

(2009) 12 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh
Case No: Civil Writ Petition No. 12763 of 1992 (O and M)

Net Ram and Others

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Dec. 21, 2009

Acts Referred:

- Delhi Municipal Corporation Act, 1957 - Section 170
- Haryana General Sales Tax Act, 1973 - Section 20
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 13B, 2(6), 7, 7(1), 7(2)

Citation: (2010) 159 PLR 602 : (2010) 2 RCR(Civil) 42302

Hon'ble Judges: Jora Singh, J; Hemant Gupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The petitioners have challenged provisions of Haryana Act No. 9 of 1992 i.e. an Act to amend Punjab Village Common

Lands (Regulation) Act, 1961, inter-alia, inserting Section 2(g)(6) and Section 13(B), mandating deposit of the penalty amount before an appeal

against the order passed by the Collector is entertained by the Commissioner.

2. The petitioners have restricted the ground of challenge to the condition of pre-deposit in terms of Section 13(B) of the Act at the time of hearing

of the writ petition. The said provision reads as under:

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 Sub-section (1) or Sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as

case 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.

3. The issue raised in the present writ petition stands concluded by the Full Bench of this Court in a judgment reported as Jai Singh and Others Vs.

State of Haryana, . It has been held that the condition of pre-deposit of the entire amount of penalty is not illegal. It was held to the following effect:

60. While challenging the proviso, reproduced above, learned Counsel contends that the remedy of appeal against an order of eviction, that may

be passed u/s 7 of the Act of 1961, has been made absolutely illusory inasmuch as same is incompetent till such time the penalty imposed u/s 7(2)

is deposited. This argument has to be stated to be rejected inasmuch as the very filing of an appeal is creation of a statute and if no meaningful

argument can be raised if the statute may not provide any appeal as such, the conditions attached in filing the appeal cannot be successfully

challenged The Hon"ble Supreme Court in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, , upheld the vires of

Section 170(b) of the Delhi Municipal Corporation Act, 1957, dealing with the condition of deposit of tax amount as a condition precedent for

hearing or determination of the appeal. A Full Bench of this Court in Emerald International Ltd. Vs. State of Punjab and Others, held that ""the

legislature could impose condition for exercise of right of appeal and that there is neither a constitutional nor legal impediment for imposition of such

a condition"". It was further held that ""in case a person wanted to avail of the right of appeal, he has to accept the conditions imposed by the

statute"". By virtue of provisions contained in Section 20 of the Haryana General Sales Tax Act, 1973, there is a complete bar to the entertainment

of an appeal by the Appellate Authority without payment of tax amount. Unless the authority is satisfied that the dealer was unable to pay the

amount so assessed and only in that situation the appellate authority, for the reasons to be recorded in writing, could entertain the appeal without deposit of the payment of such amount.

3. In view of the authoritative pronouncement of the Full Bench of this Court, the issue canvassed in the present petition does not survive for consideration.

4. Hence, the present petition is dismissed.