

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26796 of 2019
Date of decision :12.12.2019

Karamjit Singh and others

.....Petitioners

Vs.

State of Punjab and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr.Ashish Gupta, Advocate, for the petitioners.

Mr.T.P.S.Chawla, DAG, Punjab.

Mr.Joginder Sharma, Advocate, for respondent No.3.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Reply on behalf of respondent No.3 filed in Court today, is taken on record. Copy of the same supplied to the counsel for the petitioners.

Petitioners are aggrieved of the order dated 21.03.2018 (Annexure P-5) passed by the District Collector, Patiala, whereby, the appeal of the petitioners has been dismissed for non-prosecution and order dated 30.05.2018 (Annexure P-8), whereby, application for restoration of the appeal has also been dismissed.

It is the contention of the learned counsel for the petitioner that because of the situation as it existed and for the reasons as have been detailed in the application, which was filed for restoration of the appeal, which was dismissed for non-prosecution, a very technical and strict view has been taken by the Collector, District Patiala, while passing the order dated 30.05.2018 (Annexure P-8). He therefore, contends that grave prejudice has been caused to the petitioners as the petitioners have suffered

an order against them passed by the Regional Deputy Director, Patiala,

exercising the powers of Collector under The Public Premises Act, 1957, dated 26.07.2017 (Annexure P-3). As the appeal has not been heard on merits, the petitioners' grounds taken therein have been rendered infructuous, thus, denying a fair chance of hearing. He therefore, prays that the impugned orders passed by the Collector, District Patiala, may be set aside so that appeal of the petitioners can be heard on merits.

Learned counsel for the respondents has supported the impugned orders by asserting that because of the non-appearance of the petitioners the appeal has rightly been dismissed. It is asserted by them that if the counsel for the petitioners could not appear, they could have themselves appeared before the appellate Authority which they have failed to do, therefore, the order as has been passed by the Collector cannot be said to be without any basis.

I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the records of the case as well as the reply which has been filed by respondent No.3 but do not find myself in agreement with the assertion of the counsel for the respondents.

There is no doubt that there has been aberration on the part of the counsel for the appellant when he failed to appear before the appellate Authority but once an application for restoration of the appeal after the passing of the order dated 21.03.2018 (Annexure P-5) was filed, and that too on the very next day, the appellate Authority should have taken that into consideration that a prompt action has been taken by the petitioner/his counsel for restoration of the appeal. Nothing has been reflected which

proceedings before the appellate Authority. Interest of justice, therefore requires that the application of the petitioners for restoration of the appeal Annexure P-6 could have been accepted by the appellate Authority instead of passing an order dated 30.05.2018 (Annexure P-8). Assuming the appellate Authority found the action of the petitioners to be unjustified it could still have considered and proceeded to impose some costs for restoration of the appeal, which the appellate Authority did not choose to do.

In view of the above and keeping in view in the interest of justice, especially in the light of the fact that petitioners have virtually been deprived of statutory rights of the first appeal against an order of eviction, the present writ petition is allowed and impugned orders dated 21.03.2018 (Annexure P-5) and the order dated 30.05.2018 (Annexure P-8) are hereby set aside. This shall be subject to deposit of Rs.2000/- as costs before the appellate Authority to be paid to the respondent-Municipal Council, Rajpura. The appellate Authority is requested to consider the appeal of the petitioner and pass appropriate orders on merits in accordance with law.

The writ petition is disposed of accordingly.

12.12.2019

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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned = Yes/No.

Whether reportable= Yes/No.