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

CWP-2422-2023

Date of decision:06.02.2023

AMRIK SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLR MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Bikram Chaudhary, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. One Mohinder Singh and others instituted a case bearing No.209/VCL, under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 before the learned Collector concerned. On the above petition, the learned Collector concerned, formulated the hereinafter extracted issues.

“1. Whether the possession of the petitioners is since 26.01.1950 in individual cultivating possession?”

2. Whether the land was Banjar Qadim on 09.01.1954 when Shamlat Law enforced?”

3. Whether the land was reserved for common purposes according to revenue record?”

4. Whether the land was given on an open auction?”

2. Through a decision made thereons, and, as becomes carried in Annexure P-2, the learned Collector concerned, answered issues No.1 and 2 in

favour of the petitioners therein, but answered issues No.3 and 4 against the Gram Panchayat concerned. Therefore, the Gram Panchayat concerned, became pained from the above made verdict, and, was led to institute thereagainst an appeal before the Competent Appellate Authority. However, the statutory appeal as became preferred by the Gram Panchayat concerned, was time barred, but it is stated at the bar, by the learned counsel, that on an application constituted under Section 5 of the Limitation Act, the Competent Appellate Authority, did not pass a detailed speaking order thereons, but rather made any affirmative cryptic decision on the said application. Therefore, the respondents therein, constituted CWP-9226-2016 before this Court, wherethrough they made a challenge to the affirmative order as made on the condonation of delay application, on the premise, that the same became hence decided in a cryptic fashion. This Court on 23.09.2016 disposed of the writ petition (supra), but in the hereinafter extracted manner.

“After hearing learned counsel for the parties, we are of the opinion that certainly a gross irregularity has been committed by the Commissioner in condoning the delay and accepting the application which was incomplete in particulars and that too without notice, we, therefore, denounce such practice and warn the authority to be careful in future but noticing the fact that delay is not so inordinate so as to really warrant a serious concern and also noticing the fact that the main issue should not be held hostage to technicalities, and warrant a defeat of substantial issues which involves the land of Gram Panchayat, we deem it appropriate to dispose of the instant petition with the aforesaid warning and a direction to the authority that the matter be now heard on merits and a speaking order be passed after hearing the parties.

Writ petition stands disposed of.”

3. A reading of the above extracted order, as made by this Court on writ petition (supra), reveals that this Court had taken to make an opinion, that

the relevant delay, is not so inordinate so as to really warrant serious concern, besides it made an opinion that if the writ petition (supra), is allowed, thereupon the land purportedly owned by the Gram Panchayat concerned, rather also suffering the ill fate of its becoming appropriated by the alleged encroachers thereon. Therefore, this Court deemed it appropriate to dispose of the petition with a direction, upon the Competent Statutory to decide the said appeal on merits, and, the said appeal was ordered to be decided through the makings thereon of a speaking order.

4. Subsequently, the learned Appellate Court concerned, though was not required to re-draw an order on the application for condonation of delay, as it rather became directed by this Court, to make a decision on the merits of the said appeal. Contrarily, the learned Appellate Authority chose to decide even the application for condonation of delay. Therefore, the petitioner is still pained as the decision made by the Appellate Court, on the condonation of delay application, is submitted, to be yet cryptic, and/or, does not contain any speaking reason for hence condoning the relevant delay.

5. However, yet the challenge as made to the said order condoning the delay in the institution or the preferment of a statutory appeal, before the Competent Authority, is, not amenable for it becoming validated. The reason is but simple, inasmuch as, this Court had in the afore terms rather not deemed it appropriate to interfere with the impugned order, as previously made by the Competent Appellate Authority, on the condonation of delay application, but had deemed it appropriate to make a direction, upon, the Competent Appellate Authority, to decide the statutory appeal, on merits, and, but through a speaking order being made thereons.

6. If the above construction is made to the order as made by this Court, on writ petition (supra), thereupon the learned counsel for the petitioner was completely disabled to constitute the instant writ petition, hence challenging therethrough the decision made on the condonation of delay application, decision whereof thereons, was as above stated rather not required, to be made by the learned Appellate Authority. The decision, if any, which was required to be made, was on the statutory appeal, and, through a speaking decision being made thereon, and, after affording an opportunity of hearing to all the affected persons. If the Statutory Authority has done so, yet for reasons (supra), both the decision on the condonation of delay application, and also any challenge thrown thereto, rather for reasons (supra), is respectively unnecessary, and, misconstituted. Therefore, without interfering with the impugned order, this Court directs the Competent Appellate Authority, to within three months from today, make a lawful speaking decision, upon the statutory appeal, but only after granting an adequate opportunity of hearing to all the affected persons.

7. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

06.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No