

CWP No.18242 of 2019

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

**CWP No.18242 of 2019
Date of decision:06.12.2019**

Thakurdawara and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Robin Dutt, Advocate
for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

SUVIR SEHGAL, J.

The petitioners have approached this Court for the issuance of a writ in the nature of certiorari for quashing the order dated 16.05.2019 (Annexure P-4) passed by the Collector, Yamuna Nagar whereby they were directed to deposit 50% penalty in the Treasury as a pre-condition for entertainment of their appeal under Section 13-B(1) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as “the Act”).

The facts, in brief, leading to the filing of the writ petition are that the Gram Panchayat (respondent No.4) had filed an application under Section 7(2) of the Act before the Assistant Collector, Ist Class-cum-District Development and Panchayat Officer, Yamuna Nagar (respondent No.3) against the petitioners seeking their eviction from land measuring 33 kanals

0 marla situated in the revenue estate of village Dasora, Tehsil Chhachhrauli, District Yamuna Nagar.

After contest, the application was accepted by respondent No.3, vide order dated 18.04.2017 (Annexure P-1) holding that the land is *shamlat deh* and the petitioners are in illegal possession and are liable to be evicted. He also imposed a penalty of Rs.4,000/- per acre per year from the year 2007 to compensate the Gram Panchayat for the loss suffered by it.

This order was challenged by the petitioners by filing an appeal under Section 13-B(1) of the Act before the Collector, Yamuna Nagar (respondent No.2) and filed an application for stay as well besides a separate application for seeking permission to file the appeal without depositing the penalty imposed by respondent No.3. However, vide order dated 16.05.2019 (Annexure P-4), respondent No.2 directed the petitioners to deposit 50% of the penalty in the Treasury and to produce the receipt before the appeal could be heard on merits. The petitioners being aggrieved have filed the instant petition.

We have heard learned counsels for the parties. The counsel for the petitioners has argued that the condition regarding pre-deposit of the penalty amount is an onerous condition and while placing reliance upon a judgment of the Full Bench of this Court in the case of **Ranjit Singh Vs. State of Haryana and others 2011(2) PLR 326** has urged that the pre-deposit of the penalty amount may be waived off. He further argued that the petitioners are poor persons and are not in a financial position to deposit

Rs.96,000/- before respondent No.2.

As a matter of fact, an appeal against the order passed under Section 7 of the Act, can be filed under Section 13-B(1) of the Act which reads as under:-

“13-B Appeal and revision-(1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section(2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit:

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section(2) of Section 7, is deposited with the Collector.”

This provision came up for interpretation in Ranjit Singh's case (supra) in which it has been held as under:-

“21. On a conspectus of the decisions, relied upon by the learned counsel on both sides, it can be concluded that while a right of appeal is a pure and simple statutory right yet once such a right has been conferred its applicability cannot be rendered illusory. By way of random illustration, it may be mentioned that in the present case, the petitioner has already incurred a penalty of ₹ 1.70 lac per hectare. In the present

fragile situation of the agricultural economy with cases of indebted farmers suicides on the rise, the question before a Court would be 'whether the exercise of such a right could prove to be so onerous as to render it a mirage.' In this context, the Hon'ble Supreme Court in Shyam Kishore's case (supra) has said "sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether." Even as regards the judgments cited by the Additional Advocate General, Haryana, it must be noticed that Gujarat Agro Industries Co. Ltd's case (supra) dealt with property tax, Vijay Prakash D.Mehta and Jawahar D.Mehta's case (supra) dealt with a case under the Customs Act, while only Seth Nand Lal's case (supra) related to pre-deposit of penalty by an agriculturist. Seth Nand Lal's case (supra) may be the closest case in point. The Additional Advocate General, Haryana has strenuously argued that in the said case, the Hon'ble Supreme Court had specifically upheld the validity of pre appeal deposit. In the said judgment what weighed with the Hon'ble Supreme Court was the following passage :-

"Para 20.....In the first place, the object of imposing the condition is obviously to prevent frivolous appeals and 1208 revision that impede the

implementation of the ceiling policy; secondly, having regard to sub-ss. (8) and (9) it is clear that the cash deposit or bank guarantee is not by way of any exaction but in the nature of securing mesne profits from the person who is ultimately found to be in unlawful possession of the land; thirdly, the deposit or the guarantee is co-related to the land holdings tax (30 times the tax) which, we are informed, varies in the State of Haryana around a paltry amount of Rs. 8/- per acre annually; fourthly, the deposit to be made or bank guarantee to be furnished is confined to the land holdings tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus after leaving the permissible area to the appellant or petitioner. Having regard to these aspects, particularly the meagre rate of the annual land tax payable, the fetter imposed on the right of appeal/revision, even in the absence of a provision conferring discretion on the appellate/revisional authority to relax or waive the condition, cannot be regarded as onerous or unreasonable. The challenge to s. 18(7) must, therefore, fail.”

22. *A distinction has to be drawn among cases which deal with taxes and duties as in the case of property tax and the*

Customs Act and those which relate to a penalty in respect of an agricultural land of the farmers. Both classes cannot be judged by the same yardstick, more so in a country like ours where land holdings are shrinking while a large section of the populace is still rural and dependent on agriculture. Against this backdrop, we have no hesitation in holding that imposition of blanket liability of pre-deposit of the penalty is an onerous condition. In any event, penalty can not be judged by the yardstick of initial amount of tax liability.

23. *The next issue which arises is whether the above finding would render the provision ultra vires. In Sunil Batra vs Delhi Administration and others, AIR 1978 SC 1675, the Hon'ble Supreme Court recognized the principle of reading down the provision so as to render it constitutional in the following terms :-*

“40. The jurisprudence of statutory construction, especially when a vigorous break with the past and smooth reconciliation with a radical constitutional value-set are the object, uses the art of reading down and reading wide, as part of interpretational engineering. Judges are the mediators between the societal tenses. This Court in R.L.Arora v. State of Uttar Pradesh (AIR 1964 SC 1230) and in a host of other cases, has lent precedential support for this proposition

where that process renders a statute constitutional. The learned Additional Solicitor General has urged upon us that the Prisons Act (Sections 30 and 56) can be a vehicle of enlightened values if we pour into seemingly fossilized words a freshness of sense. “It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution, and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.

218. If sub-section (2) of Section 30 enables the prison authority to impose solitary confinement on a prisoner under sentence of death not as a consequence of violation of prison discipline but on the sole and solitary ground that the prisoner is a prisoner under sentence of death, the provision contained in sub-section (2) would offend Article 20 in the first place as also Articles 14 and 19. If by imposing solitary confinement there is total deprivation of camaraderie amongst co-prisoners, co-mingling and talking and being talked to, it would offend Article 21. The learned Additional Solicitor General while not adopting any dogmatic position, urged that it is not the contention of the respondents that sub-section (2) empowers the authority to impose solitary confinement, but it merely permits statutory segregation

for safety of the prisoner in prisoners' own interest and instead of striking down the provision we should adopt the course of so reading down the section as to denude it of its ugly inhuman features.”

24. Resultantly, by reading down the provision, it is held that Section 13B of the Act would be read down to incorporate within it the power in the appellate authority to grant interim relief in an appropriate case where the grounds so exist by passing a speaking order, even while normally insistence may be made on pre-deposit of penalty. In adjudicating the question whether in a particular case interim relief of stay of a portion or the entire penalty has to be granted, the appellate authority would have to give reasons why it proposes to dispense with the normal procedure of insistence on pre-deposit. Consequently, this writ petition is allowed and the matter is remitted back to the appellate authority to consider the appeal in terms of the law set down above.”

The Full Bench has read down the provisions of Section 13-B of the Act to include in it the power to relax the condition regarding pre-deposit of the penalty by passing a speaking order in an appropriate case.

When the impugned order dated 16.05.2019 is examined in the light of the observations made by the Full Bench, it transpires that respondent No.2 after weighing pros and cons had reduced the penalty to 50% and gave time to the petitioners to deposit the same. Therefore, no

infirmity can be found in the impugned order passed by respondent No.2.

The next contention raised by the petitioners is that they are not in a financial position to deposit even 50% of the penalty amount which works out to Rs.96,000/-. When the matter had come up for hearing before this Court on 09.07.2019, the petitioners were directed to file an affidavit as to how much amount of penalty is to be deposited in compliance of the impugned order and as to whether they are not in a financial position to deposit the same.

The order dated 09.07.2019 passed by this Court is reproduced as under:-

“The issue involved in this case is as to whether the petitioners have a right of filing of an appeal without depositing the penalty which is provided under the first proviso of Section 13-B of the Punjab Village and Common Lands (Regulations) Act, 1961 (applicable to the State of Haryana).

*Learned counsel for the petitioners has though relied upon a decision of the Full Bench of this Court in the case of **Ranjit Singh Vs. State of Haryana and others**; 2011(2)PLR 326 in support of his contention but at the same time, he has not denied that the said proviso has not been struck down by the Full Bench. Therefore, the petitioners are directed to file an affidavit to the effect as to how much amount is liable to be deposited in terms of impugned order dated 16.05.2019 and as to whether the petitioners are unable to deposit the said*

amount on account of paucity of funds.

On his request, hearing of this case is adjourned to 17.07.2019.

In the meantime, the matter pending before the Appellate authority shall be adjourned beyond the date fixed before this Court.”

In response to the said order, affidavit dated 10.07.2019 was filed by Sh. Suresh Pal, who is one of the petitioners deposing that he is a poor man and is unable to deposit the penalty amount of Rs.96,000/- and the land in dispute measuring 33 kanals is not fetching any income.

After taking his affidavit on record, this Court by order dated 17.07.2019, directed the Collector, Yamuna Nagar to verify the veracity of the said affidavit and submit a report before the Court in this regard. The report dated 14.08.2019 of Sh. Mukul Kumar, IAS, Deputy Commissioner-cum-Collector, Yamuna Nagar was filed before this Court. Paragraphs 4 and 5 of his affidavit are reproduced as under:-

“4. That SDO(C) Bilaspur vide his report bearing No.596/Reader dated 07.08.2019 (Annexure R-1) to the deponent has reported that as per report of Tehsildar Chhachhrauli (Annexure R-II) the financial condition of the petitioners is good and they are capable of depositing the penalty amount. He has also annexed the report of Halqa Patwari in this regard (Annexure R-III).

5. That in view of facts submitted above, it is humbly

submitted that the financial condition of the petitioners is good and they are capable of depositing the penalty amount. As such directions issued by this Hon'ble Court have been complied with in letter and spirit.”

A perusal of the report of Deputy Commissioner, report of Sub-Divisional Officer (Civil), Bilaspur dated 07.08.2019 and the report of Tehsildar, Chhachhrauli, shows that the financial condition of all the petitioners is sound and they are in a position to deposit the penalty amount imposed by the Collector, Yamuna Nagar (respondent No.2), vide impugned order dated 16.05.2019 (Annexure P-4). It may be noticed that neither in the application for seeking permission to file an appeal without pre-deposit before the Collector, Yamuna Nagar nor in this writ petition, the petitioners ever pleaded that their financial condition is poor. However, during the course of arguments as well as in the affidavit filed by them on 10.07.2019, they have raised a plea regarding their poor financial condition. In view of this stand, report was sought from the Deputy Commissioner, Yamuna Nagar which belies the stand taken by them.

In view of the above facts and circumstances, while upholding the impugned order dated 16.05.2019 (Annexure P-4), the petitioners are granted time till 31st December, 2019 to deposit 50% of the penalty amount in the Treasury and produce the receipt of deposit before the Collector, Yamuna Nagar as a condition precedent for the decision of their appeal on merits.

With these observations, the writ petition is disposed of.

(RAKESH KUMAR JAIN)
JUDGE

(SUVIR SEHGAL)
JUDGE

December 6, 2019
savita

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No