

# SHIV KUMAR v. STATE OF HARYANA , (2022-3)207 PLR 010, 2022 PLRonline 2170

PUNJAB AND HARYANA HIGH COURT

*Before: Mr. Justice Augustine George Masih and Mr. Justice Sandeep Moudgil.*

SHIV KUMAR and others – Petitioners,

*Versus*

STATE OF HARYANA and others – Respondents.

CWP-36543-2019 and CWP-3800-2020

**(i) Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) Section 7(2) Proviso - That the appeal should be entertained in all cases without deposit of the amount of penalty, as imposed by the first authority, cannot be accepted. [Para 6]**

**(ii) Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) Section 13-B - Waiver in the deposit of penalty - Discretion was, therefore, left to the appellate authority to exercise the power of waiver or a part waiver in the deposit of penalty at the stage of entertaining an appeal dependent upon the facts and circumstances of the case mandating upon the appellate authority to give reasons why it proposes to dispense with the normal procedure of insistence of pre-deposit. [Para 13]**

**(iii) Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) Section 13-B - Penalty - Deposit of - However, in case of non-deposit of the said amount by the appellant, the appeal can be dismissed because of non-compliance of the provisions of the Statute, as laid down in Section 13-B of the 1961 Act - But where no such prayer was even made, what to say of along with the reasons as to why such waiver is sought, the appellate authority can insist upon deposit of the penalty amount as a pre-condition for entertaining the appeal. [Para 13]**

## Cases referred to:-

1. (2011-2)162 PLR 326, *Ranjit Singh v. State of Haryana*.
2. 2020(2) RCR (Civil) 206, *Thakurdawara v. State of Haryana*.
3. AIR 1978 Supreme Court 1675, *Sunil Batra v. Delhi Administration*.

*Mr. Vikram Singh*, for the petitioners. *Ms. Tanisha Peshawaria*, DAG, Haryana, for the State. *Mr. R.S.Budhwar*, for respondent-Gram Panchayat.

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**Augustine George Masih, J.** -(11<sup>th</sup> March, 2022) - By this order, we propose to decide two writ petitions i.e. CWP No. 36543 of 2019 titled as *Shiv Kumar and others v. State of Haryana and others* and CWP No. 3800 of 2020 titled as *Bohti Devi and others v. State of Haryana and others*, as a common question of law is involved and similar are the facts in these cases. For convenience, the facts are being taken from CWP No. 36543 of 2019.

2. In CWP No. 36543 of 2019, application under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act') for ejection from the land in dispute of the respondents (petitioners in the present writ petition as also in the other writ petition i.e. CWP No. 3800 of 2020) was preferred by the Gram Panchayat, Chhallaur, Block Bilaspur, District Yamuna Nagar. The said application was allowed by the Assistant Collector, 1st Grade-cum-District Development and Panchayat Officer, Yamuna Nagar on 11.12.2015 (Annexure P-1) holding therein that the land in dispute comes under the definition of 'Shamlat Deh' and is for a common purpose meant for the use of all villagers and hence, vests in the Gram Panchayat ordering ejection of the petitioners. Since they were found to be in illegal cultivating possession of the said land, penalty was imposed upon them for the loss of non-user of the said land @ Rs. 4000/- per acre per annum from the year 1993 till the date of possession.

3. Petitioners preferred an appeal against this order but the same was dismissed by the Collector, Yamuna Nagar vide order dated 10.08.2016 (Annexure P-2) on the ground that the amount of penalty having not been deposited, the appeal would not be maintainable especially in the light of Section 13-B of the 1961 Act, which clearly states that no appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of Section 7 is deposited with the Collector.

4. Petitioners, thereafter, preferred a revision petition before the Commissioner, Ambala Division, Ambala Cantt., which was also dismissed by the said authority vide order dated 23.07.2019 (Annexure P-3) on the ground that there is no illegality in the order passed by the appellate authority as the same is based upon the statutory requirements. This has led to the filing of these writ petitions before this Court challenging the orders passed by the revenue authorities, as referred to above.

5. It is the contention of the learned counsel for the petitioners that a Larger Bench of this Court in *Ranjit Singh v. State of Haryana and others*,<sup>1</sup> (2011-2)162 PLR 326, has held that proviso to Section 13-B, which mentions that no appeal shall lie unless the amount of penalty was deposited and altogether excluding the waiving of the penalty, cannot be sustained and the same was diluted by this Court granting the appellate authority the power to give interim relief of a portion or the entire penalty, in appropriate cases, by giving reasons why it proposes to dispense with the normal procedure of insistence of pre-deposit. He, however, contends that this power can be exercised by the appellate authority but the said authority having not so exercised its powers, the impugned order cannot sustain and deserves to be set aside especially when no reason whatsoever has been given for not giving an opportunity to the petitioners for depositing the said amount. He goes to

an extent of saying that because of non-deposit of the amount, the appeal itself cannot be dismissed and it is not the mandatory requirement, while entertaining an appeal, to deposit the amount. The counsel for the petitioners has insisted to project as if no amount is required to be deposited at all at the time of filing the appeal or during the pendency of the appeal and the appellate authority is bound to entertain the appeal on merits.

6. Learned counsel for the respondents, on the other hand, have, with reference to the Larger Bench judgment in *Ranjit Singh's case* (supra), asserted that the petitioners are misreading the judgment passed by this Court. The Court has not struck down the proviso to Section 13-B of the 1961 Act but has only diluted the same and, therefore, the contention of the counsel for the petitioners that the appeal should be entertained in all cases without deposit of the amount of penalty, as imposed by the first authority, cannot be accepted.

7. Another assertion, which has been put forth by the counsel for the respondents, is that there was no prayer made by the petitioners before the appellate authority for waiver or exemption from deposit of the penalty amount nor was any reason so mentioned as to why such exemption was sought on the basis of any hardship, difficulty or inability to pay the said penalty. Reliance has been placed upon the judgment of a Division Bench of this Court in *Thakurdawara and others v. State of Haryana and others*, <sup>2</sup> 2020 (2) RCR (Civil) 206 to press this point. Counsel for the respondents, therefore, pray for dismissal of the writ petitions.

8. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the provisions of Section 13-B of the 1961 Act as also the judgments on which reliance has been placed by the counsel especially the Larger Bench judgment of this Court in *Ranjit Singh's case* (supra).

9. The question, which needs to be answered in these writ petitions, is as to whether there is any requirement of deposit of penalty amount prior to the entertainment of the appeal and in case of failure to deposit the amount, whether the appeal can be dismissed for such nondeposit of the said amount or not?

10. To find an answer to this question, we need to refer to the provisions of the Statute i.e. Section 13-B of the 1961 Act, which reads as follows:-

“13-B. *Appeal and revision*.- (1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under subsection (1) or sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit:

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of Section 7, is deposited with the Collector.

(2) The Commissioner may, suo moto {or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of Section 7 at anytime}

call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

11. For the purpose of adjudication of the dispute, as has been raised in these cases, proviso to Section 13-B (1) would be important which mandates that no appeal would lie where the Assistant Collector 1st Grade had passed an order under sub-section (1) or sub-section (2) of Section 7 unless the amount of penalty, if any, imposed under sub-section (2) of Section 7 is deposited with the Collector. A plain reading of the said proviso would lead to an undisputed conclusion that there would be no appeal maintainable without deposit of the amount of penalty as imposed by the Assistant Collector, 1st Grade by an order under Section 7 (2) which is the subject matter of the said appeal.

12. However, this aspect, when considered by the Larger Bench of this Court in *Ranjit Singh's case* (supra), the Court drew a distinction in cases which deal with taxes and duties on the one hand and the penalty in respect of an agricultural land of the farmers on the other by stating that both classes cannot be judged by the same yardstick especially in our country where the land holdings are shrinking while a large section of the population is still rural and dependent on agriculture. The Court proceeded to hold that imposition of blanket liability of pre-deposit of the penalty although being an onerous condition cannot be judged by the yardstick of initial amount of tax liability. Relying upon the judgment of the Supreme Court, the Court, in *Sunil Batra v. Delhi Administration and others*,<sup>3</sup> AIR 1978 Supreme Court 1675, has stated that the Supreme Court has recognized the principle of reading down the provision so as to render it constitutional by putting certain riders thereto.

In para-24, this Court has held as follows:-

“24. Resultantly, by reading down the provision, it is held that Section 13B of the Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case where, the grounds so exist by passing a speaking order, even while normally insistence may be made on pre-deposit of penalty. In adjudicating the appeal whether in a particular case interim relief of stay of a portion or the entire penalty has to be granted, the appellate authority would have to give reasons why it proposes to dispense with the normal procedure of insistence of pre-deposit. Consequently, this writ petition is allowed and the matter is remitted back to the appellate authority to consider the appeal in terms of the law set down above.”

13. A perusal of the above would show that the discretion was, therefore, left to the appellate authority to exercise the power of waiver or a part waiver in the deposit of penalty at the stage of entertaining an appeal dependent upon the facts and circumstances of the case mandating upon the appellate authority to give reasons why it proposes to dispense with the normal procedure of insistence of pre-deposit. Meaning thereby, where an appellant, in a particular case, seeks interim relief of stay on deposit of the amount of

penalty or waiver thereof by giving therein the reasons and the extra-ordinary circumstances which would include the inability to deposit the said amount pleading therein his financial condition, the appellate authority could exercise its powers for grant of such interim stay/waiver. In case such a prayer is made along with the reasons, it is mandated upon the appellate authority to consider the same and pass appropriate orders. It goes without saying that in case an application is moved for waiver of deposit of the amount assigning reasons for such a prayer, the appellate authority, while deciding the same, may grant some time for deposit of the amount and on deposit thereof, the appellate authority may proceed to decide the appeal. However, in case of non-deposit of the said amount by the appellant, the appeal can be dismissed because of non-compliance of the provisions of the Statute, as laid down in Section 13-B of the 1961 Act.

But where no such prayer was even made, what to say of along with the reasons as to why such waiver is sought, the appellate authority can insist upon deposit of the penalty amount as a pre-condition for entertaining the appeal.

14. In these cases, there is nothing on the record indicating that the petitioners have moved an application before the appellate authority detailing therein the reasons and/or their inability to deposit the amount of penalty, as imposed by the Assistant Collector 1st Grade nor is it the case of the petitioners in the pleadings before this Court highlighting the said aspect leading to a conclusion that the petitioners have proceeded to not depositing the amount of penalty and had insisted upon the hearing of the appeal without deposit of the said amount. The appellate authority is fully justified, in such circumstances, to dismiss the appeal for non-deposit of the amount of penalty, as imposed by the Assistant Collector 1st Grade.

15. We do not find any illegality in the impugned orders passed by the revenue authorities calling for interference by this Court in exercise of its extra-ordinary powers of writ jurisdiction. These writ petitions, therefore, stand dismissed.

**Sd/- Sandeep Moudgil, J.**

*R.M.S.*

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*Petition dismissed.*