

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-13371-1999

Reserved on: 21.09.2022

Pronounced on: 27.09.2022

Balkar Singh and Another

.....Petitioners

Versus

Commissioner (Joint Development Commissioner) Panchayat Lands,
Sector – 22, Chandigarh and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Argued by: Mr. Naresh Prabhakar, Advocate
for the petitioners.

Mr. Malkeet Singh, Advocate
for respondent No. 3-Gram Panchayat.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant petition, a challenge is made to the order dated 26.03.1999, as carried in Annexure P-2, besides a challenge is also made to order dated 03.06.1999, as carried in Annexure P-3.

FACTUAL BACKGROUND

2. Gram Panchayat, Mand Kulan, through its Sarpanch Gurmeet Singh instituted case No. 7/DDPO of 1998 before the Collector concerned. The above case was filed under Section 7 of the Punjab Village Common Lands Act, 1961 (hereinafter for short called 'the Act'). Through the above petition, a relief was claimed for ejection of the respondents therein, from the panchayat land, as they had raised Haveli thereons.

3. On the above petition, an affirmative order became recorded/drawn on 26.03.1999, by the learned Collector concerned.

4. The above order became challenged by the aggrieved respondents before the Appellate Authority concerned. However, the Appellate Authority concerned, through an order made on 03.06.1999, after dismissing the apposite appeal, proceeded to affirm the order recorded on 26.03.1999, where through the learned Collector concerned allowed the application for the above purpose, as became filed before him, by the Gram Panchayat Mand Kulan. Therefore, the aggrieved therefrom, are but led to institute thereagainst the instant petition before this Court.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR
THE PETITIONERS**

5. 1) The learned counsel appearing for the petitioners has contended before this Court, that since prior to the filing of case No. 7/DDPO of 1998 before the learned Collector concerned, the Gram Panchayat concerned had filed a similar case before the Collector concerned, but yet through an order made thereons on 21.11.1995, the same was dismissed in default. Therefore, the counsel for the petitioners submits, that the order made on 21.11.1995, hence dismissing in default the earlier petition hence carrying therein a cause of action similar to the one as carried in the instant petition rather operates as *res-judicata* qua the subsequent petition. Thus, the subsequent extant petition is contended to be mis-constituted or is contended to be barred.

2) The learned counsel for the petitioners has also

argued that since Section 2 (g) (5) (vi) of 'the Act', provisions whereof become extracted hereinafter exclude(s) from vestment in the panchayat concerned, those lands which lie outside the *abadi deh* and which were being used as gitwar, bara, manure pit, house or for cottage industry immediately before the commencement of this Act. Therefore, he contends that the house if any raised by the petitioners on the panchayat land concerned, is saved, from vestment in the Panchayat. Moreover, also when the house(s) as raised by the petitioners exist outside the *Abadi deh*, besides when the same do exist thereons prior to 1961. Thus, he argues that the petitioners were not amenable to face eviction proceedings, for theirs' becoming ejected from the panchayat lands concerned. Therefore, he argues that the orders (supra) be quashed and set aside.

“2. In this Act, unless the context otherwise requires,

[(a) xxxxxxxx

(b) xxxxxxxx

xxxxxxx

(g) —shamilat deh includes-

(1) lands described in the revenue records as Shamilat Deh excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, Tarafs, Patties, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of the village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gorah deh;

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;

but does not include land which----

(i) [-----]

(ii) has been allotted on quasi-permanent basis to a displaced person;

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(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act;]

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ANALYSES OF THE SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS THAT THE PETITION BEARING NO. 7/DDPO OF 1998 WAS BARRED BY THE PRINCIPLE OF RES-JUDICATA.

6. Admittedly, prior to filing of the extant petition, the Gram Panchayat concerned, had instituted a petition on a similar cause of action besides also for a similar relief as became propagated in the extant subsequent thereto petition. Admittedly also the earlier petition was filed by the then *Pardhan/Sarpanch* of the Panchayat concerned, besides admittedly also subsequently rather on the taking over of the office of Sarpanch, by Gurmeet Singh, hence the extant petition was become filed by Gurmeet Singh. Though admittedly on the previous petition an order was made on 21.11.1995 hence dismissing the same in default. However, for the reasons to be assigned hereinafter, the above order dismissing the earlier petition for default, yet cannot bar the subsequent thereto extant petition, as the same is not barred hence by the principles of *Res-judicata*.

7. The reason for generating the above inference flows from a reading of the provisions, as carried in Rules 3 and 4 of Order IX of the Code of Civil Procedure, 1908, provisions whereof become extracted hereinafter.

“3. Where neither party appears, suit to be dismissed. -
Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

4. Plaintiff may bring fresh suit or Court may restore suit to file – Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for [such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.”

8. A reading of the above extracted provisions of the CPC make it abundantly clear that when the plaintiff omits to cause his appearance before the learned Court concerned, on the date fixed for the relevant purpose, thereupon the Court concerned becomes empowered to make an order that the suit be dismissed. However, Rule 4 of Order IX CPC, permits the plaintiff, whose earlier suit becomes dismissed for default, to either file a fresh suit on the same cause of action, besides also permits him to make an application for setting aside the order dismissing his earlier suit in default. However, satisfaction has to be entered into by the learned Court concerned, that the earlier omission on the part of the plaintiff, to cause his appearance, on the relevant day, before the Court concerned, did occur, on account of a grave sufficient cause. On such sufficient cause being put forth before the learned Court concerned, the latter becomes empowered to either permit the plaintiff whose earlier suit has been dismissed for default, to bring a fresh suit, or as the case may be, allow his application for setting aside the order dismissing in default the apposite suit.

9. If so, with the above statutory leverages being provided to the plaintiff whose earlier suit is dismissed for default. Thus, the above statutory leverages bestowed upon the errant plaintiff, does but work, as an exception to the principle of *Res-judicata*, as, cast in Section 11 of the CPC. The reason is but simple, that the principle of *Res-judicata*,

as, cast in Section 11 of the CPC, works as an estoppel against the re-institution of a fresh suit, only when in the earlier suit a decision on merits rather is made by the learned Court concerned. Necessarily when an order dismissing for non prosecution or for default hence is made on the plaintiff's earlier suit. Thus, when the same is not made on merits, resultantly the legislature has, in the above scenario through engrafting Rule 4 in Order IX CPC rather made an exception to the principle of *Res-judicata*, as cast in Section 11 of the CPC. Necessarily when the dismissal of a suit for non prosecution or for default of appearance of the plaintiff, is but, not a verdict on merits.

CONCLUSION

10. Therefore, the subsequent suit did not invite the vice of *Res-judicata* rather it became protected by the mandate of Rule 4 of Order IX CPC. Conspicuously also when at the stage of the filing of the extant subsequent petition/suit, the respondents/petitioners herein, did not raise any objection, that the same was filed beyond the prescribed period of limitation, either through raising any scribed objections in respect thereof, hence for necessarily thereafter an issue being struck, besides evidence becoming adduced thereons. Therefore, with respondents therein/petitioners herein at the time of presentation of the subsequent suit, not raising any scribed objections with respect to it being yet barred by limitation nor obviously when any issue in respect thereof became struck, nor when any evidence thereons became adduced. Thus, the entertainment of the subsequent extant petition by the learned Collector concerned, is to be deemed to be made, only after his making an objective satisfaction, that the earlier non appearance of the then *Sarpanch* of the panchayat concerned, rather leading to the

dismissal of the earlier petition for default, hence arising from a sufficient cause. Moreover, a further conclusion also emanates that the knowledge qua the dismissal of the earlier suit, in default, was acquired much belatedly by the subsequently elected *Pardhan* of the panchayat concerned, and, further that within the relevant period of limitation, to be computed from the date of acquisition of apposite knowledge, rather the subsequent extant petition became hence well constituted. Thus, for want of protests, at the inception of institution of the subsequent suit, by the respondents petitioners herein, not only with respect to it being barred by limitation, but also in respect of their being no sufficient cause for the earlier *pardhan* omitting to record his personal appearance, on the relevant day before the Collector concerned, results in an inference, qua rather all objections (*supra*), but becoming deemed to then become abandoned besides waived, by the petitioners herein. Thus, even to the above extent no objections can now be raised before this Court.

ANALYSES OF THE PROVISIONS OF SECTION 2 (g) (5) (vi) OF 'THE ACT'

11. The above extracted provisions carried in 'the Act', may tentatively ensure the making of a conclusion, that the petitioners, had raised a house outside the relevant *Abadi Deh*, besides also may make this Court to tentatively assume that the said house(s), as, raised by the petitioners was/were *prima facie* statutorily saved from vestment in the panchayat concerned. However, yet there was an imperative statutory requirement qua firm documentary evidence, becoming adduced by the writ petitioners, in display, that the relevant house(s) was/were raised immediately before the commencement of the Act, inasmuch as, prior

any cogent documentary evidence, suggestive of the above statutory condition becoming completely satiated. Contrarily, they adduced only oral evidence which cannot be construed to be best suitable evidence, to conclude that the house(s) concerned, was/were as required by law rather raised “immediately before the commencement of the Act.”

FINAL ORDER

12. In view of the above, this Court does not accept any of the above submissions as raised before this Court by the learned counsel for the petitioners. Contrarily, this Court is of the firm view, that the concurrent orders as made by both the statutory authorities are well merited, and, do not require any interference being made.

13. In consequence, this Court does not find any merit in the writ petition and the same is dismissed. The impugned orders are maintained and affirmed.

14. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

27.09.2022

kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No