

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

CWP-23133-2022

Reserved on:13.07.2023

Pronounced on: 19.07.2023

Sushil and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

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

Argued by: Mr. Avnish Mittal, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ajit Singh, Advocate
for Mr. Arun Sharma, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J.

Factual Background.

1. Through the instant petition, a challenge is laid to an order drawn on 25.01.2021 (Annexure P-8), as made by the Assistant Collector, First Grade, Gurugram, and, to the order drawn on 02.05.2022 (Annexure P-12), as made by the learned Collector, Gurugram, besides to the order made on 12.07.2022 (Annexure P-13), by the learned Commissioner, Gurugram, wherethroughs' the revisionists-petitioners herein, were ordered to be evicted from the petition lands.

2. The learned counsel appearing for the petitioners for unresting the above drawn orders, has planked his submission on the premise, that since in respect of a controversy, but similar to the one as embodied in the above annexures, a petition bearing No. 27/SDO became filed at the instance of Gram Panchayat Budhera on 26.09.1983, thus resulting in the drawing of Annexure P-2, whereby the Gram Panchayat's petition (supra) became dismissed. Therefore, he contends that the verdict (Annexure P-2), when has remained unassailed and unchallenged, thereby it acquires apt conclusive and binding effect. Resultantly he has argued, that the subsequently drawn similar thereto motions, at the instance of Gram Panchayat concerned, which resulted in the making of the impugned orders, thus became barred by the estopping principle of constructive res-judicata. Therefore, he contends that the impugned annexures are vitiated.

Inference of this Court.

3. The suit land property is comprised in Khasra No. 51 and in 52, and, it is admittedly located in *abadi deh*. Though, any *abadi* raised on *abadi deh*, is but admittedly saved from the inclusionary definition of *shamlat deh*. However, through insertion of clause (4a) in Section 2(g) of the Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter for short call 'the 1961 Act'), provisions whereof become extracted hereinafter, thus making any vacant land situated in an *abadi deh* or *gorah deh*, hence not owned by any person, to rather fall within the inclusionary definition of *shamlat deh*.

2(g) “***shamlat deh***” includes--

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) xxxxx

[(4a) vacant land situate in abadi deh or gorah deh not owned by any person;]

(5) xxxxx

4. If so, since at the time of institution of case No. 27/SDO before the Assistant Collector concerned, the insertion of the above provision, thus occurred, thereby making any open space in an *abadi deh*, to be included in the definition of *shamlat deh*, thereupon rather the Gram Panchayat concerned, became enjoined to prove that the disputed khasra Nos. 51 and 52 were open spaces, and thereons then an un-authorized construction had been raised by the predecessor in interest of the petitioners one Sudarshan. Consequently, then an order of eviction was to be made on the case (supra), by the Assistant Collector concerned. Moreover, in case the predecessor in interest of the petitioners one Sudarshan, who became impleaded as defendant-respondent in the said suit, was proven to be neither personally or through his alienor, rather since times immemorial or prior thereto, thus not holding any constructed *abadi* on the khasra number (supra), but admittedly located within the *abadi deh*. Resultantly thus also construction, if any, made on the khasra number (supra) in contemporaneity to the insertion in the year 1981 of clause (4 a) of Section 2 (g) in 'the 1961 Act', thereby also well enabled the Gram Panchayat concerned, to claim valid ownership thereof, besides also well enabled the Gram Panchayat concerned to obtain a decree of eviction against the predecessors in interest of the present petitioners, in the petition (supra), thus from the Assistant Collector concerned.

Subsequent suit barred by the principle of res-judicata.

5. Therefore, it is but necessary, that Annexure P-2 be read.

unfolds, that neither the above fact became proven nor obviously any evidence in terms thereof, thus became adduced before the learned Assistant Collector concerned. Therefore, the Assistant Collector concerned but obviously through a verdict embodied in Annexure P-2, dismissed the case (supra), as became instituted before him, by the Gram Panchayat concerned.

6. Now, it is to be determined whether the subsequent motion, as became constituted by the Gram Panchayat concerned, did carry a cause of action or a subject matter or relief, thus common to the one, as was carried in the earlier petition, thus whereons Annexure P-2 became passed, and or, was inter-se parties who were common thereto and also to the subsequent petition. A reading of Annexure P2, and, Annexure P-8 reveals, that the subject matter(s) echoed in Annexure P-2, and, in Annexure P-8, were but similar. Moreover, excepting the impleadment of one Sudarshan, who became impleaded as respondent, in the verdict embodied in Annexure P-2, the present petitioners became impleaded as respondents in Annexure P-8, who however are admittedly the successors in interest of one Sudarshan. Therefore, not only the causes of action besides reliefs but also the litigating parties are similar in both the earlier and in the subsequent motion(s), whereons, the impugned annexures became passed. Resultantly unless Annexure P-2, became set aside and quashed by the entire hierarchy of the statutory authorities, as contemplated in 'the Act of 1961', thereupto the order enclosed in Annexure P-2, thus acquired but conclusive and binding effect, and was not amenable for becoming re-opened nor was amenable for being decided afresh, as done, through the impugned annexures. Nonetheless,

principle of constructive res-judicata, thereby estopping the Gram Panchayat concerned, to draw subsequent motions, yet subsequent motions were permitted to be maintained, and also the impugned orders became made thereons, whereupon breach is caused to the principle of constructive res judicata.

7. Though there is a reference in the order drawn by the learned Commissioner concerned (Annexure P-13), about the espousal of plea of constructive res judicata by the petitioners herein. However, the said plea became rejected on the ground that Annexure P-2, was cryptically drawn, besides became rejected on the ground, that since the Assistant Collector concerned, proceeded to determine a purported question of title, despite it not being raised, thereby with Section 13A 'of the 1961 Act', making the hereinafter extracted contemplations, whereas, then the provisions as laid down in the Code of Civil Procedure, 1908 were invokable. However, since the said plea never became raised nor became determined, thereby the validity of stakings of title, to the purported open spaces in the *abadi deh*, could not be said to be earlier firmly clinched, through the making of Annexure P-2. Resultantly the principle of constructive res judicata as was strived to be made applicable to the subsequent motions, thus was declared to be rather not applicable.

[13-A. Adjudication – (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested

in the panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a panchayat under this Act, in the court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated :

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication. -

(2) The procedure for deciding the suits under subsection (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908).]

For the reasons to be assigned hereinafter the above made inferences by the learned Commissioner concerned, in the impugned order Annexure P-13, are extremely frail and liable to be rejected.

8. The primary reason for doing so becomes planked, on the premise, that initially the onus became cast upon the Gram Panchayat concerned, to not only plead but also to prove that construction, if any, as became raised by the predecessor in interest of the present petitioners was thus raised on an open land within the *abadi deh*, and or, that the said construction was not raised prior to the coming into force of the amendment (*supra*), whereby open lands in an *abadi deh*, rather became un-amenable for any construction being raised thereons, given such lands falling within the inclusionary definition of *shamlat deh*.

9. However, as above stated a circumspect reading of the verdict (Annexure P-2), as became drawn in an earlier motion, which as above stated was inter-se parties but similar to the ones in the

subsequent motion, and, also appertains to causes of action and reliefs common to both, thus reveals that yet the said verdict remained unchallenged. Consequently, Annexure P-2 acquired conclusive and binding effect, thereby any subsequent motion, as became drawn in respect thereof, thus was barred by the estopping principle of constructive resjudicata, nor any jurisdictional competence became vested in the authorities, who made orders on the subsequent motions, to enter upon trial of the said subsequent motions nor any jurisdictional competence became vested in the statutory authorities, to make any legally binding and enforceable decisions, on such inapt subsequently drawn motions. Therefore, both the subsequently drawn motions and also the verdict(s) drawn thereons are vitiated.

10. It appears that all the above stated reasons as became assigned in Annexure P-13, by the learned Commissioner concerned, in his failing to attract the principle of res judicata to the subsequent motion could, but be raised in an appeal being preferred against Annexure P-2, by the Gram Panchayat concerned. Since an appeal against Annexure P-2, was not preferred by the aggrieved Gram Panchayat, thus before the competent Appellate Authority concerned, thereby in a subsequent vitiated motion, there was no jurisdictional competence in the statutory authorities, to yet test the validity of the said order but on any legal front.

11. Even otherwise a reading of Annexure P-2, does not, as inaptly conveyed by Annexure P-13, is either a cryptic order nor is an ill informed order, besides rather is well rested on the pleadings of the parties and the consequent thereto evidence adduced by the litigants

concerned.

12. Consequently, since there is no pleading in respect of construction, if any, raised on the suit land by the alienor of the predecessor in interest of the petitioners, thus being on open lands rather falling within the *abadi deh*, rather thereby making the said purported open land to fall within the inclusionary definition of *shamlat deh*. Contrarily when there are clear and candid speakings made in Annexure P-2, about prior to the coming into force of the amendment (*supra*), whereby open spaces within *abadi deh* became included within the definition of *shamlat deh*, rather the predecessor in interest of the present petitioners, thus purchasing an *abadi* from a *biswedar* of the *abadi* concerned. Necessarily hence the validity of the said conclusion could be tested only in an appeal being raised thereagainst but never in any subsequent motion.

Final Order

13. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed. The impugned orders (Annexures P-8, P-12 and P-13) are quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

19.07.2023

kavneet singh

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