

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

LPA No.734 of 2015 (O&M)
Decided on : 04.04.2019

Manjit Singh

..... Appellant

Versus

State of Punjab and ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Vijay Sharma, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. AG, Punjab.

Manjari Nehru Kaul, J.

CM-1516-LPA-2015

This is an application under Section 151 of Code of Civil Procedure for condonation of delay of 175 days in refiling the appeal.

After hearing learned counsel for the parties and perusing the paper book, which is duly supported by an affidavit, delay of 175 days in refiling the appeal is condoned.

CM stands disposed of.

Main case

This intra court appeal has been filed under Clause X of Letters Patent assailing the order dated 03.09.2014 passed by learned Single Judge vide which the writ petition was dismissed.

2. The factual matrix of the case is that in the year 1969 State

Government filed a suit for possession against Amar Kaur qua land measuring 12 k 19 marla, which was decreed on 21.04.1970 and handed over the possession of the suit land to the State of Punjab by observing that the defendant was an unauthorised occupant. However, the warrant of possession qua the said land could not be executed. Thereafter, on 17.04.1984, State through District Forest Officer filed petition for ejectment under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction & Rent Recovery) Act 1973 (for short 'the Act') for taking possession of land measuring 45 kanals 5 marla wherein Collector passed ex parte ejectment order dated 11.10.1991. Aggrieved by the said order, appellant preferred an appeal before Commissioner, Patiala Division, which was dismissed vide order dated 26.03.1998. Thereafter, the appellant approached this Court by way of filing writ petition challenging the said dismissal order, which also met the same fate and was dismissed on 02.08.1999. Feeling aggrieved, the appellant approached the Supreme Court by filing special leave petition. The Supreme Court vide order dated 31.03.2000 allowed the petition filed by the appellant and remanded the matter back to the Collector for fresh adjudication. The appellant filed an appeal before the Deputy commissioner, Patiala challenging the dismissal of application for restoration of possession of the land in dispute. As per the appellant, the land was in possession of Capt. Gobinder Singh, who was ADC to Maharaja Patiala as owner, even prior to 1943-44. Prior to formation of State of Punjab, Maharaja Patiala issued *Farman-e-shahi* and Capt. Gobinder Singh was made absolute owner of the land in his possession and mutations were also sanctioned on that basis. Due to some mistake, mutation of land

measuring 26 Bighas 06 Biswas could not be entered, which land was now subject matter of dispute. This chunk of 26 Bighas 06 Biswas was converted into 45 Kanals 05 Marlas and was handed over by Gobinder Singh to his wife Amar Kaur in lieu of claim for maintenance. Amar Kaur became owner of the land by virtue of Section 14 of the Hindu Succession Act, 1956. The appellant claimed to be the real nephew of Amar Kaur and relied upon a Will dated 3.8.1999 executed by her in his favour. After death of Amar Kaur on 26.02.1999, the appellant became the owner of the land not only on the basis of the Will, which was executed in his favour but also by way of adverse possession. The Collector after perusal of record on 06.02.2009 came to the conclusion that the land in question belonged to State of Punjab and the appellant being unauthorized occupant thereof needed to be evicted. The appellant against the order of the Collector filed an appeal before the Appellate Authority against the order of the Collector, which ended in dismissal on 14.10.2010. It was in this background that the appellant approached this Court by way of filing CWP No.15397 of 2014.

3. Learned Single Judge vide order dated 03.09.2014 dismissed the writ petition on the ground of inordinate delay as also on merit. Learned Single Judge while dismissing the writ petition observed as follows:

“However, in the instant case, Jamabandis clearly reflect that the department was owner of the land in question. Merely because petitioner claims that his predecessors were in possession of the land prior to enactment of Public Premises Act, it cannot be inferred that any title was vested in them. Judgment in Raj Kumar's case supra is, thus, not applicable to facts of

this case. In view of same, no fault can be found with the findings arrived at by the authorities under the Act. It may be pertinent to notice here that appellate authority had decided the case way back in October, 2010. Petitioner has challenged said order after a lapse of four years. There can be no doubt that petition is highly belated. Same is without any merit and is dismissed.”

4. Feeling aggrieved, the present appeal has been filed.
5. Learned counsel for the appellant contended that the Learned Single Judge was in error in not appreciating that the authorities under the Act had no jurisdiction to entertain an application on behalf of the State of Punjab and thus, they had completely erred in directing the eviction of the appellant. It was further urged that the jamabandies for the year 2002-03 Samat (1945-46 AD) clearly indicate that the predecessor of the appellant had been owners in possession of land much prior to the enactment of the Act. Learned counsel submitted that after the death of Amar Kaur, he had become the owner of land by way of adverse possession as well. According to him, the appellant was not covered under Section 3 of the Act as he had not come into the possession of the said land through any allotment, lease or grant. Learned counsel still further maintained that the appellant was the real nephew of Amar Kaur wife of Capt. Gobinder Singh and she had remained in continuous possession of the same without any interruption or disturbance by anybody.
6. We have gone through the impugned order dated 03.09.2014 passed by learned Single Judge, perused the paper book and arguments addressed by learned counsel for the parties.

7. It cannot be ignored that the appellant approached this Court by way of writ petition after a lapse of four years in the year 2014. Admittedly, there is no explanation forthcoming qua this inordinate delay of four years.

8. The Supreme Court in ***M/s Royal Orchid Hotels Ltd. and another vs. G.Jayarama Reddy and others., 2011(10) SCC 608*** considering the question whether the High Court should entertain petition filed under Article 226 of the Constitution of India after long delay reiterated the view expressed in ***Shankara Cooperative Housing Society Ltd. vs. M. Prabhakar and others, (2011) 5 SCC 607*** wherein the following principles had been laid down:

“29. In Shankara Cooperative Housing Society Limited v. M. Prabhakar and others (2011) 5 SCC 607, this Court considered the question whether the High Court should entertain petition filed under Article 226 of the Constitution after long delay and laid down the following principles:

“(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under [Article 226](#) is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

9. The Apex Court has time and again reiterated that if a litigant decides to be lax and without any justifiable reason approaches the Court after an inordinate delay from the date of accrual of cause of action or alleged violation of constitutional, legal or other right, he would not be entitled to claim relief under Article 226 of the Constitution of India. It would be relevant to reproduce the observations of the Apex Court in ***M/s Royal Orchid Hotels Ltd. 's case(supra)*** as under:

"25. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under [Article 226](#) of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have

evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under [Article 226](#) of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.”

10. Even on merits the case of the appellant that due to some mistake, mutation of land measuring 26 bigha 6 biswa could not be entered, qua the land which is the subject matter in dispute, deserves to be discarded. The jamabandies of the year 1945-46 clearly reflect the ownership of the respondent-department. The Civil Court had decreed and recorded a finding that the property in dispute belonged to respondent-department. There are in fact concurrent findings of the authorities qua the ownership being vested with the State Government. There is no documentary evidence which could reflect that the appellant had any title on the land qua which his eviction was ordered by the authorities under the Act.

11. As a sequel of the above discussion, no ground for interference is made out in the impugned order passed by learned Single Judge.
12. Accordingly, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

04.04.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No