

Briefly stated, the plaintiff had filed a suit for permanent injunction against the State of Haryana, Sub Divisional Officer (C) and others for restraining them from taking possession of the suit land in pursuance to the order dated 6.10.1980, passed by the Collector, Sonapat.

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Suffice to say that the plaintiff claims that he had purchased the suit land through registered sale deed dated 18.3.1981 from Smt. Goma, Hemvati and Silla Devi daughters of Tara Devi daughter of Smt. Zahro Devi. It was stated that Zahro Devi was a big land owner having more than 30 standard acres of the land in different villages of district Sonapat and that the Collector, Agrarian, wrongly put a penalty of 10 standard acres of land, as envisaged under Punjab Security of Lands Tenure Act in her absence. The suit land was never declared as surplus. After the death of Zahro Devi on 12.10.1966, her three daughters, namely, Dropti Devi etc. succeeded to her estate. After the enforcement of Haryana Ceilings on (Land Holdings) Act, 1972, the suit land was declared as permissible area, vide order dated 2.8.1978. The matter went in appeal in the Court of Commissioner, Ambala, and the order became final. Later on, one Mir Singh (defendant No. 6) made a representation to the Collector, Sonapat, who gave it the shape of appeal and wrongly accepted the same, vide order dated 6.10.1980, declaring the suit land as surplus area and some other area of village Jakholi was declared permissible in lieu of this land. The said order of Collector is illegal, void, against the law and without jurisdiction.

On the other hand, the stand of the defendants was that the disputed area was declared surplus in the hand of original owner

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by the Collector, vide order dated 6.10.1980. No appeal has been filed against the said order and said order has become final. The jurisdiction of the civil court to challenge the order was also challenged.

From the pleadings, following issues were framed :-

- “1. Whether the plaintiff is in possession of the land detailed in para No. 1 of the plaint, as alleged ? OPP
2. Whether the order dated 6.10.1980 of the Collector, Sonapat, is illegal and void, as alleged ? If so, to what effect ? OPP
3. Whether the Court has no jurisdiction to try the present matter in view of Section 26 of Haryana Ceiling on Land Holdings Act, 1972 ? OPD
4. Whether the plaintiff has no locus standi to file the present suit ? OPD
5. Whether no notice u/s 80 of CPC was served upon the defendants. If so to what effect ? OPD
6. Relief.”

After recording the evidence of both the parties and hearing them on merits, the suit was dismissed. The judgment was upheld by the learned Additional District Judge, Sonapat.

This Court, vide order dated 20.2.2009, framed the following substantial questions of law :-

- “1. Whether the order dated 6.10.1980 passed by the Collector, Sonapat, is without jurisdiction ?
2. Whether in view of the Full Bench of this Court in State

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of Haryana and others Versus Vinod Kumar and others,
1986 (1) PLR 222, the Collector could change
permissible area without notice to the landowner ?”

I have heard the learned counsel for the parties and have
also carefully gone through the file.

After hearing the learned counsel for both the parties, I
am of the view that in this case, the Collector has passed the order
dated 6.10.1980, declaring the disputed land to be as surplus area
and in lieu of that, some other land was declared permissible area.

The plea of the learned counsel for the appellant is that
the order is without jurisdiction. It is not disputed that under the
Haryana Ceiling on Land Holdings Act, 1972, the Collector is
competent to pass such order. The plea is that the appellant was
not heard and that the said order could not be passed.

At the first instance, no prayer has been made in the
plaint that the said order should be declared illegal or without
jurisdiction. Secondly, if the authority is competent to pass the order
and decide the same, it can decide it rightly and wrongly and
whether the order is right or wrong is to be tested only before the
competent authority. In this case, it comes out that the matter was
even taken before the Financial Commissioner, Haryana, who vide
order dated 12.9.1995, maintained the same. No further appeal or
revision was filed.

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Learned counsel for the appellant has referred to the Full Bench authority of this Court in State of Haryana and others Versus Vinod Kumar and others, 1986 (1) PLR 222, wherein it was held that where the order of Collector declaring the land as surplus without giving opportunity of hearing to the landowner, as envisaged in Rule 6 CPC, the civil suit to challenge the validity of said order is maintainable. The said authority is not attracted in the present case. Firstly, no declaration was sought to the effect that the order dated 6.10.1980 is illegal and on which ground, it is illegal. It was a simple suit for injunction for restraining the defendants from taking possession in pursuance to the said order. Secondly, it was found by both the Courts below that the order is legal and was passed after hearing both the parties. The order was tested in appeal before Financial Commissioner. Hence, the civil suit to challenge the said order is not maintainable. It being so, the present appeal is found to be without any merit and the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

14.10.2015
sjks