

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

**LPA-23-2023 (O&M)
Decided on: 10.01.2023**

Tehal Singh

....Appellant

Versus

State of Punjab and others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Dheeraj Mahajan, Advocate for the appellant.

G.S. Sandhawalia, J. (Oral)

CM-54-LPA-2023

Application for condonation of delay of 67 days is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 67 days in filing the appeal is condoned.

CM stands disposed of.

LPA-23-2023

Challenge in the present Letters Patent Appeal is to the order passed by the learned Single Judge in **CWP No.18194 of 2022 ‘Tehal Singh and others Vs. State of Punjab and others’**, whereby the writ petition of the petitioner was dismissed on 23.09.2022.

The learned Single Judge has repelled the arguments as to whether the constitution of the Inquiry Committee was as per the directions issued and noted that the writ petitioner had not joined the inquiry despite issuance of notice and not produced any documents. It was, accordingly, noticed that prayer for conducting a fresh inquiry only on account of the fact that a legal notice had been served would not be justified. No such direction had been issued for conducting one and

direction only had been issued to consider the legal notice and give his report thereupon. The writ petition was accordingly dismissed in limine.

We have perused the paper-book and find that challenge made to the Inquiry Report dated 18.04.2016 (Annexure P-8) which eventually led to the issuance of recovery notice dated 06.06.2022 (Annexure P-11), wherein the appellant has been directed to deposit a sum of ₹21,92,476/- as his share and similar amount was also recoverable from the Panchayat Secretary, on the basis of the said assessment report.

Counsel for the appellant has now informed us that he has preferred an appeal against the order dated 06.06.2022 (Annexure P-11) before the District Development and Panchayat Officer under Section 216 (3) (a) of the Punjab Panchayat Raj Act, 1994 (for short '1994 Act')

We are, thus, of the considered opinion that there was an alternative and efficacious remedy available to the appellant to challenge the recovery notice and also the proceedings which were initiated against him, as there is a procedure prescribed under the 1994 Act wherein there is a limitation of four years from the occurrence of the loss or after the expiry of two years from his ceasing to be a member, whichever is later.

It is not disputed that the tenure of the appellant was from 2008-2013 and the inquiry officer was appointed on 18.08.2015 (Annexure P-13). We are of the considered opinion that these are factual aspects which have to be gone into by the Appellate Authority.

Faced with this situation, counsel for the appellant has submitted that he may be permitted to withdraw the writ petition itself and avail of his alternative remedy of appeal which he has now preferred.

Notice of motion.

Mr. Abhay Pal Singh Gill, DAG, Punjab accepts notice on behalf of the respondents-State.

Keeping in view the above, we are of the considered opinion that the writ petition had been dismissed without even calling for the records. Since an alternative and efficacious remedy was available and in view of the law laid down by the Apex Court in **United Bank of India Vs. Satyawati Tondon and others, (2010) 3 SCC 260**, we are of the considered opinion that the learned Single Judge should have relegated the writ petitioner to his remedy before the authorities, rather than dismissing the writ petition which would seriously prejudice his rights also regarding the statutory appeal, which is maintainable.

Keeping in view the above, the request of the counsel for the appellant is allowed. The writ petition is allowed to be dismissed as withdrawn with liberty to raise all the pleas before the Appellate Authority. Resultantly, the present appeal has been rendered infructuous and is disposed of accordingly.

Needless to say that the Appellate Authority shall decide the issue by applying its mind independently and without being prejudiced by any observations made by the learned Single Judge or by us.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

10.01.2023
Naveen

Whether speaking/reasoned :
Whether Reportable :

Yes
No