCC 380; Union of India v. Mohan Lal Capoor, (1973) 2 SCC 836; Woolcombers of India Ltd. v. Workers Union, (1974) 3 SCC 318; Siemens Engg. And Mfg. Co. of India Ltd. v. Union of India, (1976) 2 SCC 981; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Rama Varma Bharathan Thampuram v. State of Kerala, (1979) 4 SCC 782; Gurdial Singh Fijji v. State of Punjab, (1979) 2 SCC 368; H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt., (1979) 4 SCC 642; Bombay Oil Industries (P) Ltd. v. Union of India, (1984) 1 SCC 141; Ram Chander v. Union of India, (1986) 3 SCC 103; Star Enterprises v. City and Industrial Development Corpn. Of Maharashtra Ltd., (1990) 3 SCC 280; S. N. Mukherjee v. Union of India, (1990) 4 SCC 594; Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi, (1991) 2 SCC 716; M.L. Jaggi v. MTNL, (1996) 3 SCC 119 and Charan Singh v. Healing Touch Hospital, (2000) 7 SCC 668 opined that every order passed by quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a speaking order. It must not be like the “inscrutable face of a sphinx”. The superior court cannot effectively exercise its power of judicial review unless in the order impugned, facts and reasons have been stated in detail. Merely giving an opportunity of hearing is not enough. Wherever an order can be subject to appeal or judicial review, the necessity to record reasons is even greater. It ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant facts

and the law. It enables an aggrieved party to demonstrate before the higher court that the reasons on which his claim has been rejected, are erroneous. It operates as a deterrent against possible arbitrary action by any authority invested with judicial power. The aim is to prevent unfairness or arbitrariness in reaching conclusions. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. The faith of the people in administrative authorities can be sustained only if they act fairly and dispose of the matters before them by well-considered orders. The aforesaid judgment was followed by Hon'ble the Supreme Court in ORYX Fisheries Private Ltd. v. Union of India and others, (2010) 13 SCC 427 and by this Court in Fruit & Merchant Union vs Chief Information Commissioner and others, (2013) 1 PLR 387.

If the impugned order is examined on the touch stone of principles of law laid down by Hon'ble the Supreme Court in series of judgments, the same deserves to be set aside for the simple reason that it is cryptic. What to talk of reasons, it does not contain even the complete facts.

Ordered accordingly.

The parties are directed to appear before the DDPO, Jalandhar on 20.11.2018 for further proceedings, in accordance with law.

(RAJESH BINDAL)
JUDGE

October 11, 2018
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(MAHABIR SINGH SINDHU)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No