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of the plaintiff does not fall in the category of rarest of rare cases. Besides, change of circumstances might have taken place but the hardship which has been sought to be faced by the plaintiff in the absence of boundary wall is not such which may justify to grant permission to the plaintiff to re-construct the boundary wall. This is a question which straight-way touches the merits and the main relief prayed for in the suit, which obviously could not be granted without appreciating the evidence which may be led by the parties in due course of time. It is also not shown to the satisfaction of this court that any irreparable loss would be caused to the plaintiff in the absence of boundary wall. Further more, the power to exercise jurisdiction under the above provisions should otherwise be used sparingly. It is also well settled principle of law that the lower appellate court should go slow in upsetting/varying the finding of the trial court on an application under Order 39 Rules 1 and 2 of the Code and should not substitute its opinion for the opinion of the trial court. The appellate court was thus not right in modifying the order of *status quo* passed earlier and permitting the plaintiff to re-construct the boundary wall.

(8) In view of the above reasons, the revision petition is accepted, the order of the lower appellate court is set aside and that of the trial court restored. The application of the plaintiff under Order 39 Rule 4 of the Code thus stands dismissed accordingly. However, having regard to the facts and circumstances of this case and in the interest of justice, I deem it appropriate that the suit be decided at an early date. The trial court is, therefore, directed to dispose of the suit within six months after affording at least two effective opportunities to each of the parties for their respective evidence. The trial court shall also report compliance of this direction to this Court.

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*J.S.T.*

*Before Jawahar Lal Gupta and K.S. Garewal, JJ.*

MRS. RAJINDER KAUR,—*Petitioner*

*versus*

UNION TERRITORY, CHANDIGARH AND ANOTHER,—  
*Respondents*

C.W.P. No. 19356 of 1998

13th November, 2000

*Constitution of India, 1950—Art. 226—Allotment of a site for setting up a weigh bridge—Petitioner depositing 25% of the amount—*

*Petitioner unable to set up weigh bridge for lack of basic amenities—Municipal Corporation failing to provide basic necessities even after 3 years of allotment—Petitioner could not derive any advantage from the land—Payment of instalments by the petitioner deferred till all the facilities are provided—Writ allowed with costs.*

*Held*, that the petitioner has been unable to use the site for lack of basic amenities since November, 1997. Even a road has not been provided. Thus, it is not even possible to reach the site. The setting up or utilisation of the Weigh Bridge is obviously difficult. It is on account of the inaction on the part of the respondents that the petitioner has been unable to derive any advantage from the land and to earn a return on the substantial amount of money already spent by her.

(Para 4)

*Further held*, that a citizen, who delays the payment of an instalment of money is burdened with the payment of interest and penalty at the rate of 24%. The respondents have retained the petitioner's money without providing anything to her for the last about three years. The sequence of events discloses a total indifference to the obligation imposed on the Administration. No explanation for the failure to provide a basic necessity like a road and parking area has been given. The citizen pays and yet suffers. We cannot compliment the respondents for their inertia and inaction. There are too many who claim to be 'Civil Servants'. But there is too little of service to the citizen.

(Para 6)

R. S. Dass, Advocate, *for the petitioner.*

Subhash Goel, Advocate, *for respondent Nos. 1 and 2.*

Ms. Deepali Puri, Advocate, *for the Municipal Corporation.*

## JUDGMENT

*Jawahar Lal Gupta (Oral)*

(1) On 18th November, 1997, the respondent Administration auctioned a site in the Industrial Area, Phase II, Chandigarh for the setting up of Weigh Bridge. The petitioner was the highest bidder. Her offer of Rs. 58 lacs was accepted. The petitioner had paid 25% of the amount at the time of auction. In pursuance to the acceptance of the bid, the petitioner was given a letter of allotment on 19th January, 1998. The remaining 75% had to be paid in three annual instalments

payable on 10th December, 1998, 10th December, 1999 and 10th December, 2000. In October, 1998, the petitioner sent two communications to the Estate Officer with the request that amenities be provided at the site so that she may be able to set up the Weigh Bridge and utilise the money spent by her. Nothing was done. Two further representations were submitted in November, 1998. The copies of the four representations are on record as Annexures P-7 to P-10. When the authorities failed to do the needful, the petitioner filed the present writ petition in December, 1998. She prays that "a writ in the nature of mandamus directing the respondents to provide the amenities such as water connection, sewerage connection, electricity supply, approach road and parking at the site "be issued. She further prays that the" instalment, ground rent and interest, which is payable by 10th December, 1998 may be deferred and the respondents may be directed to charge the instalment, ground rent and interest after one year from the provision of the amenities".

(2) Notice of motion was issued. The respondents put in appearance on 19th April, 1999. They were directed to file the written statement two days prior to the date of hearing. No reply was filed. A request for more time was made. On 13th September, 1999 further time was granted. The case was adjourned to 17th January, 2000. The reply on behalf of the respondents was filed on 17th January, 2000. Neither the name nor the designation of the officer who filed the written statement has been disclosed by Ms. Deepali Puri. No reply was filed by respondent Nos. 1 and 2. The case was adjourned and finally it was listed for hearing before this Bench on 10th October, 2000. On that date a request for adjournment to enable the Administration to file an affidavit was made. Simultaneously time was also granted to Ms. Deepali Puri, learned counsel for the Municipal Corporation to obtain instructions regarding the provision of the facilities at the site. It has come up for hearing today.

(3) Mr. R.S. Dass, learned counsel for the petitioner submits that facilities have not been provided so far. Learned counsel for the respondents state that work on the construction of the road had been started. It could not be commenced earlier on account of financial constraints.

(4) The sequence of events, as noticed above, clearly shows that the petitioner has been unable to use the site for lack of basic amenities since November, 1997. Even a road has not been provided. Thus, it is not even possible to reach the site. The setting up or utilisation of the Weigh Bridge is obviously difficult. It is on account of the inaction on

the part of the respondents that the petitioner has been unable to derive any advantage from the land and to earn a return on the substantial amount of money already spent by her.

(5) A fact, which deserve as mention is that in the written statement filed on behalf of the Municipal Corporation on 17th January, 2000 it was stated that facilities such as sewerage and water supply have been provided. It was also averred that "only the roads and parking area are required to be metalled/constructed, which would be completed within a period of six months". Admittedly, a period of more than 9 months has elapsed since then. The roads and parking area have still not been constructed. The petitioner has been deprived of the benefit of the amount of Rs. 15 lacs spent by her till now. Why ? Many excuses. But, no execution.

(6) A citizen, who delays the payment of an instalment of money is burdened with the payment of interest and penalty at the rate of 24%. In the present case the respondents have retained the petitioner's money without providing anything to her for the last about three years. The sequence of events discloses a total indifference to the obligation imposed on the Administration. No explanation for the failure to provide a basic necessity like a road and parking area has been given. Ms. Deepali Puri, states that there were financial constraints. Did the Municipal Corporation, which she represents, ask the Administration for funds ? If yes, when ? There is no answer either in the written statement or even at the hearing. It appears that the Administration as well as the Corporation are 'living' beyond their income. The citizen pays and yet suffers. We cannot compliment the respondents for their inertia and inaction. There are too many who claim to be 'Civil Servants'. But there is too little of service to the citizen.

(7) No other point has been raised.

(8) In view of the above, we direct that the payment of instalment by the petitioner shall be deferred. She will be liable to pay the first instalment at the expiry of one year from the date on which all the facilities are provided. Still further, the respondents shall not be entitled to charge any interest or ground rent for the period from November, 1997 to the date on which the amenities like the road, water and sewerage connection are provided. The terms of allotment should be read accordingly. It is clarified that the second and third instalments would become due at the expiry of one year each from the date on which the first instalment falls due. We, hope, this would awaken the authorities and the others like the petitioner would not continue to suffer.

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(9) In view of the above, the writ petition is allowed. The petitioner shall also be entitled to her costs, which are assessed at Rs. 10,000.

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**R.N.R.**

*Before K.K. Srivastava and J.S. Khehar, JJ.*

BISHAN SINGH,—*Petitioner*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 2049 of 1999

11th October, 1999

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 16.2—Petitioner absent from duty after consuming liquor—Dismissed from service—Challenge thereto—Dismissal order upheld—Act of consuming liquor while on duty and absenting himself from duty is the gravest act of misconduct committed by a member of the disciplined force.*

*Held*, that the act of the petitioner in consuming liquor and absenting himself from duty is the gravest act of misconduct committed by a member of the disciplined force and this has been duly taken note of by respondents No. 2 to 4. The mere fact the petitioner had put in some years of service and should have been considered for termination of service and not for dismissal of service is of no consequence.

(Para 10)

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 16.2(2)—Appraisal of evidence—Well established principle that High Court will not sit as a Court of appeal and re-examine evidence of witness examined during departmental proceedings—Ample opportunity given to the petitioner to cross-examine witnesses—Enquiry report duly considered by the Punishing authority—Presenting authority and Inquiry officers have requisite jurisdiction in law to appraise facts and evidence in coming to the conclusion about charge being against the delinquent official.*

*Held*, that this Court will not sit as a court of appeal and re-examine the evidence of the witnesses recorded during the course of departmental enquiry. The Inquiry Officer and the Punishing Authority are the competent authorities having requisite jurisdiction in law to appraise the material, including the evidence of the