

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

CR No. 1419 of 2002 (O&M)

Date of decision: September 8, 2015

Sant Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Ranjan Lakhanpal, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

CM No. 1776 CII of 2015

The application is to recall the order passed on 17.8.2015 that dismissed the application for restoration. Now the applicant wants to argue the case on merits.

For the reasons stated in the application, the order is recalled and the revision petition is restored to its original number.

Main case

1. The revision petition challenges the action initiated against the petitioner for eviction under the Punjab Public Premises Act making reference to the fact there has been a lease granted by the Canal Department to the petitioner's husband for a period of one year in 1972-1973 and after the completion of the one year, the possession of the petitioner's husband without authorization constituting the character of the possession as

unauthorized and liable for ejectment.

2. The counsel for the petitioner states that the department took action under the same Act on two occasions earlier and they were dismissed on a finding that the petitioner's husband was found in possession since 1953 and hence the action for ejectment will not lie. The counsel would state that the Department had concealed the fact of failure to obtain ejectment in the previous proceedings and there would be also a bar of resjudicata by instituting a fresh petition.

3. The principle of resjudicata is rooted on public policy that a party will not vex on the same cause of action, a suit or proceedings, if it is decided on merit between the same parties or the persons claiming under them and it had become final. The court that applies the principle shall exercise caution that there had been a particular adjudication which would become final and cannot be re-agitated. If there had been a finding that the property was not a Public Premise to which provision of the Act were applicable or if there was a finding that the defendant was himself the owner or his possession had become adverse, an ejectment action treating the same property as public premises would be barred. In other words, the bar of resjudicata would operate against a point raised and decided or a defendant which ought to have been raised and failed to do. It cannot extend to the situation which the previous adjudication does not refer to. If a petition for ejectment, therefore, filed by reference to the property as having been granted in lease to the husband in the year 1972-1973 and the Estate Officer adverted to it, to define the character of possession for the wife who continued after the life time of the husband, the principle that would become applicable would be one of estoppel, that is, governed under

Section 117 of the Indian Evidence Act. Even the possession held independently could be altered, if a party enters into an agreement of lease and he would be bound by such admission by the representation that he makes by the alteration of character that he obtains to himself. A person who enters upon the property without knowledge of who the owner was or a person who asserts his own rights could well seek to legitimize his own holding by attorning a tenancy to a person whom he was prepared to recognize as landlord. If the Canal Department, therefore, was seeking ejectment making reference to the lease in favour of the petitioner's husband and the execution of the said document is proved, there is no scope for challenging the claim to ejectment by reference to the dismissal of the previous proceedings.

4. Although the petition had been dismissed for default earlier, I have allowed the benefit of arguments of the counsel after restoring it for rehearing. The proceedings already taken will work themselves out in accordance with law and it will be competent for the authority even to apply for damages for use and occupation for filing meritless revision petition before this court and enjoying the benefit of the property.

5. The revision petition is meritless and is dismissed.

September 8, 2015
prem

(K.KANNAN)
JUDGE