

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

CWP-18777-1995 (O&M)

Reserved on: 03.10.2023

Date of Decision : October 07, 2023

CHANAN RAM (SINCE DECEASED) THROUGH HIS LR AND ANR.

...Petitioners

V/S

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present : Mr. Vikas Singh, Advocate
for petitioner No.1.

Mr. Rahul Sharma, Advocate
for petitioner No.2

Mr. Maninder Singh, DAG, Punjab

Mr. N.P.S. Mann, Advocate
for respondents No.3 to 21.

SURESHWAR THAKUR, J. (ORAL)

1. In the instant writ petition a challenge has been thrown to Annexure P-3. Annexure P-3 has been drawn on a petition constituted, under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”). In the said petition a challenge was made to the drawing of the consolidation scheme by the Consolidation Officer concerned. The said challenge became rested upon the factum, that the predecessors-in-interest of the petitioners though in the revenue records drawn prior to 1950, thus in the column of

Haqiat existed, but in the column of cultivation, rather an entry of *Maqbuja Malkan* became entered. Therefore, it was contended that the cultivators concerned, who are claimed to be the predecessor-in-interest of the petitioner, rather held independent cultivating possession of the suit lands, thereby they were well entitled to in terms of Section 2(g)(viii) of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”), thus receive the beneficial grace of the apposite savings clause, as becomes cast in Section 2(g)(viii) of the Act of 1961, provisions whereof becomes extracted hereinafter.

“2(g)(viii) was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or”

2. In other words, it was contended that the distribution of the suit lands, as made vis-a-vis the Gram Panchayat concerned, rather in the consolidation scheme, thus was legally vitiated or was flawed.

3. Resultantly, a prayer was made, that the consolidation scheme, as became drawn by the Consolidation Officer concerned, be quashed, and, set aside, and, the suit lands be allotted vis-a-vis the petitioners in the petition bearing No.34/1995.

4. The Authority before whom the said lis became presented, through a decision made thereons, on 16.10.1995, after accepting the above raised plea rather nullified the mutation of ownership, as became attested vis-a-vis the Gram Panchayat concerned, and, remanded the lis to the Consolidation Officer, Mohali, with a direction to redistribute the land of Khewat No.199, Khatoni No.342 to 378 of Jamabandi for the year 1991-92, to the right holders as per their shares as per the entries of Bajaw-Ul-Urj.

However, 10 acres of land were directed to be left for common purposes, as

it had been so prayed, by Chanan Ram and Mewa Ram and other 130 persons of the village.

5. The above made verdict is challenged on the ground, that the jurisdiction which became exercised by the author of impugned Annexure P-3 rather was unlawfully exercised or became arbitrarily exercised. The above plea is rested on the ground, that the impugned order may have been drawn but only if the respondent concerned, had subjected the *Mohal* concerned, to consolidation operations.

6. The above plea is supported by Annexure P-4, wherein, an echoing is carried, that no consolidation became effected in the *Mohal* concerned.

7. Though *prima-facie*, thus on the anvil of Annexure P-4, the above made argument (*supra*), becomes well rested. The reason becoming comprised in the trite factum, that unless a lawful consolidation scheme, was prepared yet only when prior thereto, thus the consolidation operations became lawfully launched in the *Mohal* concerned, thereupon the Authority contemplated under Section 42 of the Act of 1948, may not become ably vested with the jurisdiction to decide the *lis* (*supra*). Primarily for the reason, that since a challenge, to the preparations of the consolidation scheme, was made whereby allotments of lands were made to the Gram Panchayat concerned, rather than to the petitioners in the *lis* (*supra*), who claimed assertion of title thereons, thus on the above premise. Therefore, the undertakings of lawful consolidation operations in the *Mohal* concerned, was but imperative. However, if no lawful consolidation operations became undertaken in the *Mohal* concerned, nor when any lawful consolidation scheme became prepared, thus there was no leverage, either in the petitioners or in the Authority concerned, who made the impugned order, to

enter into the domain vis-a-vis the legality of distribution of lands, thus respectively to the Gram Panchayat concerned, and/or, to the proprietors concerned, nor thereby the consolidation scheme rather was required to be declared to be null and void nor an order was required to be made, as has been made in terms (supra).

8. The contesting respondents in theirs attempting to validate the impugned order, relied upon a verdict drawn by this Court, upon, CWP-18252-1995, wherein, in the operative portion thereof, operative part whereof becomes extracted hereinafter, this Court upheld the order making redistribution of lands vis-a-vis the estate holders concerned.

“The impugned order of the Additional Director Annexure P-3 has been gone through by us. The land vests in the proprietary body, and, therefore, the same has rightly been ordered to be re-partitioned amongst right holders of the village. The relevant case law has been noticed by the Additional Director in the impugned order which is well reasoned. We have gone through the findings recorded by the Additional Director and are in agreement with the same. Dismissed in limine.”

9. Learned counsel for the petitioners, therefore, argues that since the disputed lands in the writ petition (supra), also fall in the *mohal(s)*, thus similar to the instant writ petition, and, wherein a challenge alike the one, as made by the petitioner(s) herein, also rather become raised. Therefore, a contention is raised, that the above extracted verdict, as made on petition (supra), by this Court, on 14.02.1995, does estop the present petitioners to, on the above premise, thus cast a challenge before this Court, to the impugned order, thus on the premise, that it is vitiated, with a vice of want of jurisdiction in the author of Annexure P-3, inasmuch as, his making the

impugned order, despite no lawful consolidation operations becoming launched in the *Mohal* concerned.

10. Conspicuously, the *res controvesia* thus engaging the contesting litigants, is whether there is any aura of truth in Annexure P-4. In determining the veracity of Annexure P-4, this Court had through an order drawn on 12.04.2023, made a direction upon the learned State counsel, to disclose, on an affidavit to be sworn by a responsible functionary of the department concerned, the *trite factum*, whether ever in the *Mohal* concerned, any consolidation operation, did take place. In compliance to the above made order, an affidavit has been filed by the Sub Divisional Magistrate, Khanna, District Ludhiana, within whose jurisdiction the disputed lands exist. A reading of the said affidavit discloses, that in the *Mohal*/revenue estate of village Khatra, Tehsil Khanna, District Ludhiana, rather no consolidation proceedings ever taking place.

11. The effect of the above, is that, the argument *qua* the conclusivity and binding effect of the order (*supra*), as became made by this Court, on 14.02.1995 in the writ petition (*supra*), does thereby rather requires becoming discountenanced by this Court.

12. The reason for making the above conclusion, becomes garnered from the *factum*, that the veracity of Annexure P-4, with candid echoings therein, that no consolidation operations, ever becoming lawfully launched in the *Mohal* concerned, but with fullest corroboration, does also become echoed in the affidavit sworn by the SDM concerned. Therefore, when no lawful consolidation operations, ever became launched in the *Mohal* concerned, thus it appears that the earlier made verdict (*supra*), by this Court on the writ petition (*supra*), though it pertains to a *Mohal* similar to the one, as in the case at hand, rather does not carry any efficacious binding,

clinging or conclusive effect, nor it operates as an estoppel against the petitioners to yet challenge the impugned order, thus on premise (supra).

13. The reason becomes grooved in the factum, that since this Court has been enable to unearth, from the official respondents concerned, thus material suggestive, that no consolidation operations ever became launched in the *Mohal* concerned, thereby it appears that this Court, in the earlier writ petition, rather not becoming purveyed the apposite information (supra). Contrarily, it appears, that the apposite information (supra), became suppressed and withheld from this Court, at the instance of the litigants concerned. More especially at the instance of the proprietors concerned, besides also it appears that all the litigants concerned, were either intentionally or naively unaware of the trite factum (supra). Therefore, the earlier withholdings of the above information (supra), from this Court vis-a-vis at the instance of the litigants concerned, does thereby tantamount to the litigants concerned, procuring the verdict (supra), through theirs practicing the vices of *suggestio falsi and suppressio veri*, upon this Court. The effect of the above ill-practices being earlier made upon this Court, thus has resulted in the litigants concerned, ill-ensuring a favourable verdict becoming recorded in their favour.

14. Consequently, the judgment made by this Court, on 14.02.1995 upon writ petition (supra), does become vitiated by the vice of fraud. Resultantly, thereby the judgment (supra), as became made by this Court, becomes non-est. Consequently, the reliance as made upon the judgment (supra), is a misplaced reliance thereons.

15. The Hon'ble Apex Court in a judgment rendered in case **Civil Appeals Nos.5097-99 of 2004**, titled as "**A.V. Papayya Sastry and others V. Govt. of A.P. and others**" reported in **(2007) 4 Supreme Court Cases 221**,

has while dwelling upon the vitiatory ill-effects of decrees or judgments becoming obtained by fraud, thus has concluded, that the ill-effects of verdict(s) becoming obtained by fraud, extend qua also theirs suffering from nullification, but irrespective of theirs being made in rem or in personam. Moreover, when it has also been underlined in placentum (g), the relevant placentum whereof becomes extracted hereinafter, that a challenge rested upon premise (supra), is amenable to be raised at any time in any judicial proceedings. Therefore, though no apposite challenge is made in the writ petition (supra), yet since the above vitiatory trite factum, rather has emerged before this Court, on its making elicitation from the respondents concerned, vis-a-vis the trite factum of lawful launchings of consolidation operations in the *Mohal* concerned. Moreover, when the consequence thereof, is that, the earlier made verdict become stained with the gross and pervasive vice, vis-a-vis, the same becoming obtained through practicings vis-a-vis this Court rather by the litigants concerned, thus, the ill vices of *suggestio falsi and suppressio veri*. Therefore, the effect thereof, is that, the verdict (supra), as become made by this Court, is non-est nor also it has any binding and conclusive effect.

“g. Fraud – Meaning – Vitiates all judicial acts whether in rem or in personam – Judgment, decree or order obtained by fraud has to be treated as non est and nullity, whether by court of first instance or by the final court – It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings – This is an exception of Art. 141 of the Constitution and doctrine of merger – Constitution of India, Art. 141”

16. The result of the above, is that, there is merit in the instant petition, and, the same is allowed. Impugned annexure P-3 is quashed, and, set aside. However, liberty is reserved to the respondents concerned, to file a

declaratory suit before the appropriate Statutory Forum or before the Civil

Court concerned, seeking therein a declaratory relief qua theirs becoming declared, as lawful owners of the suit lands.

17. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

07.10.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

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