105 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3805-2020
Date of decision : 17.03.2022

Amar Singh and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Ms. Rajni Gupta, Addl. A.G., Haryana
for respondents No.1 to 4.

Mr. R.S. Budhwar, Advocate
for respondent No.5-Gram Panchayat.

AUGUSTINE GEORGE MASIH, J. (ORAL)

The petitioners have approached this Court assailing the orders dated 23.07.2019 (Anneuxre P-3) passed by the Commissioner Ambala, Division Ambala, District Ambala-respondent No.2, order dated 28.12.2016 (Annexure P-2) passed by the Collector Yamuna Nagar, District Yamuna Nagar as also the order dated 11.12.2015 (Annexure P-1) passed by the Block Development and Panchayat Officer, Jagadhari.

Learned counsel for the petitioners states that against the order passed by the Block Development and Panchayat Officer dated 11.12.2015 (Annexure P-1), petitioners have preferred an appeal, which is dismissed by the Collector, Yamuna Nagar vide order dated 28.12.2016 (Annexure P-2) primarily on the ground that the petitioners had not deposited the amount of penalty and, therefore, their appeal was not maintainable. The said order was challenged by the petitioners before the Commissioner Ambala, Division Ambala where vide order dated 23.07.2019 (Annexure P-3) the order passed by the appellate authority has been upheld holding the dismissal of the appeal because of the non-deposit of the amount of the penalty in accordance with law. Counsel contends in the light of the Full Bench Judgment of this Court in ***'Ranjit Singh vs. State of Haryana and others, 2012 (2) RCR (Civil) 353'***, that the pre-deposit of the amount of penalty would not in itself be a reason for non-entertaining the appeal. Merely because the penalty amount has not been deposited by the petitioners their appeal as well as the revision could not have been dismissed by the authority while passing the orders dated 28.12.2016 and 23.07.2019 (Annexures P-2 and P-3) respectively.

Learned counsel for the respondents on the other hand asserts that the judgment passed by the Larger Bench of this Court in ***Ranjit Singh's*** case (supra) do not say that the amount of penalty is not to be deposited by the persons against whom there is an order under Section 7(2) of the Punjab Village Common Lands (Regulation) Act 1961. It is contended that only on an application moved by the appellant before the authority detailing therein the hardship and the difficulty in deposit of the amount and praying for exemption and relaxation therein, can such an application and an order to this effect be passed. Whereas in the present case the petitioner has not been able to substantiate such a contention having been raised or made before the appellate authority. Prayer has thus, been made for dismissal of the writ petition.

Learned counsel has also brought to the notice of this Court, order dated 11.03.2022 passed by this Court in similar circumstances dealing with the identical situation as also the reason as in the present petition.

In the light of above and keeping in view the order dated 11.03.2022, passed by this Court in CWP-36543-2019 titled as '*Shiv Kumar and others versus State of Haryana and others*' wherein it has been held as follows:

> *'12. However, this aspect, when considered by the Larger Bench of this Court in Ranjit Singh's case (supra), the Court drew a distinction in cases which deal with taxes and duties on the one hand and the penalty in respect of an agricultural land of the farmers on the other by stating that both classes cannot be judged by the same yardstick especially in our country where the land holdings are shrinking while a large section of the population is still rural and dependent on agriculture. The Court proceeded to hold that imposition of blanket liability of pre-deposit of the penalty although being an onerous condition cannot be judged by the yardstick of initial amount of tax liability. Relying upon the judgment of the Supreme Court, the Court, in Sunil Batra vs. Delhi Administration and others, AIR 1978 Supreme Court 1675, has stated that the Supreme Court has recognized the principle of reading down the provision so as to render it constitutional by putting certain riders thereto.*
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> *In para-24, this Court has held as follows:-*
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> > *"24. Resultantly, by reading down the provision, it is held that Section 13B of the Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case where, the grounds so exist by passing a speaking order, even while normally insistence may be made on pre-deposit of penalty. In adjudicating the appeal whether in a particular case interim relief of stay of a portion or the entire penalty has to be granted, the appellate authority would have to give reasons why it proposes to dispense with the normal procedure of insistence of pre-deposit. Consequently, this writ petition is allowed and the matter is remitted back to the appellate authority to consider the appeal in terms of the law set down above."*
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> *13. A perusal of the above would show that the discretion was, therefore, left to the appellate authority to exercise the power of waiver or a part waiver in the deposit of penalty at the stage of*

> *entertaining an appeal dependent upon the facts and circumstances of the case mandating upon the appellate authority to give reasons why it proposes to dispense with the normal procedure of insistence of pre-deposit. Meaning thereby, where an appellant, in a particular case, seeks interim relief of stay on deposit of the amount of penalty or waiver thereof by giving therein the reasons and the extra-ordinary circumstances which would include the inability to deposit the said amount pleading therein his financial condition, the appellate authority could exercise its powers for grant of such interim stay/waiver. In case such a prayer is made along with the reasons, it is mandated upon the appellate authority to consider the same and pass appropriate orders. It goes without saying that in case an application is moved for waiver of deposit of the amount assigning reasons for such a prayer, the appellate authority, while deciding the same, may grant some time for deposit of the amount and on deposit thereof, the appellate authority may proceed to decide the appeal. However, in case of non-deposit of the said amount by the appellant, the appeal can be dismissed because of non-compliance of the provisions of the Statute, as laid down in Section 13-B of the 1961 Act.*
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> *But where no such prayer was even made, what to say of along with the reasons as to why such waiver is sought, the appellate authority can insist upon deposit of the penalty amount as a pre-condition for entertaining the appeal'.*

In view of the above, keeping in view the facts and circumstances of the present case, we do not find any merit in the present writ petition and, therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 17th, 2022
ps-I

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No