

CWP-27807-2023

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

CWP-27807-2023

Date of Decision : 12.12.2023

Sukhwant Singh (Deceased) through Legal RepresentativePetitioner

VERSUS

State of Punjab and Others

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Ashish Gupta, Advocate for the petitioner.

Mr. Maninder Singh, DAG Punjab.

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SURESHWAR THAKUR, J. (Oral)

1. Petitioner filed a declaratory suit invoking the provisions of Section 11 of the Punjab Village Common Lands (Regulations) Act, 1961, whereby he claimed his becoming endowed right, title and interest in respect of the petition land. Through a decision made thereons (Annexure P-2), on 04.03.2016, the Collector concerned assigned the claimed declaratory decree to the petitioner supra. However, since the Gram Panchayat concerned was required to moving an appeal thereagainst before the Appellate Court concerned, besides when the said appeal was required to be made within the prescribed period of limitation, yet the Gram Panchayat concerned, instituted a time barred appeal No.270 of 2020 (Annexure P-3), before the Commissioner concerned. Resultantly, since the said appeal was barred by limitation, thereupon unless, on the appended therewith application cast under Section 5 of the Limitation Act, an affirmative order was made, thereby, the appellate authority concerned, could, thus, well

dismiss the appeal, on the ground, that the statutory appeal is barred by limitation.

2. The Gram Panchayat concerned moved an application (Annexure P-4) before the Appellate Authority concerned, whereby it claimed relief, that the delay of 03 years and 10 months, as had occurred in the institution of the appeal supra before the Appellate Court concerned, thus, be condoned, for thereby ensuring that subsequently a lawful decision, on the merits of the appeal, rather is made by the Appellate Authority concerned. A reading of the application, Annexure P-4, contents whereof, become extracted hereinafter, does prima facie reveal that therein contrary to the requirement as envisaged, in a plethora of judgments made by Courts of law, requiring that each days delay becomes well, explained, yet the explanation for each days delay did not evidently come to be meted by the applicant/appellant.

“1. That the applicant is filing the accompanying appeal and the same be read as part and parcel of the present application.

2. That it is pertinent to mention here that Ex-Sarpanch is very close to the respondent No. 2. Therefore he has not filed any appeal against the impugned order before the competent court.

3. That the appellant was not earlier aware of the impugned order of the respondent No. 1 as he took over the charge of Gram Panchayat record in the year 2019.

4. That the appellant came to know about the order when he was directed by the Block Development and Panchayat Officer, Dhilwan to file the appeal. Then the appellant immediately applied for the certified copy of the order as well as the relevant revenue record.

5. That thereafter the appellant has approached the counsel to file the present appeal against the impugned order. Hence the delay of 3 years 10 months has occurred in filing the present appeal, which is neither willful nor intentional but only due to the reasons stated above.

It is, therefore, respectfully prayed that the present application may kindly be allowed and delay, if any, in filing the present appeal may kindly be condoned, in the interest of justice.”

3. Therefore, without at this stage delving into the legal effect of the above lack of speaking being made in Annexure P-4, rather the reason which prevails upon this Court to, at this stage, allow the writ petition, becomes comprised, in the factum, that the aggrieved petitioner had earlier instituted a Civil Writ Petition No.7646 of 2022, thus against the order as became earlier made by the Appellate Authority concerned, whereby the applicant/appellant's application for condoning the above period of delay, thus, became allowed.

4. This Court, through a decision made thereons on 28.09.2022, verdict whereof becomes extracted hereinafter, after quashing the impugned therein annexure, Annexure P-7, proceeded to make an order of remand, upon, the learned Commissioner concerned, to make a well reasoned and considered order on the application supra.

“ Accordingly, impugned order dated 04.03.2022 (Annexure P-7) is set aside and the matter is remanded to learned Commissioner, Rural Development and Panchayat, Vikas Bhawan, Sector 62 SAS Nagar to pass a well reasoned and considered order on the application seeking condonation of delay in filing appeal under

Section 11 of Punjab Village Common Lands (Regulation) Act, 1961 in accordance with law, after affording an opportunity of hearing to the parties.”

5. In pursuance to the said order of remand being made by this Court, thus the impugned order had been passed by the Appellate Authority concerned. Be that as it may, irrespective of the above observations, yet an imperative legal obligation became cast upon Commissioner concerned, to, thus after inviting a reply to the application (supra), from the non-applicant/respondents to, thereafter strike issues, besides an imperative obligation also, thereafter, became cast upon the Appellate Authority concerned, on all the relevant issues, thus permit the litigants concerned to adduce their respective evidences.

6. It could be only in the wake of the above being done, that this Court would conclude, that thereby the above extracted verdict, as became made by this Court on the earlier writ petition, has become completely complied with, and would also lead this Court to the conclude that in terms of above made verdict, the learned Appellate Authority concerned, rather has proceeded to make a reasoned and considered order on the application supra.

7. However, the above recourses remained unadopted by the Commissioner concerned, thereby not only the procedure regulating the decision making process on the application supra, has been infringed, but also no conclusion rather becomes recorded, but based on worthy appraisal of the evidence adduced by the contesting litigants concerned rather on the issues, as become formulated on the pleadings of the parties. In consequence, this Court is again constrained to allow the writ petition and is also constrained to quash the impugned order. In consequence, thereof, the apposite *lis* is remanded to the

Commissioner concerned, to on the pleadings of the parties, if already complete, and if not complete to ensure after completion of pleadings, thus formulate all the issues as are required to be so formulated.

8. Subsequently, the learned Commissioner concerned is directed to on all the relevant issues, permit the litigants concerned to adduce evidence thereons but with liberty to the opposite litigants, to adduce evidence in rebuttal to one as becomes adduced by the litigant, on whom the relevant discharging onus becomes cast.

9. Subsequently, the learned Appellate Authority concerned is directed to ensure that in terms of verdicts pronounced by Courts of law, thus a valid decision is made on the relevant application. The above exercise is directed to be completed within a period of two months from today, and, depending upon the decision as made upon the application supra, the learned Commissioner concerned shall proceed to either declare the statutory appeal supra, to be time barred or may proceed to in accordance with law make a lawful decision on the statutory appeal but within two months thereafter.

10. In view of the above, the present writ petition is accordingly, disposed of. Pending applications, if any, also stand disposed off.

(SURESHWAR THAKUR)
JUDGE

December 12, 2023
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No