(2013) 06 SHI CK 0077

In the High Court Of Himachal Pradesh

Case No : CWP No. 10812 of 2012

Dina Nath APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 06 SHI CK 0077

Hon'ble Judges : Ajay Manikrao Khanwilkar, C.J;Kuldip Singh, J

Bench : Division Bench

Advocate : Ajay Sharma, for the Appellant; Shrawan Dogra, AG and Mr. Romesh Verma, Addl. AG and Mr. J.K. Verma, Dy. AG, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Manikrao Khanwilkar, C.J.—Heard counsel for the parties. Rule. Rule made returnable forthwith, by consent. Counsel for the respondents waive notice. Taken up for final disposal forthwith, by consent. This writ petition under Article 226 of the Constitution of India, in effect, takes exception to the orders passed by the Collector, Una, District Una (H.P.) dated 12th October, 2012 in case No. 59 NRC-79 G.R./2012, 16th October, 2012 in case No. 64 NRC-86 G.R./2012 and 16th October, 2012 in case No. 63 NRC-85 G.R./2012.

2. It is not in dispute that the petitioner has not challenged the decision of the Sub Divisional Magistrate-cum-Licensing Authority (MV), Una, District Una (HP), which was the basis for issuance of the impugned orders by the Collector. Indisputably, remedy of appeal is available against the decision of the Sub Divisional Magistrate, which has not been availed by the petitioner. In the order passed by this Court, dated 22nd May, 2013, this aspect has been specifically noted. Inspite of that, even today, the petitioner has no intention to challenge the said decision. In other words, the challenge, in the present petition is limited to the orders dated 12th October, 2012 and 16th October, 2012, Annexures P/1 to P/3 at pages 12, 16 and 20, respectively.

3. The principal ground, on which these orders are challenged, is about non-compliance of the procedure prescribed in Rule 65 of the Punjab Land Revenue Rules, as applicable to the State of Himachal Pradesh. Rule 65 reads thus:

65. (i) If the application is in due form and the arrear, of which recovery is desired has not been due for more than six months, the Revenue Officer shall fix a date for the hearing of the case, and serve a writ of demand on the defaulter together with a notice requiring him to appear on the date so fixed, if the demand has not in the meantime been paid.

(ii) If the arrear has been due for more than six months the application shall be rejected, unless the applicant satisfies the Revenue Officer that the delay in realizing the arrear is not due to his neglect. And, if so satisfied, the Revenue Officer shall proceed as in subsection (i).

4. The case of the petitioner is that the orders passed by the Collector are in relation to the dues, which had become payable for more than six months before passing of the impugned orders or initiation of proceedings by the Collector. The application preferred by the Department before the Collector was not accompanied by any delay application. As a result, the same ought to have been rejected. Secondly, the petitioner was not served with the notice by the Collector before the impugned orders came to be passed and thus, no opportunity of hearing was made available to the petitioner.

5. Having considered the rival submissions and after perusing the orders in question, we find merits in the submissions of the petitioner that the orders passed by the Collector dated 12th October, 2012 and 16th October, 2012 (Annexures P/1 to P/3) do not record satisfaction that the same have been passed in respect of the dues, which were due for not more than six months as such or that the application filed by the Department was entertained because it was accompanied by delay application or otherwise.

6. In the circumstances, we deem it appropriate to quash and set aside orders dated 12th October, 2012 & 16th October, 2012 (Annexures P/1 to P/3) and relegate the petitioner before the Collector for passing fresh order on the application preferred by the Department for recovery of the dues as arrears of land revenue. That application will have to proceed afresh on its own merits, in accordance with law. In view of this order, it is not necessary for us to dilate any further on the second contention raised by petitioner about not affording of opportunity of being heard before the impugned orders came to be passed. Accordingly, this petition is allowed and impugned Annexures P/1, P/2 & P/3 are set aside. The petition stands disposed of accordingly, so also the pending application(s), if any.