

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

CWP No.27849 of 2017

Date of Decision:-08.01.2019

Kewal Singh & Anr.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present:- Mr. Vikas Bali, Advocate for the Petitioners.

Mr. H.S. Grewal, Additional Advocate General, Punjab.

JASWANT SINGH, J.

Petitioners Kewal Singh and Harinder Jit Singh have preferred the instant writ petition, seeking quashing of orders dated 27.10.2017 (**P-10**), 10.04.2017 (**P-6**) and 28.04.2017 (**P-8**), passed by the authorities below, whereby their petition under Section 11 of The Punjab Village Common Lands Act, 1961 (hereinafter referred to as the '1961 Act') for declaring them owners in possession of agricultural land in question in village Sianiwal, Tehsil Nakodar, District Jalandhar has been dismissed in default and application for its restoration was also dismissed, which has further been affirmed by the Appellate Authority.

Although State of Punjab had accepted notice on behalf of respondent nos.1 to 3 at the time of issuance of notice of motion itself i.e. 07.12.2017, still no reply has been filed by it till date. Similarly, respondent no.4- Gram Panchayat was ordered to be served through dasti process, who stands duly served and thereafter, the matter was adjourned on 05.03.2018 and 31.08.2018 for

enabling respondent no.4-Panchayat to file its reply, still no reply on its behalf has been filed even today, although it has been one year since the matter has been pending consideration. Accordingly, their defence is ordered to be struck off and this Court proceeds to decide the matter on merits.

Learned Counsel for the petitioner has argued that the Collector, Jalandhar dismissed in default the petition filed by the petitioners under Section 11 of the 1961 Act merely because the petitioners or their counsel failed to appear on one date and their application for restoration, which was filed within seven days was also dismissed. It is further contended that the Appellate Authority, instead of going into the merits of the case, ought to have remanded the matter back to Collector for adjudication on merits, but having failed to do so, the impugned orders are liable to be set aside.

On the other hand, the respondents have supported the impugned orders passed by the Authorities below and have prayed for dismissal of the present writ petition.

After perusing the paper book and scrutinizing the arguments raised by the rival parties, we are of the opinion that the instant writ petition, deserves to be allowed.

That facts are not much in dispute. It is evident that petitioners had filed a title suit under Section 11 of the 1961 Act, which was dismissed in default vide order dated 10.04.2017 (P-6), when the matter was pending for cross examination of petitioner's witnesses. The application for restoration, which was filed on 17.04.2017 (P-7) has also been dismissed on 28.04.2017 (P-8), by holding that petitioners had intentionally delayed the matter. Aggrieved against the same, an appeal was preferred before the Appellate Authority, who dismissed it as if the appeal was on merits, vide order dated 27.10.2017 (P-10). It is thus seen that the Appellate Authority has not applied its judicious mind while passing the order dated 27.10.2017, as it is evident that the matter was never decided by the

Collector on merits. In such a situation, the Appellate Authority ought to have refrained itself from commenting on the merits of the case.

In the instant case, we are inclined to remit the matter back to the Collector, Jalandhar by quashing the impugned orders as admittedly, petitioners petition under Section 11 was fixed for PWs and some PWs already stood examined and further, petitioners had failed to appear on one date only and they moved the application within a reasonable time of one week from dismissal in default of their application under Section 11 of the 1961 Act. Therefore, we feel that the petitioners were vigilant and merely because on one date they failed to appear, their title suit cannot be thrown out on hyper-technicalities, as principles of natural justice demand that tile suit should be decided on merits.

Consequently, the instant writ petition is allowed and the impugned orders dated 27.10.2017 (P-10), 10.04.2017 (P-6) and 28.04.2017 (P-8), passed by the authorities below are set aside. The matter is remanded back to Collector, Jalandhar with a direction to adjudicate the dispute pending *inter se* the parties on merits after affording due opportunities to them to prove their case as per law. However, the Collector is directed to decide the matter from the reached stage, as expeditiously as possible and not later than six months from the date of receipt of certified copy of this order.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

January 08, 2019
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No