

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RA-CW-317-2021
in CWP-14311-2021
Date of decision:29.09.2023

RAJBIRINDER SINGH CHAHAL

...Applicant

Versus

DEPUTY COMMISSIONER-CUM-ESTATE OFFICER AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Review applicant in person.

Mr. Adiya Jain, Advocate and
Mr. Rahul Vohra, Advocate
for the respondents.

SURESHWAR THAKUR, J. (ORAL)

1. The present applicant had instituted the writ petition (CWP-14311-2021) before this Court with a prayer of mandamus being made to direct the respondents concerned, to transfer/mutate house No.1149, Sector 8-C, Chandigarh in favour of the present applicant.

2. The above claimed mandamus became anchored, upon a registered sale deed executed on 06.02.2015 *inter-se* the present applicant and his vendor i.e. Mrs. Renu Mohan.

3. This Court while hearing the writ petition (*supra*), on 15.11.2021, on the submission of the learned counsel for petitioner allowed the withdrawal of the petition, but with liberty to file an appropriate

application before the Hon'ble Apex Court rather for seeking a clarification

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in the subject matter thereby, the writ petition (*supra*), was disposed of as withdrawn, yet the above order is endeavoured to be reviewed at the instance of the present applicant, who appears in person before this Court.

4. The applicant submits that the said order is required to be recalled or reviewed, as the earlier submission made by his counsel, that some clarifications are required to be made by the Hon'ble Apex Court rather was a submission, which was not required to be made, as the matter which was purportedly *subjudice* before the Hon'ble Apex Court, rather had already been decided. Consequently, the applicant who appears in person submits, that if the above submission, as, made by his counsel, and, which led this Court to make the order (*supra*), thus was made on a misconception of facts, therefore, the order (*supra*), as, made by this Court be permitted to be reviewed or recalled.

5. Normally, though the import of the order (*supra*), creates an estoppel in respect of a simpliciter dismissal as withdrawn of any lis, by a Court of law, without the granting of any liberty to the petitioner, to re-access the Court of law, thereupon reiteratedly it does completely estop, the petitioner to seek the recalling or reviewing of the order, as became previously rendered by this Court, and/or, on a similar thereto cause of action, thus cast a fresh motion.

6. If so, the present review application is hit by the bar of estoppel created under the relevant provision of Order 23 of the CPC.

7. Be that as it may, the applicant who appears in person, has made a vociferous contention before this Court, that the said made order by this Court, was planked upon a misconception of facts, inasmuch as, the counsel stating that a lis was *subjudice* before the Hon'ble Apex Court, and, that in

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the said *subjudice* lis, an appropriate clarification is required to be secured from the Hon'ble Apex Court, whereas, the lis had terminated.

8. If the above made argument has some aura of tenacity, this Court is to do justice to the applicant, who appears in person, and may become coaxed to re-enter into the entire gamut of the lis, as becomes encapsulated in the writ petition.

9. However, for the reasons to be assigned hereinafter, even if it is presumed, that there was some purported misconception, reared by the learned counsel for the petitioner, which led him to make the apposite statement, yet the gravamen of the entire lis relates to a relief, whereby the petitioner seeks the makings of a mandamus, upon, the respondents concerned, thus for a mutation being attested in his favour, in terms of the sale deed, as made in his favour by one Mrs. Renu Mohan.

10. The Hon'ble Apex Court apparently, did become seized with the above issue, and, as apparent on a reading of Annexure P-3, annexure whereof, is an order made by the Hon'ble Apex Court, order whereof becomes extracted hereinafter, thus the apposite miscellaneous application, bearing No.2202-2018, became disposed of in the hereinafter manner.

“After hearing the learned counsel for the parties interlocutory applications are disposed of in the following terms:

The CBI is directed to return the original file pertaining to H.No. 1149/8-C, Chandigarh to the Estate Officer forthwith.

We make it clear that the Estate Officer before taking any further action in the matter on the basis of the original records

directed to be furnished by this Court shall do so only with the leave of the Court”

11. For reasons as set forth therein it became declared to be not maintainable before the Hon’ble Apex, thus on the premise, that the CBI had filed a charge sheet in respect of the apposite FIR, before the learned trial Judge concerned.

12. Moreover, it also appears that through an order as becomes enclosed in Annexure P-3, and, as became made by the Hon’ble Apex Court, order whereof becomes extracted hereinabove, thus a direction was made upon the Estate Officer concerned, to before drawing any further action, on the matter, on the basis of the original records, as became directed to be furnished by this Court, it shall do so only with the leave of the Court. Therefore, only the leave of the Hon’ble Apex Court is permissible for becoming asked for, and/or, the same becoming granted to the present applicant. Further, the leave of this Court for the relevant purpose, is not permissible to be earlier asked for nor can the same be granted vis-a-vis the present applicant.

13. Significantly, the above MA-2202-2018 has been dismissed on 10.09.2018, wherein, the applicant had sought directions to the respondents to transfer the subject property in its record, in his favour. The lis before the Hon’ble Apex Court was decided vide judgment dated 18.11.2015, and, the miscellaneous application (supra) was filed in the year 2018, which met dismissal in September 2018, thereby affirming the order of January, 2018. The import of the order of January, 2018 was well within the knowledge of the petitioner. Therefore, having suffered an apposite verdict of dismissal and yet after more than 2½ years, rather qua the very relief declined by the

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Hon'ble Apex Court, the petitioner but becomes disabled to re-espouse the same, before this Court, as thereby it would result in this Court, untenably granting the relevant relief, despite its becoming declined to the present applicant, besides when the relevant relief is permissible to be assigned to the present applicant rather only by the Hon'ble Apex Court.

14. Therefore, if there is any estoppel arising from similarity *inter-se* the relief claimed before the Hon'ble Apex Court, and, the relief claimed in the instant writ petition, thereby any purported miscommunication or misconception of facts, as made by the learned counsel for the petitioner, and, which led to the making(s) of the order (supra), thereby does not at all create any inherent right in the applicant to, on the above plank, thus make any valid claim, before this Court, that thereby the order (supra), as became rendered by this Court, is required to be reviewed or recalled.

15. Resultantly, the bar of estoppel (supra), as created against the institution of a subsequent petition, and on same cause of action in respect whereof, there was an order disposing of the writ petition, as withdrawn, but without liberty to the applicant to re-access this Court, thus thereby regenerates with more vigorous force, and, thereby the instant review application is dismissed without costs.

(SURESHWAR THAKUR)
JUDGE

29.09.2023

Ithlesh

(VINOD S. BHARDWAJ)
JUDGE

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