

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

127 CWP No.165 of 2024
Date of Decision: 08.01.2024

Reena Rani and othersPetitioners

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Vikram Singh, Advocate for the petitioners.

Mr. Maninder Singh, Deputy Advocate General, Punjab.

Mr. D.K. Saldi, Advocate, for respondent No.3/caveator.

Sureshwar Thakur, J.(Oral)

1. Learned counsel appearing for the opposite parties, do not contest, the submissions made before this Court by the learned counsel, for the petitioners, that despite this Court in a verdict made on 08.11.2016 (Annexure P-12) upon Civil Writ Petition No.229 of 2016 titled Surjit Singh and others Vs. State of Punjab and others, making a direction, upon, the Collector concerned to settle and formulate an issue, relating to the instant proceedings, being a gross abuse of the process of law, given as stated therein, the same becoming generated despite a clinching verdict being made on, an earlier *lis* between parties similar to the parties in the subsequent *lis*, and also with there being commonality of causes of actions and reliefs in the earlier *lis* and the subsequent *lis*, thus thereupon, the subsequent *lis* being prima facie barred by the principle of constructive *res judicata*, yet the said directions remaining uncomplied with. The said portion of the verdict becomes embodied in paragraph 3 thereof, para whereof is reproduced

“(3). Since the petitioner’s case is that the title dispute between them and the Gram Panchayat has already been finally settled and initiation of fresh proceedings is nothing but an abuse of process of law, we grant liberty to them to seek modification of the order dated 05.11.2015 from the Court of Collector as and when the occasion for alienation and/or to raise construction etc. arises. The petitioners may seek framing of the preliminary issue regarding non-maintainability of the present proceedings also. Additionally, we direct the Collector to decide the proceedings expeditiously.”

A reading of the para supra, also makes further echoings that said issue was required to be framed as a preliminary issue, thus for a decision being made thereons.

2. Moreover, the learned counsel appearing for the opposite parties also do not oppose the address before this Court by learned counsel for the petitioners, that yet the said issue has neither been framed nor obviously, the apposite evidence adducing discharging onus, in respect thereof, has been encumbered, upon, the litigant concerned.

3. In the wake of the above, lack of opposition by the counsel for the opposite parties, to the above made prayer by the counsel, for the petitioners, this Court modifies the impugned order dated 08.12.2023 (Annexure P-20), to the extent, that in terms of the directions, which are contained, in the order dated 08.01.2016 (Annexure P-12), the Collector concerned, thus shall frame a preliminary issue with respect to, qua on the above score, rather the subsequent proceedings being barred by the principle of constructive *res judicata*. Moreover, the relevant evidence adducing discharging onus, on the said formulated preliminary issue, shall also

on the preliminary issue, the Collector concerned shall proceed to make a decision upon the other issues which have been formulated in Annexure P-22.

4. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

08.01.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No