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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 4310 of 2008

Date of Decision: 03.03.2020

BANARSI DASS

...*Petitioner*

VS.

STATE OF PUNJAB THROUGH ITS SECRETARY, RURAL
DEVELOPMENT AND PANCHAYATS DEPARTMENT, PUNJAB,
CHANDIGARH AND OTHERS

....*Respondents*

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Ishpuneet Singh, Advocate
for the petitioner.

Mr. P.S.Bajwa, Additional Advocate General, Punjab.

Mr. Dhirinder Chopra,
Advocate, for respondent No. 7.

RAKESH KUMAR JAIN, J. (Oral)

This petition is directed against the orders dated 08.08.2002 and 21.11.2007 passed by the Divisional Deputy Director, Rural Development and Panchayats, Patiala (Exercising the powers of Collector) and Joint Development Commissioner (Exercising the powers of Commissioner) respectively by which an application filed by respondent No. 4-Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act") has been allowed and the appeal filed by the petitioner has been dismissed, *inter alia*, on the ground of delay.

In brief, respondent No. 4-Gram Panchayat filed an application under Section 7 of the Act for seeking eviction of the petitioner from the land falling in *khewat/khatoni* No. 425/631, *khasra* No. 3//13/2/2(0-2), 12/2(3-8), 17/2/1(1-0), 18/2(0-3) total measuring 4 *kanal* 13 *marla* situated in Village

Tarvedi Camp, Tehsil Ropar on the ground that the land in dispute vests in the Gram Panchayat as *shamlat deh* and the petitioner herein was in unauthorized possession. The said application was allowed vide order dated 08.08.2002 passed by the Collector.

As per Section 7(2) of the Act, the appeal against the order of the Collector is maintainable before the Commissioner which is required to be filed within 60 days from the date of order appealed against. Since, the Collector had passed the order on 08.08.2002, therefore, the limitation of 60 days was upto 08.10.2002 but the appeal was filed on 26.12.2006 after a delay of 4 years and 4 months. The reason assigned in the application for seeking condonation of delay was that the petitioner was under an impression that the appeal would lie only after the decision of RSA No. 1103 of 2002 filed by the petitioner is admitted and pending in this Court. This explanation has not been accepted by the Commissioner, therefore, application for condonation of delay was dismissed and as a consequence thereof, the appeal was also dismissed vide impugned order dated 21.11.2006. Aggrieved against the said orders, the present petition has been filed.

Counsel for the petitioner has submitted that the land in dispute was purchased by the Gram Panchayat in the year 1964 much after the consolidation, therefore, it would not fall under the definition of *shamlat deh*. On the other hand, counsel for the respondents has submitted that the petitioner has to first cross the hurdle of delay of 4 years and 4 months in filing of the appeal which has not been condoned by the Commissioner and the appeal has been dismissed.

Counsel for the petitioner has, thus, submitted that since, he is before the writ Court, therefore, the delay in filing the appeal before the Commissioner should not come in his way as the order passed by the lower appellate Court was without jurisdiction and also that the reason assigned by the petitioner falls within the definition of “sufficient cause”.

On the other hand, counsel for respondents has vehemently argued that the question as to whether the order passed by the Collector is without jurisdiction or not has to be kept pending till the application for seeking condonation of delay is decided in favour of the petitioner who has not assigned any reason much less the “sufficient cause”.

We have heard counsel for the parties and after perusal of the record, are of the considered opinion that the argument raised by counsel for the respondents has to be considered for the purpose of decision on the issue as to whether the appellate Court has committed an error in dismissing the application of the petitioner for seeking condonation of delay of 4 years of 4 months.

The proceedings under Section 7 of the Act are summary in nature but have a serious consequence in regard to the possessory rights of the party concerned who is held to be in unauthorized possession of the land which vests in the Gram Panchayat as *shamlat deh*. The party who is litigating before the revenue authorities must be agile in watching its interest as Section 7(2) provides for an appeal to be filed to challenge the order of dispossession from the land in question passed by the Collector.

The legislature has provided 60 days’ time for the purpose of filing of the appeal but in this case petitioner had filed the appeal on

26.12.2006 against the order dated 08.08.2002 i.e. after a delay of 4 years or 4 months and that too without giving any convincing reasons.

Section 5 of the Limitation Act, 1963 is an enabling provision for the purpose of extension of period of limitation in filing of the appeal or application. The word used by the legislature “sufficient cause” though not defined under the Act but has to be gathered from the circumstances of each case which is a *sine qua non* for the purpose of condoning the delay in filing of the appeal/application.

The reason for condonation of delay given by the petitioner when tested on the touchstone of “sufficient cause” does not find favour because it is submitted that the petitioner had already filed RSA No. 1103 of 2002 and was under the impression that the appeal would lie only after the decision of the said RSA which is far beyond anybody’s imagination. It is, thus, an after-thought plea on the part of the petitioner in order to wriggle out of the huge delay which has been caused by him deliberately in not approaching the appellate Court for the purpose of challenging the order of the Collector.

We are, thus, of the considered opinion that there is no error on the part of the Commissioner (appellate Court) in dismissing of the application of the petitioner while not condoning the delay of 4 years and 4 months as no cogent reason has been found therein.

Once we are holding that the order passed by the Commissioner (appellate Court) while dismissing the application for condonation of delay is justified, nothing survives in this petition for the purpose of passing of an order in favour of the petitioner. With these observations, we do not find any

merit in this petition and the same is hereby dismissed though without order as to cost.

[RAKESH KUMAR JAIN]
JUDGE

March 03, 2020
Ess Kay

[ASHOK KUMAR VERMA]
JUDGE

<i>Whether speaking / reasoned</i>	:	Yes	/	No
<i>Whether Reportable</i>	:	Yes	/	No