

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.29665 of 2017
Date of Decision: 22.10.2018

Gurnam Singh

..... Petitioner

Versus

Director Panchayat, Directorate of Village Development and
Panchayat Department, Punjab and others

..... Respondents

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

Present: Mr. Manuj Nagrath, Advocate
for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab
for respondents No.1 and 2.

None for respondent No.3-Gram Panchayat.

MAHABIR SINGH SINDHU J.

Petitioner has filed the present writ petition for quashing of the impugned order dated 14.07.2017 (P-2) passed by respondent No.1-Commissioner, whereby their appeal has been dismissed and the order of ejectment dated 12.08.2015 (P-1) passed by the Collector-respondent No.2 has been affirmed.

Brief facts of the case are that a petition under Section 7(1) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') was filed by the Gram Panchayat-respondent No.3 against the petitioner and his brother Jarnail Singh for ejectment being in unauthorized possession of the land measuring 9 Marla

comprised in Khewat No.310, Khatauni No.351 and Khasra No.75, Hadbast No.206 situated in the revenue estate of village Nurpur, Tehsil and District Jalandhar (for short 'land in dispute') as per *Jamabandi* for the year 2007-08.

The petition was opposed by present petitioner and his brother by filing reply and, *inter alia*, submitted that Gram Panchayat has no connection with the land in dispute and as a matter of fact, the same was inherited by their forefathers and as such they are owner in possession thereof. Further submitted that even before the consolidation as well as the partition of the country, they have been continuing as owner in possession in the same capacity.

It transpires that during the proceedings pending under Section 7(1) of the Act, none appeared on behalf of the present petitioner as well as his brother and consequently, were proceeded *ex parte* and after hearing the Gram Panchayat, respondent No.2-Collector allowed the petition and ordered their ejectment from the land in dispute while passing the *ex parte* order dated 12.08.2015(P-1).

Aggrieved against the *ex parte* proceedings as well as the above order, the petitioner along with his brother moved an application for setting aside of the same but was dismissed by the Collector on 19.11.2015 while passing the following order:-

“Present: Counsel for both parties.

Counsel for both parties are heard.

Application filed Respondent / Second Party is

dismissed. Order dated 12.08.2015 is upheld.”

Still aggrieved against the above orders, the petitioner along with legal representatives of his brother filed an appeal under Section 7(2) of the Act and the same has also been dismissed by the Commissioner while passing the impugned order. Hence, the present writ petition.

This Court, while issuing notice of motion on 22.12.2017 passed the following order:-

“Let notice of motion be issued for 15.02.2018 as to why the matter be not directed to be decided on merits subject to imposition of exemplary costs on the petitioner.

Dasti only.

Status quo re: possession be maintained till the next date of hearing.”

Today, the case has been called twice but no one has appeared on behalf of the Gram Panchayat for the reasons best known to them.

It is argued by learned counsel for the petitioner that impugned orders passed by the authorities below are absolutely non-speaking and even the learned Commissioner has dismissed their appeal primarily on the ground of delay which was sufficiently explained in the application for condonation of delay but without considering the same, the appeal has been dismissed.

On the other hand, learned State counsel has opposed the

prayer and submitted that although Gram Panchayat is the only contesting party but since the petitioner was not vigilant about their rights, hence, the present writ petition deserves to be dismissed.

Heard both sides and perused the paper-book.

Perusal of the *ex parte* order dated 12.08.2015 passed by the Collector, nowhere reveals that plea raised by the petitioner and his brother in their reply has been considered, rather, the same has been passed without assigning any reason. Still further the perusal of the order dated 19.11.2015 extracted here-in-above, also reveals that application for setting aside the *ex parte* order was dismissed while writing only one word and there is no application of mind at all. Similarly, the Commissioner has also passed the impugned order in a very mechanical manner, without adverting to the sufficient causes given in the application for condonation of delay filed along with the appeal, simply while observing that it is not convincing.

As a matter of fact, the petitioner along with other applicants submitted that they were not aware about the rejection of their application for setting aside the *ex parte* order passed by the Collector as the counsel who was representing at that time did not inform about the fate of the case and they became aware of the order of the Collector only when Sarpanch of the village openly declared that Gram Panchayat is going to retrieve the possession of the land in dispute. Therefore, there were sufficient reasons which ought to have been considered by the Commissioner while deciding the application

for condonation of delay instead of dismissing the appeal on this ground.

In view of the above, this Court has no option except to allow the present writ petition subject to payment of costs to compensate the Gram Panchayat. Consequently, the present writ petition is allowed. Impugned order dated 12.08.2015 (P-1) as well as order dated 14.07.2017 (P-2), passed by the Collector and the Commissioner, respectively, are set aside and the matter is remanded back to the Collector to decide afresh right from the stage when the petitioner and his brother were proceeded *ex parte* subject to payment of costs of Rs.5000/- to be paid by the petitioner to the Gram Panchayat.

It is made clear that none of the parties shall seek unnecessary adjournment and the Collector shall decide the matter preferably within six months from the receipt of certified copy of this order.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

22.10.2018

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No