

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

CWP No.6196 of 2018

Date of decision : 06.04.2018

Sant Mansa Ram Charitable Trust, Kakrala and others

.....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Baljinder Singh, Advocate for the petitioners.

Mr. Sheery K. Singla, Advocate for
caveator/respondent No.4

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DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for setting aside impugned orders dated 26.02.2018 (Annexure P-9), dated 13.03.2013 (Annexure P-7) and dated 20.05.2010 (Annexure P-5), passed by the Financial Commissioner, Punjab, Divisional Commissioner, Patiala Division, Patiala and Collector, Sub Division, Nabha, Distt. Patiala, respectively.

Briefly, the facts of the case as made out in the present petition are that Sant Mansa Ram, Chela Sant Hari Charan Dass was owner of about 11 acres of land which was his self-acquired property. He purchased said land through various sale deeds executed and registered on different dates. During his lifetime, he remained as owner and in cultivating possession of

the land. He also constructed a Dera where he used to recite and perform Puja-Paath and religious ceremonies. Said Sant Mansa Ram left for heavenly abode on 16.08.2001. After his death, his Chela Sant Gian Dass succeeded him as he was appointed by the Members of Bheikh and other respectable persons on 30.08.2001. He came into possession of the land in dispute and continued as such till his death on 20.07.2007. As per desire of Sant Mansa Ram, a trust was established on 20.09.2001 known as SANT MANSA RAM CHARITABLE TRUST. Balbir Singh, Sukhwinder Singh, Gurmail Singh, Sukhdev Singh, Daljit Singh, Harkewal Singh, Harpal Singh, Karamjit Singh and Sarpanch of village Kakrala were made its trustees. Presently, Karamjit Singh is the elected Secretary of the Trust. After death of Sant Mansa Ram, the property was mutated in the name of SANT MANSA RAM CHARITABLE TRUST on 22.04.2002 vide mutation No.3874 as is clear from the Jamabandi for the year 2004-2005. Thereafter, the Trust also purchased land measuring 03 Kanal 07 Marlas vide sale deed dated 22.05.2003. There was no dispute regarding inheritance of the property.

After death of Gian Dass on 05.08.2007, a complaint was made to the D.I.G., Patiala Range, Patiala on 13.10.2007 and proceedings were initiated under Sections 107/151 of Code of Criminal Procedure, 1973 but ultimately, a compromise was entered into between the parties. A civil suit was also filed after death of Sant Gian Dass on 23.05.2008 claiming ownership of the property by Sant Atam Parkash, Chela Sant Mansa Ram. An appeal was also filed against order of sanctioning of mutation dated

22.04.2002. Said appeal was time barred as it was filed after a delay of more than 7 years. An application for condonation of delay was also filed but the delay was condoned without any application of mind vide order dated 20.05.2010. Said order was challenged by way of filing revision petition but it was dismissed. While dismissing the revision, the Commissioner has held that the Collector should have decided the case on merits also and it was remanded to the Collector for hearing on merits. Petitioners challenged order dated 20.05.2010 by way of filing revision under Section 16 of the Punjab Land Revenue Act and status quo order was passed. Said revision petition was dismissed vide order dated 26.02.2018 with the direction to the parties to appear before the Collector.

Petitioners have challenged the orders passed by learned Financial Commissioner, Divisional Commissioner and Collector by raising various grounds.

Learned counsel for the petitioners submits that the appeal was hopelessly time barred and delay of more than 7 years was condoned without mentioning any reason and without any justified cause. Learned counsel also submits that a civil suit was also filed by respondent No.4 for seeking declaration of ownership in possession. In that case, it was specifically mentioned that the mutation of the suit land was entered and sanctioned after death of Sant Mansa Ram. The civil suit was filed on 23.05.2008 and the appeal along with application for condonation of delay was filed on 28.10.2009. The factum of filing civil suit was concealed by respondent No.4. By raising a false plea regarding knowledge from the date

i.e. 29.09.2009, the application for condonation of delay was moved. Learned counsel also submits that plea of knowledge regarding mutation was false as learned Collector himself had observed that application under Section 5 of the Limitation Act was filed after a long delay. Not only the application but the appeal should have been dismissed on the ground of unexplained delay itself, but the application was allowed and unexplained delay was condoned. At the end, learned counsel for the petitioners submits that all the authorities below have failed to consider that respondent No.4 filed a civil suit for declaration of ownership with regard to property in dispute and also claimed its possession. Said suit was dismissed in default vide order dated 21.02.2014. Thereafter, no application for restoration of the suit was filed. The remand order to the Collector for decision of the appeal on merit would multiple the litigation in the second round of litigation, which would be a misuse of process of law.

Mr. Sheery K. Singla, Advocate appears for the caveator and has vehemently opposed the submissions made by learned counsel for the petitioners. He raised a preliminary objection that even at present also, the Trust is not in existence. The delay was rightly condoned by considering the date of knowledge and well reasoned order was passed. Learned counsel also submits that main appeal is pending before the Collector, Nabha and petitioners are not interested in decision of the appeal and wants to prolong the litigation. Petitioners can agitate their grievance before the appellate Court but instead of pursuing the appeal, they are lingering with the litigation by pursuing the order passed in the application for condonation of

delay.

Heard arguments of learned counsel for the petitioners as well as learned counsel appearing for the caveator.

After hearing arguments of both the sides, the dispute is as to whether the delay of more than 7 years has rightly been condoned or not. As per the case of the petitioners, the application for condonation of delay was allowed and delay of more than 7 years was condoned without any reason and without recording any finding, whereas it is the argument of learned counsel for the caveator that a well reasoned order was passed and delay was condoned as the fact came to the knowledge of the respondents late and there were sufficient reasons to condone the delay.

Admittedly, learned Financial Commissioner has directed the parties to appear before the Collector Sub Division, Nabha. The issue involved in the present petition is of sanctioning the mutation on 22.04.2002 by the Assistant Collector IInd Grade Nabha. Against said order, appeal was filed after a delay of more than 7 years and the delay was condoned by the Collector by allowing the application for condonation of delay. The main appeal is still pending before the Collector, Nabha.

Perusal of order passed in the application for condonation of delay shows that a totally non-speaking order has been passed by considering the date of knowledge of the order. Two versions have come on record regarding date of knowledge. The reply of the application has not been taken into consideration. Appellant has been heard while deciding the application but without hearing the respondent, the order was passed and

application was allowed.

It is a well settled proposition of law that delay is not to be condoned in a casual and mechanical manner without mentioning sufficient reasons. In the present case, there was delay of more than 7 years and by mentioning only one line, the delay has been condoned. Even date of knowledge is also disputed as it was mentioned in the application that there were sufficient reasons to condone the delay as the factum of sanctioning mutation in favour of the respondents came to notice subsequently. No notice was issued at the time of sanctioning of mutation on 22.04.2002. The sanctioning of mutation came to the notice of the appellant on 29.09.2009 and only the date of knowledge was relevant for condonation of delay. Appeal was filed well in time *i.e.* within a period of 30 days from the date of knowledge. A complaint was filed to the police on 13.10.2007, whereas the civil suit was filed on 23.05.2008. Meaning thereby, on two different occasions, two different versions are there as the date of knowledge was mentioned as 29.09.2009. Even on perusal of order passed by the Collector, it is apparent that he himself has observed that the application under Section 5 of the Limitation Act was filed after a long delay but still the application was allowed and delay was condoned. All the authorities have not taken into consideration that the civil suit was filed by respondent No.4 with regard to the same property in dispute and claim was of possession. Said suit was also dismissed in default vide order dated 21.02.2014. Thereafter, respondent No.4 did not file any application for restoration of the suit for a period of more than 3 years. All these facts as mentioned above clearly

shows that the delay was condoned without giving any sufficient reason, whereas the reasons should have been mentioned. Moreover, the date of knowledge is also disputed because of two versions.

In view of the facts as mentioned above the present petition is allowed and impugned orders dated 26.02.2018 (Annexure P-9), dated 13.03.2013 (Annexure P-7) and dated 20.05.2010 (Annexure P-5) passed by the Financial Commissioner, Punjab, Divisional Commissioner, Patiala Division, Patiala and Collector, Sub Division, Nabha, Distt. Patiala, respectively are hereby set aside.

Accordingly, learned Collector, Nabha is directed to hear the application for condonation of delay afresh as well as appeal on merits after giving adequate opportunity of hearing to both the parties and decide the same within a period of two months after appearance of both the parties. Both the parties are directed to be present before learned Collector, Nabha on 23.04.2018.

It is also made clear that learned Collector is not to be influenced by any observations given in the order passed earlier in the application.

06.04.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No