

CWP-30700-2019 (O&M)

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

**CWP-30700-2019 (O&M)
Date of decision : 24.10.2019**

Mehar Chand and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Harish Nain, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

Notice of motion.

On asking of the Court, Mr. Harish Nain, AAG, Haryana, who is present in Court, accepts notice on behalf of the respondent(s)/State.

The petitioners have approached this Court for issuance of a writ in the nature of *mandamus* staying the operation of order dated 15.09.1993 (Annexure P-3), passed by the Collector, under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, (in short 'the 1972 Act'), copy of which, was neither supplied nor was in the knowledge of the petitioner.

Mr. Vikram Singh, learned counsel appearing on behalf of the petitioners submitted that petitioners were owners in possession of land measuring 1078 kanals approximately including the land comprising of

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Khewat No.783/700 Khatoni No.1014/931, Rect. No.18, Killa No.24/3 (2-0), Rect. No.36, Killa No.2/2 (5-3), 3/2 (5-1), 8 (8-0), 9(8-0), Rect. No.52, Killa No.1/1 (2-11) 10/1 (2-2), total measuring 32 kanals 17 marlas, as per jamabandi for the year 1935-36, situated in revenue estate of Village Jhasrsently, Tehsil Ballabgarh, District Faridabad. On account of increase in area of the Municipal Corporation, the land of *shamlat deh* also fell within the boundaries of Municipal Corporation, accordingly, was transferred, vide mutation dated 24.10.1972 (Annexure P-2). It is a settled law that *shamlet deh* land cannot vest within the municipal corporation, if not used for the common purposes. The then, Collector, Faridabad, initiated the proceedings of eviction against the father of petitioner, resulting into, passing of *ex parte* order dated 15.09.1993. Since there was already threat for forcible dispossession at the hands of the respondents, the petitioners preferred the suit for injunction qua the same and it is, in those proceedings, factum of order was brought to the notice, resulting into, filing of appeal accompanied by application for stay as well as application for condonation of delay. In such circumstances, there would not be any necessity to move an application as the appeal has been filed only from the date of acquisition of knowledge.

It was next contended that for eviction from *shamlet deh* land, remedy lies elsewhere and not under the 1972 Act. All these factors have been raised in the appeal filed in the month of September 2019, before the Commissioner, Faridabad Division, Faridabad, but no action has been taken so far.

When the matter came up for hearing yesterday, this Court called upon learned counsel for the petitioner to apprise whether any

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application under Section 5 or 14 of the Limitation Act, has been filed along with the appeal or not, though the present writ petition is bereft of those particulars. Mr. Vikram Singh, had shown the copy of the appeal, which is also accompanied by an application for stay as well as application seeking condonation of delay under Section 5 read with Section 14 of the Limitation Act. He further submitted that even counsel in the trial Court, did not give legal advice to the petitioners, to avail the remedy and it is only when the matter reached at the stage of regular second appeal, aforementioned advice was extended.

I have heard learned counsel for the parties and appraised the paper book.

Concededly the appeal along with applications for stay as well as condonation of delay is still pending.

Without commenting upon the merit and demerit of the case, I deem it appropriate to dispose of the writ petition with a direction to respondent No.3 to consider the prayer of petitioners for deciding the applications for *ex parte* stay as well as condonation of delay, as expeditiously as possible preferably within a period of 10 days from the date of receipt of certified copy of this order as the petitioners have a serious threat of dispossession, at the hands of respondents.

24.10.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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