(1995) 05 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6976 of 1994

Amar Nath		APPELLANT
	Vs	
Asstt. Collector, 1st Grade and Others		RESPONDENT

Date of Decision: May 23, 1995

Acts Referred:

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 13

Citation: (1995) 111 PLR 718

Hon'ble Judges: S.S. Sudhalkar, J; R.P. Sethi, J

Bench: Division Bench

Advocate: G.S. Jaswal, for the Appellant; S.K. Kapoor, AAG for Respondent Nos. 1 and 2 and Bhag Singh, for Respondents Nos. 3 to 6, 10 and 11, for the Respondent

Judgement

R.P. Sethi, J.
Heard the learned counsel for the parties. Aggrieved by the order of the Assistant Collector 1st Grade, Ambala, passed u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961, the petitioners herein filed an appeal before respondent No. 2, who, vide his order, Annexure P-9, dismissed the same solely on the ground that appeal was not maintainable in the absence of deposit of the amount of penalty. The learned counsel for the petitioners has relied upon a Full Bench Judgment of this Court in Jai Singh v. State of Haryana 1995 1 PLR 614 (FB) wherein it was held:

"The restriction imposed by the proviso renders the substantive clause of conferring a right of appeal a mere paper right. The right of appeal is rendered nugatory, in effect. The restrictions imposed is stringent. Theoretically, right of appeal is conferred but the ground realities namely poverty of Indian villagers cannot be lost sight of. The right to prefer an appeal must include the right to defend the right with respect to possession of the land or immovable property proclaimed by the Gram Panchayat to be vested in it. Atleast one right of appeal against executive fiat is reasonable procedural right particularly when

scrutiny by the ordinary Civil Court has been taken away. Taking conspectus of all the relevant facts and circumstances, I am of the considered view that the imposition of condition provided by the provisions for deposit of damages before the appeal is entertained is unreasonableness. The provision is hit by Article 14 of the Constitution of India being arbitrary and unreasonable. Further the authorities have a right to recover the damages imposed as arrears of land revenue. Keeping all the facts in view and the observations made above, I am of the considered view that the proviso to Section 5 of the 1992 Act providing for deposit of penal damages for entertaining appeal is ultra vires the Constitution and the same is declared to be so."

2. In view of the Full Bench Judgment, the respondent No. 2 was not justified in dismissing the appeal only on the ground of non-deposit of the amount of penalty. The order of respondent No. 2, Annexure P-9, is accordingly set aside and the case remanded back to him with the direction that he shall hear the parties afresh and decide the appeal on merits in accordance with the provisions of law. The learned counsel appearing for the parties are directed to appear or cause the appearance of their clients before respondent No. 2 on 28th July, 1995.