

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

CWP NO.13859 of 2006

DATE OF DECISION: August 31, 2006

Sukhpal Singh and others

....Petitioners

VERSUS

The State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL  
HON'BLE MR. JUSTICE H.S.BHALLA

PRESENT: Shri R.K.Jain, Advocate for the petitioners.

**Viney Mittal,J.(Oral).**

Notice of motion to the respondents.

On the asking of Court, Shri Ashok Jindal, Additional Advocate General, Haryana accepts notice on behalf of the respondents.

Copies of the writ petition have been supplied to the learned counsel for the respondents.

The petitioner was issued a show cause notice dated January 10,2005 (Annexure P.3). The aforesaid show cause notice was challenged by the petitioner initially before the Tribunal under Act No.41 of 1963. The Tribunal held that since the land in question was situated within the municipal limits, therefore, it had no jurisdiction under the Act. The petition filed by the petitioners was returned back with a liberty to them to present the same before an

appropriate authority. In these circumstances, the petitioners presented the aforesaid petition before the Financial Commissioner & Principal Secretary to Govt. of Haryana, Urban Estate Department, respondent No.1. The said petition remained pending for some time. Ultimately, vide order dated March 31, 2006, the petition/appeal filed by the petitioners was dismissed for non prosecution. The petitioners filed an application for restoration of the aforesaid appeal. Alongwith the application, an affidavit of Shri S.K.Chopra, Advocate was filed, explaining his reasons for non appearance. It appears from the record that the aforesaid application filed by the petitioners has also been rejected and communication in this regard has been sent to the petitioner on July 26, 2006 (Annexure P.8), although no specific order appears to be passed by the Financial Commissioner and Principal Secretary, respondent No.1 in this regard.

After hearing the learned counsel for the petitioners and taking into consideration the various pleas raised by them in the petition, we are satisfied that non-appearance of the counsel on March 31, 2006 was on account of a sufficient cause. It was in these circumstances that when an application had filed by the petitioners for restoration of their appeal, respondent No.1 should have allowed the aforesaid application and restored the appeal filed by the petitioners and should have decided the appeal on merits of the controversy. It appears that a hyper-technical view has been taken by the respondent No.1, when the restoration application filed by the petitioners has been dismissed.

Without going into the merits of the claim made by the petitioners, we set aside the orders dated March 31, 2006 as well as July 26, 2006 and restore the appeal filed by the petitioners before respondent No.1 to its original number. Respondent No.1 is directed to decide the aforesaid appeal in accordance with law on merits of the controversy within a period of three months from the date a certified copy of this order is received.

The petitioners, through their authorized representative, are directed to appear before respondent No.1 on September 18, 2006.

A copy of the order be given dasti on payment of usual charges.

(Viney Mittal)  
Judge

**August 31, 2006**  
**KD**

(H.S. Bhalla)  
Judge