
(2017) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : CWP No.2476 of 2017

Anuj Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Canal and Drainage Act, 1974 — Section 18

Citation : (2017) 1 LawHerald 889

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Himanshu Raj, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Amit Rawal, J. (Oral) - The grievance of the petitioner is that the orders under challenge i.e. order passed by Divisional Canal Officer and Superintending Canal Officer in appeal and revision preferred by the opposite party against the order of Deputy Collector are erroneous, as primarily dismissed on the ground of res judicata, on the premise that the earlier application was dismissed.

2. In this regard, he had drawn attention of this Court to the judgment rendered by this Court in Bhagirath v. Divisional Canal Officer, Sirsa 2000(2) RCR (Civil) 496. The relevant paragraphs 3 and 4 of the same read as under:-

"3. Having heard counsel for the parties and after going through their pleadings, we are of the opinion that the second application filed by respondents Nos. 4 to 6 which culminated in passing of the impugned orders was not barred by the principles of res judicata. Apart from the fact that parties in the two applications were different, proceedings before the Divisional Canal Officer are of a summary nature and did not involve any detailed inquiry except for the publication of a draft scheme inviting objections/suggestions and for considering the same under Section 18(2) of the Act. No doubt, the Divisional Canal Officer performs a quasi

judicial function while disposing of the application but does not exercise powers of a Court so as to attract the doctrine of res judicata. The method in which the application is disposed of is not analogous to the disposal of a plaint in a civil Court nor are any issues framed. The Divisional Canal Officer has no power to summon the witnesses and can only approve, reject or modify the draft scheme prepared under Section 17 of the Act. He cannot by any process of reasoning be described a Court and he does not even have the trappings of a Court. It is settled law that where disputes are settled in a summary manner the principle of res judicata can have no application. A similar question arose before the Supreme Court in *Inder Singh v. Financial Commissioner, Punjab* (1997) 1 Pun LJ 52. This was a case under the Pepsu Tenancy and Agricultural Lands Act, 1955 where under also the applications filed are disposed of in a summary manner. A tenant had filed an application under Section 22 of that Act for conferment of proprietary rights which was rejected by the competent authority on 25-4-1960 on the ground that he was not in possession for twelve years. This order was affirmed by all the departmental authorities in appeal and revision and even a writ petition filed against these orders was dismissed by this Court. Subsequently, the tenant made a second application on 26-3-1965 for conferment of ownership rights based on tenancy. This application was allowed on 15-12-1965. The order was confirmed in appeal and a revision petition had been dismissed by the Financial Commissioner. In a writ petition filed in this Court a Division Bench set aside the orders of the authorities on the sole ground that the order passed on earlier occasion was final between the parties and operated as res judicata and, therefore, the second application under Section 22 of the Act was not maintainable. The Division Bench judgment was challenged before the Supreme Court and while reversing the view expressed by this Court their Lordships accepted the contention that principles of res judicata do not apply to proceedings where disputes are decided in a summary manner. It will be appropriate to reproduce the observations of their Lordships made in para 3 of the judgment;

"Shri Ujagar Singh, learned senior counsel for the appellants contended that the view taken by the High Court is not correct in law. Since the proceedings before the authorities is of summary nature, the doctrine of res judicata has no application. The Act does not prescribe any principle of res judicata as such. The proceedings before the authorities are of summary nature. It would not be correct to apply the principle of res judicata. We find force in the contention. It is not in dispute that the order passed by the authorities is without any elaborate trial like in a suit but in a summary manner. It is well settled law that the doctrine of res judicata envisaged in Section 11 of C.P.C. has no application to summary proceedings unless the statute expressly applies to such orders. The authorities are not civil Court nor the petition a plaint. No issues are framed nor tried as a civil suit. Under these circumstances, the Division Bench of the High court was clearly in error to conclude that the earlier proceedings operate as res judicata."

Applying the same principle to the proceedings before the Divisional Canal Officer, we have no hesitation in holding that the application filed by respondents Nos. 4 to 6 was not barred by res judicata and that the same was maintainable.

4. In Daryao Singh's case (1984 Pun LJ 3) (supra) the facts were similar to the facts of the case in hand and a learned single Judge of this Court held that an application for the transfer of an area from one outlet to another having been decided by the Divisional Canal Officer on an earlier occasion would debar a second application being filed on the same cause of action. There also an application had been filed for the transfer of the area from one outlet to the other which was rejected by the Divisional Canal Officer which order had been affirmed by the departmental authorities in appeal. The applicants again filed a second application which was allowed. The orders allowing the second application were challenged in this Court and the learned single Judge set aside the same on the ground that the second application was barred by the principle of res judicata. No doubt, this judgment supports the contention of the petitioner but in view of the binding precedent of the Supreme Court in Inder Singh's case (1997 (1) Pun LJ 52) (supra), it has to be held that the view expressed by the learned single Judge in Daryao Singh's case (supra) no longer subsists. Moreover, in the case before us, the parties are different."

3. The findings recorded in impugned orders Annexures P-2 and P-3 are as under:-

Annexure P-2

"3. In the 3rd Appeal: Demand of Sh. Sube Singh son of Sh. Telu Ram considered and found genuine, hence accepted because demand of applicant (now respondent) was rejected by the Deputy Collector vide order dated 28.12.2011 and he did not file any appeal against the order of the Deputy Collector. This Court do not find any justification to disturb the existing system. As far as demand for change of owner of 19K-02M area in the name of Smt. Asha wife of Sh. Arjun Dev (khasra No.67) found genuine, hence accepted.

The decision of Deputy Collector, Hisar W/S Division, Hisar dated 28.06.2012 is amended to the above extent. Decision taken on 30.05.2013 at Hisar and should be conveyed to all concerned as per rules."

Annexure P-3

"Decision: Revenue missal, khaka plan and other connected record have been perused. Arguments of both the parties have also been considered at length.

The perusal of the decision of the Divisional Canal Officer, Hisar Water Services Division, Hisar shows that the demand of Sh. Arjun Dev regarding claiming the jhara was already rejected by the Deputy Collector vide decision dated 28.12.2011, and applicant did not file any appeal in the court of the Divisional Canal Officer against the decision of Deputy Collector. Now he has demanded that wari of 45 kanals 8 marlas may be fixed in the name of Anuj Kumar, but as

per counsel of respondent, cultivation of the land is still with Arjan Dev. It reveals that the land was transferred to get the undue benefit of jhara. The respondent is reported to be using the jhara since long. Moreover, the counsel of the respondent cited the authority that Hon"ble Punjab and Haryana High Court through judgment reported at page 486 of PLJ 1982 and page 5912 LJR 1996(1) has held that once the dispute of jhara is decided, second application is not maintainable and that the jhara has to go to the tail ender. Hence the respondent is enjoying the jhara since long and the court does not want to disturb the existing system of warabandi. The plea of the counsel of the petitioner has no weight. The Divisional Canal Officer has rightly decided the case. Keeping in view the above facts, the RP is rejected and decision of the Divisional Canal Officer, Hisar Water Services Division, Hisar dated 30.05.2013 is maintained.

Decision be conveyed to all the concerned parties."

4. In view of the aforementioned settled law, the orders under challenge are not sustainable and liable to be set aside.

5. I do not deem it appropriate to issue notice to other side as it will defray the costs of litigation, much less, unnecessarily delay the adjudication of the lis, once the matter is covered. Accordingly, the orders under challenge are set aside. The matter is remitted back to the Divisional Canal Officer, Hisar to decide afresh the appeal of Sube Singh v. Anuj Kumar on merits and not on the applicability of principles of res judicata, in view of the findings given here-in-above.

6. The parties are directed to appear through their counsel before the Divisional Canal Officer on 30.03.2017.

7. The writ petition stands disposed of in the above terms.