

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

Sr. No.108

CWP-18293-2020

Date of Decision: 11.11.2020

BALWINDER SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.N. SATYANARAYANA
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Surinder Garg, Advocate,
for the petitioner.

S.N. SATYANARAYANA, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

The petitioner herein is impugning the order dated 28.05.2013 passed by respondent No.3 with reference to gair mumkin pahi, provided from Khasra No.190//5/1 to respondent No.4.

Notice of motion.

Mr. Pankaj Gupta, Additional Advocate General, Punjab, accepts notice on behalf of respondent-State.

Admittedly, this order was against the father of the petitioner, namely, Bachan Singh, who had approached this Court earlier in CWP-11625-2013 on various grounds, which included challenging the Rights of 4th respondent, which was decided by this Court on 16.07.2013. It is clear that as on that day, when CWP-11625-2013 was decided, the order impugned, dated 25.08.2013, was already passed, which was not challenged by the father of the petitioner.

Instead, he pursued the same in civil proceedings commencing in Civil Suit No.RBT 387 instituted on 07.05.2015, on the file of Additional Civil Judge (Senior Division), Bhagapurana, where the interim prayer was dismissed on 06.05.2016 and the suit filed by the father of the petitioner was dismissed on 24.02.2020.

It is thereafter the present writ petition is filed by the petitioner in challenging the earlier order dated 28.05.2013 on the ground that it was never challenged, and further the suit which is filed by his father being dismissed as not maintainable, he should be permitted to challenge the said order in this writ petition.

After hearing learned counsel for the petitioner for some time, we are of considered opinion that the present writ petition is not maintainable firstly for the reason that as on the date, when order dated 28.05.2013 was passed, the father of the petitioner was alive and he was aware of that order, but did not choose to challenge the same, though he was before this Court by filing a writ petition bearing CWP No.11625 of 2013 for other reliefs, with reference to the same land. Further, he has pursued the same in civil Court and having failed in that, it is now sought to be reopened by the petitioner in challenge to the said order, which was passed against his father.

When the entire material available on record is looked into, we are of considered opinion that the present writ petition is not maintainable. In addition to that, we also notice that on 02.11.2020, a direction was issued to the petitioner to come out with a specific affidavit, in indicating whether the petitioner's father was served notice in the proceedings culminated in order dated 28.05.2013, to

which no affidavit is filed. Even assuming the affidavit is filed this day by the petitioner stating that it was not served, it would not accrue to his benefit, as much as such the said statement should have been made by his father either in CWP-11625-2013, which was filed by him on the file of Coordinate Bench of this Court, which was disposed of on 16.07.2013 or in the suit which was filed by him subsequently, in Civil Suit No.RBT 387 instituted on 07.05.2015. In the absence of such statement of his father, it is not open for the petitioner to say that his father suffered an ex parte order in proceedings, which culminated in order dated 28.05.2013 passed by respondent No.3 and the same should be reconsidered by this Court.

With such observation, this writ petition is hereby dismissed.

(S.N. SATYANARAYANA)
JUDGE

(ARCHANA PURI)
JUDGE

11.11.2020
himanshu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No