

CWP-33641-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-33641-2019 (O&M)
Date of Decision : April 19, 2023

INDERJIT SINGH

-Petitioner

V/S

DIRECTOR RURAL DEVELOPMENT AND PANCHAYAT
DEPARTMENT, PUNJAB AND OTHERS

-Respondents

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

Present : Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Ruby Kaur, Advocate
for the respondent No.3.

SURESHWAR THAKUR, J.(ORAL)

1. The Gram Panchayat Village Himmatpur, Block Dasuya, District Hoshiarpur, through its Sarpanch, instituted a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961' for short) before the learned Collector concerned, against one Inderjit Singh. In the petition (supra), to which Case No.47 of 2018 became assigned, the Gram Panchayat concerned claimed a relief, that the said respondent has made encroachment, upon a 'Gair Mumkin Rasta', owned and possessed by the Gram Panchayat concerned, and therefore, an order of eviction therefrom, be passed against the said respondent.

2. As disclosed by Annexure P-5, through a decision made on the

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petition (supra), on 20.11.2018, the motion laid by the Gram Panchayat concerned, before the Id. Collector concerned, was accepted. However, the aggrieved therefrom, instituted an appeal thereagainst, before the appellate authority concerned, but, since the said appeal was time barred, therefore, along with the statutory appeal, an application cast under the provisions of Section 5 of the Limitation Act, became appended, seeking a relief therein, that the delay of 210 days, as did occur in the institution of the statutory appeal, be condoned. However, the learned appellate authority concerned, did not invite any reply, to the said application, as became instituted in the said appeal, by the respondent, nor took to, after completion of the pleadings, on the said application, frame the relevant issue(s), nor, deemed it fit to permit the applicant to adduce any evidence on the relevant issue(s). Contrarily, the learned appellate authority concerned, in a slipshod, and, in a perfunctory manner, proceeded to, through Annexure P-7, make a common dismissal order, both upon the application, and, also upon the statutory appeal.

3. The petitioner is aggrieved from the said order, and, has challenged it through his casting the instant writ petition before this Court. Though the learned appellate authority could proceed to make an order, on the merits of the statutory appeal, but could validly do so, only when it had earlier thereto had taken to condone the apposite delay, as became claimed in the application, cast under Section 5 of the Limitation Act. The said valid makings of condoning the delay, as stated above, could occur only when pleadings on the application were completed, and, also when issues were struck thereon, besides evidence was permitted to be adduced on the relevant issue. However, as stated above, the above did not occur, rather, in

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a most slipshod, and, in an arbitrary manner, not only the application for condonation of delay was dismissed, but, also the statutory appeal became dismissed.

4. Resultantly, the above manner of exercise of jurisdiction, is but an exercise with a gross material impropriety, also is a jurisdiction exercised with a patent illegality. The above is required to be undone. Therefore, the impugned order is quashed, and set aside, and, the matter is remanded to the learned appellate authority concerned to, after restoring the apposite application, besides the statutory appeal, to their original number(s), initially make, in the above manner, a lawful order, on the condonation of delay application, and thereafter, shall proceed to hear the statutory appeal, on merits, and whereafter, it may make a prompt lawful decision thereon. The above exercise shall be completed within 4 months from today, and, till the remanded lis is restored to its original number, the parties are directed to maintain status quo, in respect of the petition land(s).

5. Disposed of accordingly.
6. All pending application(s) stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 19, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No