

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4034 of 2013 (O&M)

Date of Decision.08.12.2015

Radhey Sham and others

.....Appellants

Vs.

The State of Haryana and others

.....Respondents

Present: Mr. Deepak Saini, Advocate for
Mr. Pritam Saini, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The second appeal is at the instance of the plaintiff who as purchaser from person from whom the property was acquired and treated as surplus under the provisions of the Haryana Ceiling of Land Holding Act, 1972 came with a suit for declaration that the plaintiff was the owner in possession of the property and the proceedings taken by the Government by way of allotment on the basis that property had been declared surplus and hence had become vested to the State were all *void ab initio, non est* and *non existent* in the eye of law. The plaintiff had to confront with the situation of proceedings having been initiated for treating the property as surplus under the Land Ceiling Act and after treating the property as surplus, the property was being sought to be allotted to various persons found eligible under the scheme of allotment.

2. The contention by the plaintiff was that the claim by the State that the property had stood vested with the State under the provisions of the Act could not be correct, for even after 1972 the revenue records continued in the name of the plaintiff's vendor Dharam Pal and it had not been entered in the name of the State. There was no reason given as to why the mutation had not taken place. It was also the contention that the property was *gair mumkin* and such character of property cannot be treated as surplus. The other contention by the plaintiff was that the notice had not been issued to the plaintiff prior to taking action under the Act treating the property as surplus and for allotment and therefore, the entire proceedings were vitiated. It was also submitted that the defendant was bringing the case of the property as having been vested with the State and that it had been allotted only before the appellate Court and there had been no proper pleadings in that regard.

3. The trial Court decreed the suit finding each one of the objections taken by the plaintiff as tenable but the Appellate Court reversed the judgment and found that the suit itself was incompetent. The counsel reads to me at length all the findings recorded in his favour and also reiterates the point which had been made and which had been accepted by the trial Court.

4. The suit itself was grossly an abuse of process and it ought to have been thrown out without even having to go through the trial. The plaintiff had the benefit of trial that gave courage to an argument on behalf of the plaintiff that he can state that the suit was maintainable. The whole edifice is built on the fact that the

proceedings treating the property as surplus in respect of *banjar kadim* was incompetent under the provisions of the Act and therefore, all the proceedings are vitiated. I would reject this contention as most untenable, for it was specifically brought out in evidence that the property was used as agricultural land and allotted to such persons on such vesting. It was also contended that the plaintiff's predecessor Dharam Pal had taken objection with reference to the proceedings initiated under the Act and his objection had been rejected. The manner of vesting under the Act cannot be a subject of challenge through a civil suit and the contention that no notice had been issued to him must have been brought at the instance of person against whom proceedings had been initiated and in whose name the registry had originally stood. If Dharam Pal had himself taken objection as regards the proceedings for vesting under the Land Ceiling Act, there was no question of the other subsequent purchasers to be served with notice. There is a clear bar for the suit itself by virtue of Section 26 of the Haryana Ceiling on Land Holding Act, 1972 which states that no order of the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority made under or in pursuance of this Act shall be called in question in any court. Section 26(b) also states that no Civil Court will have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority. If the contention was going to be that the property treated as surplus was *banjar kadim* and therefore, could not have been acquired, it was a jurisdictional issue which must have been

put forth before the authority which was taking action and cannot be decided in any other forum. The issue of want of notice is equally unmerited since the person who was bound to be issued with notice had been served with notice and it is futile to argue that subsequent purchasers at various point of time after the statutory vesting would be served with independent notices.

5. The reliance on the judgment of this Court in *Dhan Kaur and others Vs. State of Punjab and others 1983 PLJ 284* was on the issue of effect of no notice to land owner. I have already brought out that the registered owner Dharam Pal had been served and he lost out in his action to make his plea that the property cannot be subjected to acquisition. The reliance on yet another judgment was made where the issue that *banjar kadim* cannot be treated as surplus was examined by the Supreme Court in *Ajmer Singh Vs. State of Haryana 1990(1) SCC 227* which had been brought to challenge the acquisition proceedings and the decision of the Financial Controller was subject to appraisal by a Court in writ jurisdiction and proceedings further. It cannot be through a suit to reopen a matter what was finally concluded between the parties.

6. The judgment of the Appellate Court was perfectly justified and the second appeal is wholly without merit and it is dismissed as such.

(K. KANNAN)
JUDGE

December 08, 2015
Pankaj*