

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

**CR No.1711 of 2016 (O&M)
Date of decision : 28.03.2016**

Smt. Bhagwanti

.....Appellant

Versus

Karnail Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Rahul Deswal, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 23.02.2016 passed by the learned Additional Civil Judge (Senior Division), Ellenabad vide which the application filed by the petitioner under Order 7 Rules 10 & 11 of the Code of Civil Procedure, 1908 (hereinafter called the 'CPC') for rejection of plaint has been dismissed.

2. Learned counsel for the petitioner contended that the jurisdiction of the Civil Court was expressly barred under Section 26 of the Haryana Ceiling on Land Holdings Acts, 1972 (hereinafter called the 'Act') to entertain the suit. The only remedy available to the plaintiff was

to file the appeal against the impugned order under Section 18 of the Act. Thus, he contended that the suit filed by the plaintiff was barred by law and the plaint was liable to be rejected. To support his contentions, he has placed reliance upon cases *Azad Vs. Dharampal* 1999(2) RCR (Civil) 139, *Devinder Singh and others Vs. State of Haryana and another* 2006(3) RCR (Civil) 491, *Mange Ram & another Vs. Tek Ram and others* 2011(4) Law Herald 3392, *Surinder Singh and another Vs. The Prescribed Authority (SDO Civil) Mahendergarh others* 2012 (1) RCR (Civil) 542, *Rai Singh Vs. State of Haryana* 1999(2) RCR (Civil) 564, *Jai Kishan Dass and others Vs. The Haryana State and others* 2010(2) RCR (Civil) 848, *Hari Ram Vs. State of Haryana and another* 2009(5) RCR (Civil) 635, *State of Haryana Vs. Hari Om and others* 2012 (5) RCR (Civil) 581, *Gurbax Singh and others. Vs. State of Haryana and others* 2014(1) RCR (Civil) 693, *Attar Singh and others Vs. State of Haryana and others* 2010(4) PLR 696, *Balbir Chand and others Vs. State of Haryana and others* 2008(1) RCR (Civil) 417, *Bhag Mal and others Vs. Ram Murti and others* 2004(4) RCR (Civil) 557.

3. I have duly considered the aforesaid contentions.

4. Respondent No.1 Karnail Singh has filed the suit for declaration to challenge the order dated 09.07.1982 passed by Sub Divisional Officer (Civil), exercising the powers of the Prescribed Authority under the Act, vide which the allotment of land in favour of the plaintiff has been cancelled. A specific plea has been raised by the plaintiff that the impugned order was passed without giving any notice or

information to him. The same is null & void and against the principle of natural justice.

5. Learned counsel for the petitioner has vehemently contended that as the jurisdiction of the Civil Court is barred under Section 26 of the Act to entertain the civil suit against the order passed by the prescribed authority, so the suit was barred by law and plaint should have been rejected.

6. It is the settled principle of law that for deciding the application under Order 7 Rule 11 CPC, the Court is to take into consideration only the pleas mentioned in the plaint. The defence of the defendant and the pleas raised in the written statement cannot be taken into consideration. To support this view, reference can be made to cases ***Surjit Kaur Gill and another Vs. Adarsh Kaur Gill and another 2014(2) RCR (Civil) 36, Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee 2012(3) RCR (Civil) 811 and PV. Guru Raj Reddy represented by G.P.A. Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others 2015(2) RCR (Civil) 43.***

7. Thus, in the instant case, the plaintiff/respondent has taken a specific plea that the impugned order with respect to the cancellation of the allotment has been passed without giving him any notice or information in violation of the principles of natural justice. The plaintiff was allotted the land vide order dated 09.07.1982. The allotment

was cancelled vide order dated 23.03.1984 as the land bearing 22 Kanals 7 Marlas out of the suit land was declared as permissible area of landlord. It is an admitted fact that plaintiff was never arrayed as party to the aforesaid proceedings. In case ***State of Haryana Vs. Vinod Kumar AIR 1986 (P&H) 407***, the Full Bench of this Court has laid down as under:-

*“Broadly speaking there are two types of judgments/orders, namely, judgments in rem and judgments in personam. The former binds the whole world whereas the latter binds only the parties. The jurisdiction exercised by the authorities under the Act is not of such a nature that the orders passed under it would bind the public at large. Obviously they are the judgments/orders in personam. The fundamental principle as to their nature is that they only bind the parties to it or the persons names therein. So far as the person who is neither a party nor named in such an order is concerned, the order in the eye of law is ineffective and non est and as such he is under no obligation to take proceedings to get it set aside. Assuming that the impugned order is only voidable and will be binding on the unserved owners unless it is got declared void or set aside, it cannot be said that the only remedy open to them is to approach the authorities under the Punjab Act and the remedy of a regular suit would be barred by the provisions of Section 25 of the Punjab Act. **It is well settled that if an order is passed by a tribunal of limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the Civil Court even if the statute expressly bars the jurisdiction of the Civil Court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal. It is also well established that in the case of alternative or concurrent remedies it is open to the party to choose anyone of them. The existence of the remedy under the Act, if any, therefore, would not bar the remedy of the suit.**”*

8. The same ratio of law has been reiterated in case ***Megh Raj and others Vs. Manphool and others 2008 (3) RCR (Civil) 241***, wherein it has been held as under:-

“17. The question that, however, merits attention is, whether civil Courts, despite the explicit bar set out in Section 26, would have jurisdiction to entertain challenge to an order passed under the Haryana Act, which appears to be beyond or without jurisdiction. The answer to this question need not detain us any further as it is well settled that where the impugned order is a nullity or without jurisdiction statutory bars as enacted by Section 26 would not oust the jurisdiction of a Civil Court to entertain a challenge thereto. A Full Bench of this Court in State of Haryana v. Vinod Kumar (supra), while dealing with this proposition held as follows:

“In our opinion the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil Courts cannot operate in cases where the plea raised before the civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity.”

It is, thus, apparent that where the impugned order is a nullity or is without jurisdiction, a civil Court would, irrespective of the ouster of its jurisdiction under Section 26, be entitled to entertain a suit and record its opinion for or against the impugned order. It is, therefore, held that jurisdiction of a civil Court, to entertain a dispute, arising from an order passed under the Haryana Act would not be barred, where the impugned order is without jurisdiction or is a nullity.”

9. In view of the aforesaid consistent ratio of law, the question as to whether the jurisdiction of the Civil Court under Section 26 of the Act is barred or not depends upon the appreciation of evidence

to be adduced by the parties as to whether any notice or opportunity of being heard was granted to the plaintiff or not at the time of passing the impugned order. Thus, at the threshold of the suit, no findings can be recorded on this question of fact.

10. There is no dispute with the question of law that the plea of jurisdiction is a mixed question of law and fact and is to be decided on appreciation of evidence. In view of the plea raised by the plaintiff in the plaint that the impugned order of cancellation of allotment has been passed by the learned Prescribed Authority without giving any notice or information to him, the suit cannot be stated to be barred by law at the very threshold as this question depends upon the findings to be recorded on appreciation of evidence to be adduced by the parties as to whether the principles of natural justice were complied with or not. Cases relied upon by learned counsel for the plaintiff are not distinguishable on facts. None of the judgment referred by the learned counsel for the petitioner relates to the rejection of plaint under Order 7 Rule 11 CPC. In case ***Azad Vs. Dharampal*** (supra) the civil suit was filed by the heirs of the original landlord for declaration of the land as surplus. So, they being the heirs of the original landlord, were bound by the order passed by the authorities. In case ***Devinder Singh and others Vs. State of Haryana and another*** (supra) the jurisdiction of the Civil Court was held barred on the trial of the suit that the Civil Court cannot proceed with a suit for specific performance of the contract which affects the right of the State Government to the surplus area under the Act. So, there was totally

different controversy in that suit. Moreover, in that suit also the plaint was not rejected at the threshold and the suit went full trial right from the Court of Senior Sub Judge to the Hon'ble Supreme Court. Again cases ***Mange Ram & another Vs. Tek Ram and others*** (supra) and ***Surinder Singh and another Vs. The Prescribed Authority (SDO Civil Mahendergarh others*** (supra) were the regular second appeals and on appreciation of entire evidence and material on record, the jurisdiction of the Civil Court was found to be barred. In case ***Rai Singh Vs. State of Haryana*** (supra), the appellant has exhausted all the remedies under the Act. The counsel for the appellant could not show as to how the provisions of the Act have been incorrectly applied. There was no issue in that case with respect to the order passed by the prescribed authority at the back of the appellant. In case ***Jai Kishan Dass and others Vs. The Haryana State and others*** (supra), this Court has categorically observed that it was not a case that Shiv Charan Dass was not given any opportunity by the Prescribed Authority before determining the surplus area. So, the jurisdiction of the Civil Court was held to be barred under Section 26 of the Act. Cases ***Hari Ram Vs. State of Haryana and another*** (supra), ***State of Haryana Vs. Hari Om and others*** (supra), ***Gurbax Singh and others. Vs. State of Haryana and others*** (supra), ***Attar Singh and others Vs. State of Haryana and others*** (supra), ***Balbir Chand and others Vs. State of Haryana and others*** (supra) and ***Bhag Mal and others Vs. Ram Murti and others*** (supra) are the judgments which have been passed in the regular second appeals on appreciating the

entire evidence and material brought on record to hold that the jurisdiction of the Civil Court was barred but the petitioner in this case wants this finding at the threshold of the suit without appreciation of evidence to be produced by the parties. As already discussed, the question as to whether the jurisdiction of the Civil Court in the present suit is barred or not will depends upon the appreciation of evidence as to whether any notice or opportunity of being heard was provided to the plaintiff/respondent No.1 or not before passing the impugned order and not at this initial stage.

11. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order.

12. Consequently, the present revision petition is without any merits and the same is hereby dismissed.

13. However, it is made clear that nothing expressed by this Court in this order as well as by the learned trial Court in the impugned order shall be construed as an expression on the merits of the case.

28.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**