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

CWP-13468-2023

Date of decision:01.08.2023

RAMPHAL MALIK

...Petitioner

Versus

**THE DIVISIONAL COMMISSIONER, ROHTAK DIVISION, ROHTAK
AND OTHERS**

...Respondents

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

Present: Ms. Sony, Advocate for
Mr. Rajeev Sharma, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. An application under Section 42 of the Haryana Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”), became preferred before the Assistant Director, C/H, Haryana Rohtak exercising the powers under Section 42 of the Act of 1948. The claim made in the said application was allowed through an order being made thereon in the year 1968.

2. Apparently, the said order has remained unchallenged, and, thereby it acquires conclusive, and, binding effect. Nonetheless, subsequently given the incorporation of Section 43-A in the Act of 1948 through Haryana Adoption of Laws Order 1968, rather the said decision was asked to be reopened, and/or, was strived to be reviewed. However, the motion (supra), as laid before the

Commissioner, Rohtak Division, Rohtak, resulted in a dismissal order being made thereon. The reason for the making of said dismissal order, became rested, on the factum, that there was some bonafide error in the relevant allotment as became made through an order (supra), as was passed in the year 1968.

3. The above assigned reason by the Commissioner, Rohtak Division Rohtak in drawing the impugned order, inasmuch as, there being no vested jurisdiction in him for reviewing the order passed in the year 1968, rather both is a well informed reason, besides a validly made decision.

4. Even if some clerical mistake or typographical mistake, as such occurred in the order recorded in the year 1968, thereby the jurisdiction to cause rectification or corrections of such typographical mistakes or clerical mistakes, thus became vested only in the Authority who made the order in the year 1968, and, was not exercisable as such, and, that too belatedly before the Commissioner, Rohtak Division, Rohtak, who passed the impugned order, and, who for the above sound reason, thus declined relief to the present petitioner.

5. Be that as it may, it appears though a purported clerical mistake or typographical mistake, may purportedly occur in the order drawn in the year 1968, but the said projection appears to be merely a camouflage to somehow derive the benefit of Section 43-A of the Act of 1948, as became incorporated through Haryana Adoption of Laws Order 1968.

6. The above colourable tactic(s), as, deployed by the petitioner, to take benefit of the above provision, does not warrant any acceptance by this Court, as aptly done by the Commissioner concerned, while making the impugned order. The reason being that, since at the time of the drawing of the decision in the year 1968, rather the said incorporated statutory provision thus was in force. Resultantly, the petitioner was required to plead the facts in tandem with the statutory ingredients, as incorporated in Section 43-A of the act of 1948,

whereas, apparently, he did not choose to make pleadings, in consonance with the statutory ingredients, as embodied in Section 43-A of the act of 1948. The omission (supra) on the part of the petitioner, to do so, causes the ill-consequence, qua thus in terms of Order II Rule 2 of the CPC, rather the petitioner becoming estopped to raise a plea, but planked upon Section 43-A of the Act of 1948. In other words, since all the statutory ingredients, as carried in Section 43-A of the Act of 1948, provisions whereof were in force at the time when the lis came up for adjudication, before the Authority concerned, were thus required to be pleaded in the relevant motion, and, since they remained unpleaded. Therefore, much belatedly therefrom any attempt, to raise pleadings in respect of the statutory ingredients carried in Section 43-A of the Act of 1948, is but barred by the principle of estoppel, as becomes engrafted in Order II Rule 2 of CPC, provisions whereof are extracted hereinafter.

“ORDER II

1. xxx

2. ***Suit to include the whole claim.***—(1) *Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.*

(2) ***Relinquishment of part of claim.***—*Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

(3) ***Omission to sue for one of several reliefs.***—*A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”*

7. In summa, this Court finds no merit in the instant petition, and, is constrained to dismiss the same. Hence, the petition is dismissed. The impugned order is maintained, and, affirmed.

(SURESHWAR THAKUR)
JUDGE

01.08.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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