

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

120

CWP-9810-2024

Date of Decision: 01.05.2024

Reena Rani and others

....Petitioners

Versus

State of Punjab and others

....Respondents

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

Present: Mr. Vikram Singh, Advocate and
Mr. Vivek Gupta, Advocate
for the petitioners.

Mr. Maninder Singh, Senior Deputy Advocate General, Punjab.

Mr. V.K.Sindher, Advocate
for respondent No.3.

Sureshwar Thakur, J. (Oral)

1. The present petitioners had earlier instituted Civil Writ Petition No.165 of 2024 (Annexure P/6) before this Court. In the decision made on the said writ petition, thus on 08.01.2024, the hereinafter extracted directions as carried in paragraph 3 thereof, became passed upon the Collector 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 become cast upon the litigant concerned. Pursuant to a decision being made on the preliminary issue, the Collector concerned shall proceed to make a decision upon the other issues which have been formulated in Annexure P22.”

2. Resultantly, thereafter, directions as such became passed upon the Collector concerned, to, after framing a preliminary issue with respect to whether the instant petition was barred by the principle of *res judicata*, thus subsequently, also permit the litigants concerned to adduce their respective evidence(s) on the said formulated issue.

3. In terms of the said order, the present petitioners filed an application (Annexure P/7) or another application as stated by the learned Senior Deputy Advocate General, thus before the Collector concerned, whereby they respectively asked for the apposite reliefs, relating respectively to the summoning of the witnesses detailed in clauses (a) to (g) of paragraph 3 thereof, or for other incidental reliefs, thus for proving the relevant documents. Moreover, permission was also asked to be accorded to them by the Collector concerned, thus for furnishing the relevant road and diet money, for subsequently summons being issued rather for the witnesses concerned testifying before the Collector concerned.

4. On the said application, Annexure P/8 became passed besides on another application concerned and alike order became passed. The contents of Annexure P/8 are extracted hereinafter:

“An application dated 22-02-2024 was filed by the respondents for placing on record the relevant evidence for the purpose of effective hearing on the preliminary issue of maintainability in the present case. A list of documents to be produced by the respondents is also stated in the application.

Notice was issued to the petitioner and the petitioner filed reply to the application. Arguments of the parties heard.

After perusal of the application, reply of the petitioner and hearing the arguments addressed by the respective parties and in view of the order of the Hon'ble High Court dated 08.01.2024, the application is allowed and the applicant/respondents are directed to place on record the certified copies of the documents mentioned in the application before the next date of hearing. In case of not presenting the documents by the applicants/respondent before the next date, no further opportunity will be provided to them in this regard and the order will be passed on the basis of record available on file. Case is adjourned to 02.05.2024.”

5. Though, the Collector concerned through Annexure P/8, allowed Annexure P/7, and the connected application became also allowed thus with almost similar aspects, but he directed the applicants/respondents to only place on record, thus before the next date of hearing, the certified copies of the documents mentioned in the application, and, further stated that in case the said documents rather are not filed, by the applicants/respondents before the next date, thereupon no further opportunity shall be granted to the applicants/respondents, rather an order will be passed on the basis of the documents already available on the case file. The learned Collector is present in Court and has been sensitized to the fact that the above passed directions were required to be strictly complied with.

6. The requisite non compliances, which have been made by the learned Collector concerned, related not to his formulating a preliminary issue as became directed to be so formulated by him, but the violations, which became committed, were qua those further directions, as relates to his permitting the litigants concerned to also adduce rather respective oral evidence(s) for therebys, thus the apposite documentary evidence becoming lawfully proven.

7. The reasons for making the above conclusion generates from the factum that the learned Collector concerned, merely permitting the applicants/respondents to place on record, the certified copies of the documents, mentioned in the application (Annexure P/7), thereby he dispensed with the lawfully ordained mode of proof of such certified copies, inasmuch as, the lawfully ordained mode of proof in respect of certified copies of documents, rather may not occur, merely on the supplying of the documents to him, but was to happen only when the authors of such certified copies, stepped into the witness box, and, therebys during the course of their respective examinations-in-chief, thus their ensuring the makings of valid exhibit marks thereon. The reason for the above mode of proof becoming necessarily adopted by the learned Collector concerned, arises from the factum, that any certified copies as become issued by the examiners concerned, do only enjoy a rebuttable presumption of truth, and therebys unless an opportunity is granted to the opposite litigant, to rebut the presumption of truth carried by such public documents, therebys there would be failure of delivering justice to the opposite litigant, inasmuch as, his becoming denied an opportunity to adduce

cogent rebuttal thereto evidence, rather through his making cross examination upon the author of such public documents or his adducing credible documents to counter the truth of the contents carried in the certified copies of public documents.

8. Furthermore, even if assuming the said mode of proof becomes adopted by the Collector concerned, yet if the opposite litigant asks for any further opportunity to adduce rebuttal thereto evidence, thus through the tenderings of documents, thereupon such an opportunity also cannot be denied to the opposite litigant. However, readings of Annexure P/8, but completely deviates from the but required adoptions of the above ordained recourses, as become contemplated in the relevant provisions embodied in the Evidence Act, as, relating to the mode of proof of documents, public or otherwise or certified copies of public documents.

9. Therefore, after quashing the impugned order (Annexure P/7), the instant writ petition is disposed of with directions upon the learned Collector concerned, who appeared personally before this Court, to pass a fresh order on the relevant application, wherebys after his accepting the road and diet money, thus, in pursuance thereof he may order for the making of summons upon the witnesses concerned, for rather thereby the said witnesses recording their respective testifications in respect of proof of the documents concerned. Moreover, the witnesses concerned shall be ensured, that during their respective examination-in-chief, thus they from the originals of certified copies concerned, which they be ensured to bring along with them to the Court concerned, thus lend efficacious proof to the apposite certified copies.

Moreover, in case the originals of such certified copies are brought to the Court by the witnesses concerned, thereupon the learned Collector concerned, may lawfully permit the makings of valid exhibition marks on the certified copies of the originals concerned. Moreover, in case subsequently after completion of the recording of the testifications of the witnesses concerned, any opportunity is asked for by the opposite litigant, to adduce evidence in rebuttal to the evidence already adduced by the other litigant, thereupon such an opportunity shall also be granted.

10. In the above manner, within a period of three months from today, a valid speaking decision shall be recorded on the preliminary issue relating to the instant proceedings being barred by the principle of *res judicata* and, within three months thereafter, a valid speaking decision on the merits of the *lis* shall be recorded by the learned Collector concerned, but after hearing all the affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

01.05.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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