

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

C.W.P No. 9460-2021

Date of decision : 05.05.2021

Joginder Singh (since deceased) through his LR'sPetitioners

versus

State of Haryana & orsRespondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. R.S. Mamli, Advocate
for the petitioners.

RITU BAHRI, J. (Oral)

Petitioners have approached this Court, seeking quashing of order dated 15.02.2018 (P-2) passed by Asstt. Collector Ist Grade-cum-DDPO, Yamuna Nagar and order dated 27.03.2019 (P-3) passed by Collector, Yamuna Nagar, District Yamuna Nagar and order dated 24.11.2020 (P-4) passed by Commissioner, Ambala Division, Ambala.

Learned counsel for the petitioners contends that the impugned orders have been passed merely on the ground that the petitiones have not deposited the penalty of Rs.4000 per acre from the year 2009. Learned counsel for the petitioners at the very outset has referred to Full Bench judgment of this Court in a case of ***Ranjit Singh vs. State of Haryana and others, 2012 (2) R.C.R (Civil) 353*** to contend that on the ground of non payment of penalty, the Collector cannot dismiss the appeal.

Issue notice of motion.

On asking of the Court, Mr. Hitesh Pandit, Addl.A.G. Haryana accepts notice on behalf of respondent-State.

Learned State counsel has argued that before the Asstt. Collector Ist Grade, an application under Section 7 (2) of the Punjab Village Common

Lands Act, 1961 was filed by Gram Panchayat and the same was allowed on 15.02.2018 (P-2) by imposing penalty upon the petitioners of Rs.4000/- per acre from the year 2009 for unauthorized occupation. In this order, it has been observed that the petitioners had not led any evidence despite giving opportunities. Hence without leading evidence, no fresh orders on merits can be passed.

At this stage, learned counsel for the petitioners states that a petition under Section 13-A of the Punjab Village Common Lands Act, 1961 has been filed by the petitioners along with other land owners and all the documents since 1947 till 2008-09 has been filed. The petition is still pending.

Learned counsel for the petitioners states that only evidence which has to be led by the petitioners is old jamabandis till date to show that the petitioners are the proprietors of the village and having share in the land of shamlat also, the land belongs to the proprietors being the Gair Mumkin Nadi.

As per ***Ranjit Singh 's case (supra)***, the condition laid down in proviso to Section 13-B of the Punjab Village Common Land Act that the appeal will not lie unless the amount of penalty will not be deposited, was considered to be harsh and makes the right of appeal illusory. It has been held that in such a case, Court has the inherent power to waive the condition in appropriate cases. In para 46, 47 and 51, it has been observed as under:-

*46. Reference is made to the earlier decision of Division Bench of Gujarat High Court dated October 27, 1969, where Clause (e) was held violative of Article 14 of the Constitution. The proviso accordingly was added to Clause (e) reproduced above, which came to be challenged before the Gujarat High Court on the same very plea that it is violative the provisions of Article 14 of the Constitution. The Division Bench held that Clause (e) violated Article 14 of the Constitution. This decision of the High Court was challenged before the Supreme Court in **Anant Mills Co. Ltd.'s case (supra)** and the decision of the High Court was reversed and Clause (e) with added proviso was held not*

violative of Article 14 of the Constitution. The amended Clause (e) and the proviso, which were subject matter of constitutional challenge in the High Court and the High Court holding the same to be constitutionally valid, was challenged before the Supreme Court in this case. Here again, it is the proviso which saved the provision of appeal being rendered illusory. In this case, the conditions imposed to the maintainability of the appeal were not considered so harsh to make the right of appeal illusory while upholding the provisions of pre-deposit in this regard.

47. *From the above, it would be reasonable to construe that the right of appeal may be a statutory right but can not be rendered illusory. Right of appeal is more or less a universal requirement of guarantee of life and liberty rooted in the conception that the men are fallible and Judges are men and that making assurance doubly assured before irrevocable deprivation of life and liberty come to pass, a full scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure. Even Article 39A requires of a State to secure the operation of the legal system to promote justice on the basis of equal opportunity and to ensure that the opportunity of securing justice are not denied to any citizen by reasons of economic or other disabilities. Easy access to justice is an integral part of the right to move the Courts and it flows from the benevolent mandate of Article 39A. This Article expressly contemplates the existence of class of people who suffer from economic disabilities and has mandated the State to ensure that people belonging to that class are not deprived of access to justice. Accordingly, the provisions of Court Fees Act having classified litigants into those who are economically disabled and those who are not was held reasonable and permissible. Nobody is to be denied entry on account of huge court fees, particularly payable by the poorer section of the people. Doors of justice are not to be closed on ground of money. As observed in **M/s Central Coal Fields Ltd. Vs. M/s Jaiswal Coal Co.**, AIR 1980 Supreme Court 2125, the right of effective access to justice has emerged in the third world countries as the first amongst the new social rights what with public interest litigation community based action and pro-bono public proceedings. Effective access to justice, thus, can be seen as the most basic requirement, the most basic human right of a system which proposed to guarantee legal rights.*

51. *In order to save the validity of this proviso, it may have to be*

*read down for which there are precedents. As observed in **Shyam Kishore's case** (supra), the appellate Judge would have incidental and ancillary power, which should not be curtailed except to the extent specifically excluded by the statute. There is no indication in the proviso that jurisdiction of the appellate Judge is excluded altogether to waive the penalty and, thus, the inherent rights of the appellate Judge to waive the condition in appropriate case can be read into the provision. Some interpretation, which leaves some room for exercise of a judicial discretion, where equities deserve it, may be appropriate. The golden rule that in a statute dealing with ordinary people in every day life, the language is presumed to be used in its primary, ordinary sense, unless this stultifies the purpose of the statute or otherwise produces some injustice absurdities, anomaly or a contradiction in which case some secondary ordinary sense may be preferred so as to obviate the injustice, absurdity, anomaly or contradiction or fulfill the purpose of the statute. One of the principle of construction of provision in such like cases, as already noticed, causing unnecessary expense to litigant, is not to be adopted. Thus, to avoid injustice and unnecessary expense, the proviso to the Section may have to be read down to include the right to waive the condition by the appellate Judge in an appropriate case.”*

Without expressing any opinion on the merits of the case and applying the ratio of full bench judgment in **Ranjit Singh's case** (supra), the present petition is allowed and orders dated 27.03.2019 (P-3) and 24.11.2020 (P-4) are set aside. The matter is being remanded back and Collector, Yamuna Nagar, District Yamuna Nagar is directed to decide the appeal and pass fresh order on merits on the basis of material placed on record by the petitioners.

(RITU BAHRI)

JUDGE

(ARCHANA PURI)

JUDGE

05.05.2021

G Arora

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No