

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.24351 of 2017

Date of Decision: 31st October, 2017

Sant Kaur (since deceased) through LRs

. . . . Petitioners

Vs.

State of Punjab and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Deepak Aggarwal, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have challenged the orders dated 15.3.2017, 02.05.2017 and 04.05.2017 passed by respondents No.4 & 5, respectively on an application filed by respondent No.2 under Section 5 of the Punjab Public Premises (Eviction of Unauthorized Occupants) Act, 1971 holding the petitioners to be in unauthorized possession and directed them to vacate the land in question.

Learned counsel for the petitioners has submitted that earlier two similar applications were filed by the canal authorities claiming themselves to be the owner of the property in question and both the applications were dismissed by a detailed order. When the 3rd application was filed by the Forest Department for seeking eviction of the petitioners, the petitioners filed CR No.1419 of 2002 under Article 227 of the Constitution of India with a prayer that the proceedings initiated in terms of the application filed by the Forest Department may be stopped. The said

revision petition was disposed of by this Court by a detailed order on 8.9.2015, which is reproduced as under:-

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.”

In the aforesaid order, the petitioners had taken the plea of res judicata in order to challenge the initiation of the proceedings at the instance of the Forest Department on the ground that the similar proceedings were initiated by the Canal Department against the petitioners were earlier dismissed. This Court while dismissing the revision petition made a specific observation that *“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". Meaning thereby, the proceedings initiated at the instance of the Forest Department were not quashed and were allowed to be continued. Both the Courts below have found that the petitioners are in unauthorized possession over the land which is recorded in the revenue record belonging to the quasi-government.

Learned counsel for the petitioners has lastly argued that the petitioners are in possession from the year 1953 and have become owners by way of adverse possession. This plea of the petitioners cannot be accepted as the petitioners cannot claim adverse possession against the property of the State.

No other point has been raised.

In view of the aforesaid observations, I do not find any merit in the present petition and the same is hereby dismissed.

The file of CR No.1419 of 2002, which was attached vide order dated 27.10.2017, is hereby ordered to be released.

31st OCTOBER, 2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No