

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

CWP-27666-2023

Date of Decision : 12.12.2023

JASWINDER SINGH AND ANOTHER

.....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Harish Goyal, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. One Jagpal Singh instituted file No.158/Collector/ADC. (D) before the Collector concerned, whereby he claimed the rendition of a declaratory decree in respect of the petition lands. In the said *lis* became impleaded apart from the other private respondents also the Gram Panchayat Tana Tehsil District Fatehgarh Sahib.

2. Through a decision made thereons on 05.11.2009 (Annexure P-2), the learned Collector concerned, proceeded to decline the asked for declaratory decree to (supra). The operative part of Annexure P-2, is extracted hereinafter.

“ Therefore, keeping in mind all the above facts, the present petition is not maintainable and the land in dispute is not used for common works and the Gram Panchayat is not the owner of the disputed land, Petition is dismissed.”

3. A reading of the above extracted operative part of Annexure P-2 discloses that the Collector concerned, declined the

claimed declaratory decree to the petitioner in the lis (supra). The above declining order was passed on the ground that the misl (supra) is not maintainable.

4. A reading of the said operative part, further unfolds, that yet a declaration was passed by the Collector concerned, that the disputed lands are not used for the common purposes, and, the Gram Panchayat is not the owner of the disputed lands.

5. Therefore but obviously, given the above made declaration thus against the Gram Panchayat concerned, thereby the latter was to make an appeal thereagainst before the Commissioner concerned. However, the Gram Panchayat concerned, despite obviously becoming aggrieved from the said Annexure P-2, did not choose to assail, the same, through its instituting an appeal before the Commissioner concerned. However, Jagpal Singh, petitioner in the misl (supra) laid before the Collector concerned, becoming aggrieved from the drawing of Annexure P-2, chose to make an appeal thereagainst, before the Commissioner concerned.

6. On appeal bearing No. 41 of 2010, as, laid before the Commissioner concerned by the aggrieved from Annexure P-2, the impugned Annexure P-1 became passed.

7. It appears from a reading of the impugned order, that earlier to the institution of the misl (supra), at the instance of one Jagpal Singh before the Collector concerned, the Gram Panchayat concerned also in respect of the lands, thus similar to the disputed lands, as carried in the misl (supra), rather had filed a declaratory suit under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961.

However, it appears that the said declaratory petition became dismissed for default through an order made on 27.06.1984 by the Collector concerned.

8. Nonetheless, the Gram Panchayat concerned, did not either choose to seek the setting aside of the order (Annexure R-26), whereby its suit became dismissed for default nor it chose to make an appeal thereagainst before the Appellate Court concerned, thus after a declining order becoming made by the Collector concerned, on the Gram Panchayat's application, seeking restoration of the apposite *lis*, to its original number, but after the recalling of the order Annexure R-26.

9. Conspicuously, thereby, it appears that for want of the above steps being taken by the Gram Panchayat concerned, rather for seeking annulment of Annexure R-26, and also for want of any lawful order becoming passed by the Collector concerned, whereby the said motion became allowed, whereafters the apposite *lis* but previous to the instant *lis* as laid before the Collector concerned, thus became restored to its original number. The omission (*supra*) *prima facie* made the instant *lis*, instituted by one Jagpal Singh, thus in respect of lands, which are purportedly similar to the lands as were carried in the earlier declaratory suit, instituted by the Gram Panchayat concerned, but carrying therein, a relief similar to the one as carried in the present *lis*, rather to become barred by the principle of constructive *res judicata*.

10. However, if the above inferences are thus drawable from the impugned order rather making a mention qua the above wants, being made by the Gram Panchayat concerned, yet even if the said conclusion *prima facie*, is also required to be mobilized by this Court,

yet there was an imperative requirement of an *ad nauseum* discussion, rather being made by the Commissioner concerned, thus relating to the further imperative fact, that in the previous *lis*, thus not only the lands therein, were similar to the lands in the instant *lis*, but also qua the parties in the earlier *lis* being similar to the parties in the subsequent *lis*, and/or, in other words the earlier *lis* was inter parties, the parties in the subsequent *lis*. However, the Commissioner concerned, has made a cursory reference to the non making of efforts by the Gram Panchayat concerned, to seek the annulment of Annexure R-26, and, also qua its want to thereafter seek an order from the Collector concerned, thus for ensuring the restoration of the *lis* to its original number.

11. The above cursory and passing reference to Annexure R-26, has ultimately impliedly led the Commissioner concerned, to thus conclude that the subsequent *lis*, as laid by Jagpal Singh, thus seeking a declaration qua the disputed lands are owned by the Gram Panchayat concerned, rather was barred by the principle of constructive *res judicata*, and that too, but reiteratedly when none of the above parameters rather governing the application of the principle of *res judicata*, to the present *lis*, became expressedly spoken in the impugned Annexure.

12. In the wake of the above, the Commissioner concerned, has made a further mandamus, upon, the Gram Panchayat concerned, to make a challenge to Annexure R-26, before the Appellate Court concerned.

13. In consequence, the Commissioner concerned, thus purportedly through invoking the principle of constructive *res judicata*,

rather proceeded to dismiss the appeal bearing No.41 of 2010

14. The making of the above mandamus by the Commissioner concerned upon the Gram Panchayat concerned, appears to be made in a most mechanical and perfunctory manner, inasmuch as, his completely failing to, after narrating the above imperative facts, in the impugned order, for thereby his well making an implied conclusion, that the subsequent *lis*, is barred by the principle of constructive *res judicata*, rather reiteratedly has also made the above untenable mandamus upon the Gram Panchayat concerned.

15. The above was avoidable rather the Commissioner was required to be making a firm conclusion vis-a-vis the application of the statutory norm of constructive *res judicata*, thus to the subsequent *lis*, but yet only after the relevant facts (*supra*) became fully expressed in the impugned order. However, evidently the apposite facts remain unexpressed in the impugned order, thus thereby the purported application of the norm of *res judicata*, to the instant *lis*, rather becomes liable to be faulted.

16. In sequel, the impugned order suffers from a gross non application of mind, vis-a-vis, the purported application, of the principle of constructive *res judicata*, to the subsequent *lis*.

17. Resultantly the writ petition is allowed. The impugned order is quashed and set aside and the appeal bearing No. 41 of 2010, is remanded to the Commissioner concerned, who shall after restoring, the same to its original number, shall make a fresh decision thereons, but in accordance with law.

18. If the Commissioner concerned, is of the view that

Annexure R-26, is amenable, to become employed, thus to the subsequent *lis*, rather the principle of constructive *res judicata*, thereupon, he is directed to delineate in the freshly drawn orders, rather all the factual details relating to, for therebys his ultimately concluding, that the principle of constructive *res judicata*, is applicable to the subsequent *lis*.

19. In consequence, the Commissioner concerned, shall pass a speaking order on the remanded *lis*, within six months from today, but after hearing all affected persons concerned, but after bearing in mind all the above observations.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

12.12.2023

kavneet singh

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