

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

CWP-755-2021

Reserved on: 25.04.2023

Pronounced on: 02.05.2023

Mewa Singh

.....Petitioner

Versus

Divisional Commissioner, Hisar Circle, Hisar & Ors.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. P.K.Mutneja, Senior Advocate with
Mr. Brijesh Kumar, Advocate
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Sandeep Thakan, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J.

Factual Background.

1. The Gram Panchayat Rajthal, instituted on 25.03.2013, a petition under Section 7(1)(2) of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter for short called as 'the PVCL Act'. In the said petition, one Mewa Singh was impleaded as the respondent-defendant. In the above petition, the petitioner-Gram Panchayat Rajthal, claimed that the respondent therein had made an encroachment, upon, the *Gair Mumkin Gali*. Therefore, it was prayed that the said encroachment be ordered to be removed from the *Gair Mumkin Gali*.

2. The learned Collector concerned, through a decision made thereons on 10.12.2015 (Annexure P-7), accepted the said petition. The

above decision (Annexure P-7), resulted in the aggrieved therefrom instituting thereagainst an appeal before the competent Appellate Authority concerned. However, the competent Appellate Authority concerned, through a decision made on 30.07.2019, upon, appeal No.159-EA/2015/16 (Annexure P-9), declined the espoused relief to the appellant. Thus, affirmed the verdict, as became previously drawn by the learned Collector concerned (Annexure P-7).

3. Consequently, the aggrieved Mewa Singh preferred thereagainst a revision petition before the Revisional Authority concerned. However, through a decision made on 13.10.2020 (Annexure P-11), upon the revision petition concerned, the Revisional Authority concerned, also declined the espoused relief to the revisionist therein. The above concurrently made decisions (Annexures P-7, P-9 and P-11), has caused pain to the petitioner and has led him to institute thereagainst, the instant petition before this Court.

Reasons for accepting the petition.

4. The principal reason for accepting the petition, is grooved in the factum, that uncontestingly, in respect of the subject matter involved in the instant petition, the Gram Panchayat had earlier instituted, a petition under Section 7 of 'the PVCL Act', before the Assistant Collector concerned, thus resulting in the said eviction petition being dismissed through an order, as comprised in Annexure P-1. Though, the dismissal order, as made on the earlier petition, carrying therein a cause of action or subject matter or khasra numbers, but similar to the ones, as carried in the extant petition, is not sufficient, to attract to the extant petition, the estopping principle of constructive *res-*

predecessor in interest, became impleaded as a party.

5. Be that as it may, the earlier petition instituted by the Gram Panchayat Rajthal, against the respondents therein, resulted in as revealed by Annexure P-1, a dismissal order being made on the said petition. Moreover, one of the respondents, who became impleaded therein was the predecessor in interest, of the present petitioner, inasmuch as, one Ajit Singh. Therefore, when in the earlier petition, whereons a dismissal order Annexure P-1, was made, thereins related to reliefs or causes of action, besides khasra numbers, but similar to the ones, as carried in the extant petition. Therefore, when the apposite decision Annexure P-1, was also made thus, inter-se those parties, who are similar to the parties in the extant petition. Resultantly the subsequent motion, as laid before the statutory authorities concerned, which resulted in the drawing of the impugned orders, was necessarily barred by the estopping principle of *res-judicata*. If so, the effect of the above statutory bar of estoppel operating against the Gram Panchayat concerned, besides upon the authorities concerned, who drew the impugned annexures, is that, the impugned annexures, suffer from a vice of breach being caused to the principle of constructive *res-judicata*. The necessary sequel thereof, is that, when the holistic principle underlining the said principle, as becomes statutorily engrafted in Section 11 of the CPC, provisions whereof are extracted hereinafter, is to curtail, the menace of multiplicity of proceedings, or recurrence of proceedings, despite conclusive and binding decisions, being earlier made inter-se parties, cause(s) of action or relief(s) or over the subject matters, which are similar to the subsequent petition. Thus,

the impugned annexures are stained, and, on the above score, they are, thus, declared to be so.

“11. Res-judicata. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

Final Order

6. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed. The impugned orders are quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

02.05.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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