

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

CWP-19130-2007

Reserved on: 24.01.2023

Date of decision: 03.02.2023

KASHMIR SINGH AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present: Mr. S.D. Sharma, Sr. Advocate assisted by
Ms. Sakshi Verma, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Munish Jolly, Advocate
for the respondent-Gram Panchayat.

SURESHWAR THAKUR, J.

CM-19525-CWP-2018 IN CM-4163-CWP-2016

The instant application has been filed under Section 151 of CPC for hearing of CM-4163-CWP-2016, and, to allow the applicant-Gram Panchayat to utilize the auction amount or any part of auction amount.

The instant application is allowed, and, the applicant-Gram Panchayat, is ordered to utilize the auction amount, but only in accordance with law.

CWP-19130-2007

1. The petitioners instituted a petition under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the “Act of 1961). In the said petition the petitioners claimed a declaratory decree that they be pronounced as owners in possession of the suit lands measuring

about 202 acres. The learned Collector concerned, through an order made thereon i.e. on 27.01.2005 accepted the petition (supra), and, declared the petitioners to be owners in possession of the suit lands. The reason which prevailed, upon the learned Collector to make the declaratory verdict became rested, upon the factum that since the revenue entry appertaining to the petition lands describes them to be *Jumla Mushtarka Khewat*. Therefore, with the petitioners rather in proportion to their other lands in the Mohal concerned, hence held evident cultivating possession of the petition lands. Thus any reservation from such lands, and/or, any deduction from such lands, in the finalized Consolidation Scheme *qua* the panchayat concerned, was grossly impermissible. Resultantly, it became concluded that the petitioners were entitled to the declaratory verdict.

REASONS ASSIGNED BY THE LEARNED APPELLATE COURT FOR DISMISSING THE PETITIONERS' TITLE SUIT

2. The aggrieved therefrom Gram Panchayat, instituted an appeal bearing No.208 of 2005 before the learned Commissioner. The above appeal became decided on 17.10.2007. The learned Appellate Court after scrutinizing the revenue records, came to a conclusion, that the revenue entries revealed, that the petitioners were cultivating the petition lands, as *najaij kabaz* or as unauthorized cultivators, and/or, on payment of chakota to the Gram Panchayat. Therefore, a further conclusion became drawn, that since the above lands, were respectively, put to unauthorized cultivation, and/or, were assigned on lease to the petitioners, despite, such lands becoming reserved for the entire village proprietary body, hence in the finalized consolidation operations, therefore, the petitioners ,were not entitled to claim the declaratory decree.

3. The learned Commissioner also while making the above decision, on the appeal (supra), had placed reliance upon the conclusive and binding

verdicts, as became recorded by this Court in CWP-18897-1997, decided on 06.05.1999, titled '**Gram Panchayat and others V. Additional Director Consolidation and others**' wherein a successful challenge was cast at the instance of the petitioners therein with respect to the order drawn by the Officer, exercising jurisdiction, under, The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "Act of 1948), whereby after a gap of 40 years rather occurring since the happening of the finalized Consolidation Scheme, yet the Competent Authority, accepting the motion as become(s) cast before him, by the petitioners hence for the redistribution or repartitioning to them, of the lands which became assigned, to the Gram Panchayat concerned. The above verdict was as revealed by SLP (Civil No.12132-1999) hence unsuccessfully challenged before the Hon'ble Apex Court.

4. The petitioners became aggrieved from the orders drawn in appeal No.208 of 2005, and, become led to institute thereagainst, the instant petition before this Court.

5. Though, the conclusions as became drawn by the learned Appellate Court qua the making(s) unauthorized cultivation of the suit lands, and/or, qua the making(s) cultivations thereof, as *chakotedars*, do not require any interference, as they become well rested, upon a sound appraisal of the documentary evidence.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

6. However, the learned counsel for the petitioners contends, that since the petitioners were entered in the revenue records as *Jumla Mushtarka Malkan*, therefore, when the above entry but saved the lands related to such entries from their vestment in the *Panchayat Deh*. Therefore, he contends that

the said question was not to be decided in a petition under Section 42(a) of the Act of 1948, but was to be decided in an declaratory suit being filed under Section 11 of the Act of 1961.

7. The learned counsel in making the above submission has rested them, upon the judgment of this Court rendered in case titled as '**Parkash Singh and others Vs. Joint Development Commissioner, Punjab and others**' to which Civil Writ Petition No.2318-2002 was assigned, wherein a complete bar becomes foisted upon the Authorities concerned, constituted under the Act of 1948, hence to decide a question of title.

8. The learned counsel for the petitioners further submits, that even if conclusive, and, binding judgments became earlier rendered in respect of the lis, at hand, but yet the said judgments do not attract thereon, the doctrine of *res judicata*, as in para 96 of the judgment (supra), para whereof stands extracted hereinafter, an injunction becomes cast, upon, the Competent Authority exercising jurisdiction under the Act of 1948, rather disabling it, to determine the question of title appertaining to the suit lands, hence carrying the above description, especially *qua* such lands purportedly vesting in the *Panchayat Deh*, and/or, such lands vesting in the petitioners.

“96. In view of the nature of the doctrine of merger and the precedents referred to by us, we have no hesitation in holding that where a tribunal/Court of limited jurisdiction, adjudicates upon a matter that does not fall to its jurisdictional competence, such an order, even if affirmed by dismissal of the writ petition or a special leave petition, shall not operate as res judicata or prohibit the jurisdictional forum from deciding questions that fall to the latter's jurisdictional competence. This apart, if an order is affirmed, by dismissal of a writ petition and the special leave petition but neither the order passed in writ jurisdiction nor in leave to appeal, assigns any reasons, such the order shall not be deemed to have

merged in the order passed by the High Court or the Supreme Court, so as to prohibit the jurisdictional forum from entertaining a petition on a question of title and the said forum would not be prohibited from deciding the matter on merits.”

9. Therefore, given the verdict as made by the Competent Authority under the Act of 1948 when obviously became rendered, for wants of jurisdictional competence in it, to decide the question of title in the suit lands rather vesting in the petitioners or lawfully vesting in the *Panchayat Deh*. As such, with the above vice gripping the earlier drawn conclusive verdicts, by the Competent Authority, rather not attracting thereons the principle of *res judicata* to the instant extant lis nor the final, and, binding verdicts recorded, upon the earlier motion(s), which traveled upto the Hon'ble Apex Court, rather estopping the petitioners from instituting the instant writ petition.

10. That in view of the principles enshrined in para 97 of the verdict (supra), para whereof stands extracted hereinafter, besides when the Hon'ble Apex Court in judgment (supra), has made an expostulation of law, that when any judgment is acquired through practicing the vices of *suppresio veri or suggestio falsi*, thereupon the said judgment does not attract thereons, the principle either of merger nor of estoppel, as, arising from the principle of constructive *res judicata*. Therefore, he submits that the instant petition, is maintainable before this Court, irrespective of binding and conclusive verdicts being made in an earlier lis, rather purportedly containing therein a similar hereto cause of action, and, also containing khasra numbers, similar to the ones in the instant writ petition, besides it being *inter-partes* the litigants which are similar in the instant petition.

“97. We, therefore, answer the second and third questions, in the following terms:-

- (i) The State or its delegate, exercising power under [Section 42](#) and authorities under the Consolidation Act are tribunals of limited jurisdiction.*
- (ii) Consolidation authorities have no power to decide disputed questions of title in respect of lands, or any right, title or interest therein.*
- (iii) The State or its delegate, may in the exercise of power under [Section 42](#) of the Consolidation Act order correction of errors, in accordance with law;*
- (iv) While exercising powers under [Section 42](#) of the Consolidation Act, if it is held that the land, in dispute, vests or does not vest in a Gram Panchayat such an order would be construed to be an opinion recorded by a Tribunal of limited jurisdiction and an order so passed would not operate as res judicata to be binding upon parties or the Collector, exercising power under [Section 11](#) of the 1961 Act, or the jurisdictional forum, constituted for deciding a question of title.*
- (v) If a writ petition or special leave petition filed to challenge an order passed under [Section 42](#) of the Consolidation Act is dismissed without assigning any reason, by use of the words "dismissed", "no merits, dismissed" or such like similar expressions, the order passed under [Section 42](#) of the Consolidation Act shall not merge in the order passed by the High Court or the Hon'ble Supreme Court, so as to operate as res-judicata or prohibit the Gram Panchayat from approaching the jurisdictional forum, or.*
- (vi) If an order passed under [Section 42](#) of the Consolidation Act has not been challenged in a writ petition or before the Hon'ble Supreme Court, such order shall be ignored, by the Collector exercising power under [Section 11](#) of the 1961 Act, as [Section 13-B](#) clearly postulates that notwithstanding anything to the contrary in any law or any agreement, instruments, custom or usage or any decree or order of any court or other authority, the provisions of the 1961 Act shall prevail.*

(vii) If, however, the order passed by the Director Consolidation has been affirmed, by the High Court or in a special leave petition or an appeal before the Hon'ble Supreme Court on merits, the order passed by the Director Consolidation shall be deemed to have merged in orders passed under Articles 226 and 136 of the Constitution of India and would, therefore, on the basis of the doctrine of rule estoppel, merger and the order of precedence among courts, prohibit the Gram Panchayat from filing a petition under [Section 11](#) of the 1961 Act, the Collector from entertaining such a petition, or where the land is "Jumla Mushtarka Malkan" the Civil Court."

REASON FOR REJECTING THE ABOVE SUBMISSION

11. Though the learned counsel appearing for the petitioners, submits that the Competent Authority, exercising jurisdiction under the Act of 1948, lacked the afore jurisdictional competence to make a decision, upon the earlier motion as laid before it. Therefore, though he argues that the conclusive decision made thereon, does not attract to the instant lis, the estopping principle, as, engrafted within the rule of constructive *res judicata*. However, the above submission is extremely weak, and, is not accepted.

12. The reason for not accepting the above argument, is squarely grooved in the factum, that it was the petitioners who cast the above motion before the Authority concerned, and, it was thereafter only that this Court in CWP-18897-1997, as became instituted before this Court, by the Gram Panchayat concerned, had through a detailed reasoned order, set aside the judgment made in favour of the petitioners. Since the decision recorded by this Court, on 06.05.1999, upon CWP-18897-1997, is a detailed and speaking order, and when a reading of the order drawn by the Hon'ble Apex Court, on 01.10.1999, does reveal, that after hearing the learned counsels concerned, the Hon'ble Apex Court was led to affirm the order, as, made by this Court. Thus, it

has to be concluded, that both this Court as well as the Hon'ble Apex Court, had not summarily decided the respective writ petition or of the SLP rather had made a keen application of mind to the motions, as became laid before them. Resultantly, when within the ambit of clause 5 of hereinabove extracted parameters, as carried in para 97 of judgment (supra), the earlier decisions were made on merits of the lis, and/or, were not made summarily through non-speaking order. Thus, the earlier made verdicts acquire binding, and, conclusive effect, and, are not amenable for being challenged, in a subsequent petition. Moreover, since the access to the jurisdiction of the Statutory Authority concerned, was made by the petitioners, and, who also became recipients of a favourable order therefrom, thus at this stage, when a pronouncement adversarial to them, became pronounced by this Court, on 06.05.1999, and, also a verdict adversarial to the petitioners became pronounced by the Hon'ble Apex Court, while deciding SLP (Civil No.12132-1999). As but a natural corollary, the principle enshrined in para 96, thus yet does not relieve, the bar of *res judicata* operating against the subsequent drawing(s) of a similar motion, at the instance of the petitioners, before the learned Collector concerned, especially when reliefs or causes of action similar to the one as carried in the earlier motion were carried in the subsequent motion besides, when there is an identity of parties in the earlier lis rather with the ones in the instant writ petition.

13. The learned counsel appearing for the petitioners, has yet made a submission before this Court, that since the description of the petition lands, in the revenue records, is *Jumla Mushtarka Malkan*, and, yet such lands became reserved in the finalized Consolidation Scheme rather for the benefit of the village proprietary body. Therefore, the writ lands were not to be reserved in favour of the panchayat concerned, nor any post consolidation entry of *Jumla*

Mushtarka Malkan was required to be made. However, the above argument is also rejected.

REASONS FOR REJECTING THE ABOVE SUBMISSION

14. The reason for rejecting even the above reason stems, from the factum that initially pleadings were to be made, and, evidence was to be adduced qua the reservation of lands by the consolidation authorities, rather for the benefit of the panchayat concerned, were not validly made, as no correct measurements or demarcations of the lands, was made, hence for ably facilitating the land owners concerned, to validly retain their lawfully owned lands, and/or, to facilitate the lands, being reserved for the panchayat. The said proven incorrect demarcations, or measurements, would emerge especially from the field books maintained with the consolidation staff, and, may lead to the ill fate of lands, yet falling within the lawful land holdings limits of the cultivators yet theirs being untenably reserved for the benefit of the panchayat, and, thereafter an entry of *Makbuja Malkan* being made. In case such valid demarcations or measurements were made, and, subsequently it was detected, that within the realm of the lawful title vesting in the land owners concerned, the land holders were holding cultivation of the lands, thereupon the land owners would become entitled to retain lawful possession thereof, and/or when the measurements or demarcations of the lands, as made by the consolidation staff, revealed that lands in excess of the lawful entitlement of the land owners concerned, rather were in their respective cultivating possessions, thereupon the consolidation officer, could well reserve in the finalized consolidation scheme, lands for the benefit of the village proprietary body, and, could also well assign thereto an entry of *Jumla Mushtarka Malkan*. If in the finalized consolidation scheme, land excess to the lawful holdings of the cultivators concerned, is

snatched or is reserved for the benefit of the entire village proprietary body, thereupon even if it is, in the post consolidation era rather assigned in the revenue records, the description of *Jumla Mushtarka Malkan* yet such an entry would be amenable to a construction, that it is *Shamlat Deh* land, and, that it vest in the *Panchayat Deh*, and, on such land(s), the land owners hold no unlawful right, title and interest. However, the above factum was neither pleaded nor consequent thereof best evidence (supra) emerged. Therefore, the finalized Consolidation Scheme was not amenable for being reopened after 40 years. Emphatically also when the petitioners are recorded as *Kabja Najaij* in respect of the lands concerned, or are entered as lessees in respect of the lands. Therefore, also they cannot claim any lawful title vesting in them in the petition lands.

15. The learned counsel for the petitioners, has yet argued that in view of the judgment (supra), expostulating that in case the earlier verdict is obtained through practicing vices of *suppresio veri or suggestio falsi*, thereupon the earlier made binding, and, conclusive verdicts, do loose their vigor, whereupon rather the subsequent motion cast under Section 11 of the Act of 1961, by the petitioners, before the learned Collector concerned, was an ably recoured remedy.

16. Even the above submission, does not appeal, to the judicial conscience of this Court, as there is no evidence on record suggestive, that the verdicts drawn by this Court, on 06.05.1999 upon CWP-18897-1997, and/or the verdict made by the Hon'ble Apex Court, hence rejecting the petitioners' claim that they were after an elapse of 40 years, since the finalization of the Consolidation Scheme, were entitled to the re-partitioning of the lands, and, rather concluding that rather such lands were tenably reserved for the benefit of

the entire village proprietary body, by the then Consolidation Authorities, conspicuously rather being obtained through the respondents practicing *suppresio veri or suggestio falsi* either before this Court or before the Hon'ble Apex Court.

17. Therefore, the learned counsel for the petitioners cannot argue, that expostulations of law as cast in appeal (supra), rather renders inapplicable to the extant lis, the principle of constructive *res judicata*, as reiteratedly the onus, as cast upon the petitioners to prove that the respondents herein, through their evidently *suppresio veri or suggestio falsi*, upon the Courts concerned, had succeeding rather in obtaining favourable verdicts from Courts of law, hence has remained completely undischarged.

18. Be that as it may, and, irrespective of the reason (supra), the reasons stands assigned by the learned Appellate Court to allow appeal No.208 of 2005, as became cast before him by the Gram Panchayat concerned, also are rested on a worthy, and, sound appraisal of the documentary evidence. The appraisal of the documentary evidence as made by the learned Appellate Authority concerned, cannot be construed to be unmeritworthy, as there is no evidence on record suggestive, that despite the petitioners leading cogent evidence, to rebut the efficacy of above revenue entries, yet the evidence rebutting the presumption of truth attached to the revenue entries, becoming completely ignored or becoming overlooked rather in an arbitrary, and, slipshod manner, and, without assigning any reasons.

19. Therefore, it cannot be said that the documentary evidence as became adduced, and, also became aptly appraised by the learned Collector concerned, was ridden with any pervaisive fraudulence nor can it be said that the appraisal as made thereof, by the Statutory Authority rather was unmeritworthy.

SUMMARIZATION OF PRINCIPLES

- I. In case the petitioners approach the Statutory Authority under the Act, to make re-opening of the consolidation scheme, and, such an endeavour is rejected to upto the Hon'ble Apex Court. Therefore, a detailed reasoned decision, as, made in earlier motion in respect of a cause of action or relief or between parties which are similar in the subsequent motion, does attract, to the subsequent motion the principle of constructive *res judicata*.
- II. In proceedings drawn under the Act of 1948, and, when relate to a challenge to the legality of the consolidation operations, and, the said challenge is earlier conclusively and finally decided, thereupon, the subsequent motion impinging upon a similar challenge, is to be dismissed, as the decision on the earlier challenge, does acquire binding, and, conclusive effect, and, also makes the subsequent challenge to become estopped by the rule of *res judicata*.
- III. The litigant(s) who press that the earlier verdicts (supra) are obtained by the litigants concerned, through theirs practicing the vices of *suppresio veri or suggestio falsi*, is to adduce evidence, in respect of the above, and, in case the said evidence in respect of the adversarial litigant(s) hence practicing such vices, hence becomes not adduced. Thus, the mere raising of the above argument, by the litigants concerned, is completely unworthy, and, is to be rejected. Resultantly, the earlier made verdicts on similar causes of action, between similar parties, and, with similar reliefs, to the ones reared in the subsequent lis, do work

as an estoppel against the drawing of a subsequent similar motion before the Courts of law.

20. Thus, this Court finds no merit in the writ petition, and, the same is dismissed. The order pronounced against the petitioners by the learned Appellate Authority in Appeal No.208 of 2005, is maintained, and, affirmed.

(SURESHWAR THAKUR)
JUDGE

3.02.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

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