

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

(I)

CWP-23783-2015

Reserved on: 30.01.2023

Date of decision: 10.02.2023

**BAHADUR SINGH (DECEASED) THROUGH HIS LRs**

...Petitioner

Versus

**DIRECTOR RURAL DEVELOPMENT & PANCHAYAT DEPARTMENT,  
PUNJAB AND OTHERS**

...Respondents

(II)

CWP-22635-2017

**GRAM PANCHAYAT OF VILLAGE BAHAWANI KALAN**

...Petitioner

Versus

**DIRECTOR, RURAL DEVELOPMENT & PANCHAYAT AND OTHERS**

...Respondents

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

Present: Mr. Ish Puneet Singh, Advocate  
for the petitioner (in CWP-23783-2015)

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Baltej Singh Sidhu, Sr. Advocate assisted by  
Mr. S.S. Badal, Advocate  
for the petitioner in CWP-22635-2017 and  
for respondent No.3 in CWP-23783-2015.

Mr. Sandeep Khunger, Advocate with  
Mr. Saksham Khunger, Advocate  
for respondents No.13, 18 to 22 in CWP-22635-2015 and  
for respondents No.5 to 9, 12 and 14 to 16 in CWP-23783-2015.

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**SURESHWAR THAKUR, J.**

1. Since both the writ petitions arise from a common thereto orders respectively embodied in Annexure P-1, and, in P-3, therefore, both the writ petitions are amenable for being decided through a common verdict.

**FACTUAL BACKGROUND**

2. In the petition nomenclatured as case No.492/V.C. Cell, one Bahadur Singh instituted a petition under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”) before the learned Collector concerned. In the said petition instituted on behalf of the village proprietary body, it was averred, that in the consolidation operations, which became concluded in the *Mohal* concerned, rather the petition lands being reserved as *Bachat Lands*, hence for the benefit of the entire village proprietary body. The claimant averred that the attestation of mutation no.491, by the Assistant Collector Grade-II, in respect of the petition lands, but in favour of the proprietors concerned, hence was flawed. Moreover, it was also contended, that the consequent thereto drawn sale deeds, by the vendors/vendees concerned, in favour of the vendees concerned, were also flawed. The learned Collector concerned, through a decision made on 31.03.2011 upon, the apposite petition made a verdict of dismissal thereon. The verdict of dismissal was made on two premise(s): i) that the petition lands though became initially reserved in the earlier finalized consolidation scheme as *Bachat Lands*, hence for their common user by the village proprietary body concerned, but since in a subsequent petition instituted by the petitioners under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “Act of 1948”), rather the Additional Director Consolidation, after setting aside the earlier made reservation(s) of the petition lands vis-a-vis the Panchayat concerned, rather proceeding to conclusively order that, such reserved *Bachat Lands* comprised in Khewat No.126, as per jamabandi for the year 1990-91, be re-partitioned amongst the right holders. Therefore, no right, title or interest vested in the petition land in the Panchayat

concerned. The said order is comprised in Annexure P-1. Secondly on the premise, that since the aggrieved therefrom constituted thereagainst a writ petition bearing No.CWP-11669-1997, titled as '**Gram Panchayat Bawani Kalan V. The Additional Director, Consolidation of Holding, Punjab and others**' but since thereons the hereinafter extracted order became made.

“The order is well reasoned. No interference is called for.  
Dismissed in limine”

3. Therefore, since a reading of the hereinabove extracted order, makes it abundantly clear, that after application of mind to the writ petition (supra), this Court had declined to make any interference with Annexure P-1. Consequently, the learned Collector concerned, dismissed the petition cast under Section 11 of the Act of 1961. The further reason which prevailed upon, the Authorities concerned, to make a verdict of dismissal upon the said petition became grooved in the factum, that since the verdict drawn by this Court acquired a conclusive, and, binding effect, as it remained unchallenged before the Hon'ble Apex Court. Therefore, the subsequent petition, on the very same cause of action, as carried in the earlier petition, and, also between parties similar to the ones in the earlier petition, was barred by the principle of *res judicata*. The aggrieved therefrom preferred an appeal bearing No.445 of 2011 before the learned Appellate Authority concerned, but the said statutory appeal was dismissed, thus, the verdict drawn by the learned Collector concerned rather became affirmed.

4. The petitioner becomes aggrieved from the above concurrently made orders against him, and, is led to institute thereagainst the instant petition before this Court.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER**

5. The learned counsel for the petitioner, has contended with much vigor before this Court, that yet no finality and conclusivity, if any, is assignable to the verdict drawn by this Court on 13.08.1997 upon CWP-11669-1997, whereby this Court affirmed the order as made by the learned Collector concerned, and, as becomes embodied in Annexure P-1, whereby the earlier made order reserving the petition lands, for the benefit of the village proprietary body, was set aside, besides the said reserved lands were ordered to be re-partitioned amongst the petitioner, rather he argues that the earlier made decisions do not operate as an estoppel against the petitioner's successive motion, hence to discredit attestation of the mutation bearing No. 491. In making the above submission, he submits, that since in view of the law propounded in case 'Atma Ram V. State of Punjab, AIR 1959 SC 519', the question of title cannot be determined by the Authorities constituted under the Act of 1948. Therefore, the factum of valid title vesting respectively in the petitioner or in the Gram Panchayat, *qua* the petition lands, was yet open, to be decided by the Authorities below under the Act of 1961, than theirs proceeding to awaken the rule of *res judicata* against the subsequently cast petition, but on the premise, that the verdict drawn by this Court, on 13.08.1997 upon CWP-11669-1997 acquiring binding, and, conclusive effect.

**ANALYSIS OF THE ABOVE SUBMISSION AND REASONS FOR DISCERNMENT WITH THE ABOVE SUBMISSION**

6. It is not contested amongst the learned counsels appearing for the contesting litigants, that the challenged mutation bearing no.491, was recorded in pursuance, to the binding and conclusive verdict, as became drawn by this Court on 13.08.1997 upon CWP-11669-1997. Therefore, *prima-facie* the consequent thereto sale deeds as, became drawn by the vendors concerned, in

respect of their respective vendees, also *prima facie* cannot suffer any possible taint of theirs being void.

7. Though, it is settled in judgment rendered in Atma Ram's case (*supra*), that the Statutory Authorities constituted under the Act of 1948, cannot either permit the raisings of any question of title nor such question of title, can be determined, in a petition cast under Section 42 of the Act of 1948. However, since the question of title which is engaging the legal contestant, revolves around the impermissibility of attestation of mutation no.491, and, also devolves, upon the consequent thereto makings of registered deeds of conveyance by the vendors concerned, vis-a-vis their respective vendees. Therefore, when the said controversy, also is made dependent upon the factum, of an untenable reservation of lands being made, for the benefit of the village proprietary body, rather in the earlier finalized consolidation proceedings. Moreover, when a challenge was made in respect, of the above untenable reservation being made *qua* the *Bachat lands qua* the village proprietary body concerned, and, also when the said challenge succeeded through a binding and conclusive verdict being made thereons. Therefore, when the said controversy is completely and firmly clinched, and, also when the petitioner's claim, in the instant petition, is made dependent, upon the petition lands being yet rather reserved as *Bachat Lands* for the benefit of the village proprietary body, besides resultantly, when no further challenge is made to the revenue entries concerned, as became incorporated in pursuance to the conclusive and binding judgment (*supra*). As but a natural corollary the petitioners are estopped from casting a fresh motion in respect of the above controversy, especially when reiteratedly, it has been firmly and conclusively rested by this Court through a decision made on 13.08.1997 upon CWP-11669-1997.

8. May be in case the petitioners did evidently establish, that despite valid reservations, being evidently made in the finalized consolidation scheme, *qua* the village proprietary body, yet the Revenue Officer concerned, attested mutations but in breach of the finalized consolidation scheme, rather inaptly in favour of the vendors concerned. Thus obviously they could then well contend, that an evident breach happening *qua* the allotments made in the finalized consolidation scheme respectively to the land owners concerned, and, to the panchayat. However, the above is not the situation here. Contrarily the situation here, is that, the earlier made reservation of lands for the benefit was reserved, hence became set aside by this Court, through a conclusive and binding verdict drawn on 13.08.1997 upon CWP-11669-1997. Therefore, when the said verdict completely dislodges or unsettles the right, title or interest, if any, of the Panchayat Deh concerned, in the petition lands. Therefore, no raisable question of title inheres *qua* the petition lands, in favour of the Gram Panchayat concerned. Thus, there is no subsisting grievance yet remaining to be re-opened, in a subsequent proceeding, rather the earlier made lawful decision, on a controversy similar to the one in the instant petition, and, also in a lis engaging parties similar therein, and, herein, does but acquire the fullest conclusive and abiding effect. Necessarily, the earlier made lawful decision between the parties similar to the parties herein, and, also in respect of lands, which are common to both the litigations, did but completely clothe the subsequent motion with the interdicting rule of constructive *res judicata*.

### **SUMMARIZATION OF PRINCIPLES**

- I. It is settled, in judgment rendered in Atma Ram's case (*supra*),  
that the Statutory Authorities constituted under the Act of 1948,  
cannot either permit the raisings of any question of title nor such

question of title can be determined in a petition cast under Section 42 of the Act of 1948. However, if the petitioners in the earlier petition are similar to the parties in a subsequent petition, as also when the causes of action are similar in both the earlier and subsequent petitions, thereupon a lawful decision made on the earlier petition, does operate as an estoppel, against the litigants concerned, to re-open through a subsequent motion the earlier lawfully decided lis between similar parties, and, qua a cause of action similar to the one in the earlier lis.

II. The judgment in Atma Ram's case, barring the Statutory Authorities constituted under the Act of 1948, to determine the question of title, is not attracted, where the question appertains rather to the tenability of making reservations of lands to the panchayat, and, is firmly and conclusively lawfully determined, and, yet on the very same lines a petition is cast under Section 11 of the Act of 1961.

### **FINAL ORDER**

9. Thus, this Court finds no merit in the writ petitions, and, the same are dismissed. The orders impugned are maintained, and, affirmed.

**(SURESHWAR THAKUR)**  
**JUDGE**

**10.02.2023**

Ithlesh

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|------------------------------------|---------------|
| <b>Whether speaking/reasoned:-</b> | <b>Yes/No</b> |
| <b>Whether reportable:</b>         | <b>Yes/No</b> |

**(KULDEEP TIWARI)**  
**JUDGE**