

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

2024:PHHC:090484-DB



(105+222)

**CWP-14276-2016(O&M)
Date of Decision: 18.07.2024**

Itpal Singh

--Petitioner

Versus

Director Rural Development & Panchayat
Department, Punjab & others

--Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

Present:- Mr. Kanwal Goyal, Advocate for petitioner.

Mr. Shekhar Verma, Addl. A.G., Punjab.

Mr. B.S. Sidhu, Sr. Advocate with
Mr. H.S. Sidhu, Advocate for respondent no.3.

G.S. SANDHAWALIA.J (Oral)

1. The petitioner in the present case seeks setting aside of the orders passed by the authorities, whereby ejectment was directed from the land in question, which is 133 kanals 15 marlas situated in the revenue estate of Village Khabran, Tehsil and District Jalandhar, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961.

2. The ejectment order was passed admittedly ex-parte on 28.01.2014 (Annexure P-9). Apparently, though the petitioner had put in appearance at one point of time but the case had been adjourned sine die during the intervening period. It is, thus, their case that no effective notice was issued after the matter was restored and he filed an appropriate application for setting aside the ex-parte order which was dismissed by the Collector vide order dated 10.11.2014 (Annexure P-10). The appeal

thereafter filed before the Commissioner was dismissed on the ground of delay vide order dated 18.09.2015 (Annexure P-11). It is, thus, his specific case that the valuable rights, as such, have been prejudiced and the matter has been decided at their back and therefore it would be in the interest of justice if the matter is remanded to the competent court, as such, for deciding afresh.

3. Mr. Sidhu, learned senior counsel appearing on behalf of respondent no.3 has opposed the said prayer on the ground that there was no tangible or valid reason given in the application for condonation of delay.

4. We have perused the record.

5. Apparently, it is crystal clear that vide order dated 14.6.2012 the matter was adjourned sine die on account of the fact that there was pendency of CWP-1973-2010 and other connected matters before this Court. It is not disputed that at prior point of time the petitioner was duly represented and had filed his response and taken the plea that the petition was not maintainable and that Gram Panchayat had no right to file the petition. Various pleas were taken but we are not dealing with them at this point of time since we only feel that the matter was never decided by giving opportunity as such to the petitioner and it is for the authorities to take into consideration the merits of the case. The authority had come to the conclusion that the petitioner was in illegal possession and had no right to occupy the land and directed his eviction. There is nothing on record to show that after the order of adjourned sine die on 14.06.2012 the notice had been issued reviving the proceedings, as such, to them and that service had been effected. It is not disputed that immediately thereafter they filed an application for recall of the said order dated 11.08.2014 (Annexure P-12)

taking a plea that notice had not been issued to them and the proceedings started in their absence and resultantly sought setting aside the ex-parte order which was dismissed without looking into this aspect by a short order dated 10.11.2014 (Annexure P-10), which reads as under:-

“The arguments of the counsel present on behalf of both the parties are heard and the record placed on file is thoroughly examined. The application submitted by the second party in this court on 12.08.2014, is hereby dismissed and decision dated 28.1.2014 passed in case No.574 filed on 9.10.2007 is kept upheld.”

6. Thereafter, the appeal was filed before the Collector along with an application for condonation of delay on 03.12.2014 which is apparently within a month. The plea taken was that application was filed for setting aside the ex-parte order dated 20.1.2014 and the said application was dismissed and therefore there was a delay and same was bonafide and if it is to be counted from the date of dismissing the application i.e. 10.11.2014, it would be within limitation. However, the Commissioner dismissed the appeal again on the ground that it was mentioned in the application that there was a delay of 249 days, whereas the appeal was to be filed within 60 days from the date of order.

7. A perusal of the record would go on to show that the order is not sustainable. As noticed the appeal was filed on 03.12.2014 and therefore the application also is dated 03.12.2014 and thus the petitioner had approached the Appellate Authority instantly within a period of one month and therefore there is non-application of mind by the Commissioner. It has been time and again held that the merits of the case should be decided and the courts should condone the delay where there is a valid reason, as such and sufficient cause is made out. A perusal of the impugned orders would

go on to show that the courts below have gone on to throw out the petitioner without giving any sufficient opportunity and the valuable rights, as such, being in possession had been totally ignored. In case of **State of Nagaland Vs. Lipok AO and others, 2005(2) R.C.R (Criminal) 414**, the Apex Court went on to hold that those who bear responsibility of Govt. must have “a little play at the joints” and court should decide the matters on merits unless it is hopelessly without merit. It was also held that the individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

8. The law has been laid down by the Hon'ble Apex Court in **G.Ramegowda, Major Vs. Spl. Land Acquisition Officer (1988) 2 SCC 142** and **Land Acquisition Collector, Anantnag & another Vs. MST. Katiji & others, (1987) 2 SCC 107** which was relied upon in **State of Nagaland (supra)** that each and every day's delay is not to be explained and substantial justice is to be done until there is a delay which is deliberate or on account of malafides and justice oriented approach has to be kept in mind.

7. Keeping in view the above settled principles, we are of the considered opinion that Commissioner was not justified while dismissing the appeal and similarly the Collector was not justified in proceeding ex-parte. Accordingly, we set aside the orders passed by the authorities below dated 28.01.2014 (Annexure P-9), 10.11.2014 (Annexure P-10) and 18.09.2015 (Annexure P-11) and matter is remanded back to the competent

court/authorities below as the land is stated to have come within the
Municipal limits, who shall decide the issue afresh, on merits.

(G.S. SANDHAWALIA)
JUDGE

18.07.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No