

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 30.9.2016

(1) RSA No.1859 of 2013 (O&M)

Virsa Singh and another

... Appellants

versus

State of Punjab and others

... Respondents

(2) RSA No.2410 of 2013 (O&M)

Malkiat Singh and others

... Appellants

versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Amarjit Markan, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J. (Oral)

CM No.6597-C of 2013 in RSA No.2410 of 2013

By this application, a delay of 9 days in refiling the appeal is sought to be condoned

For the reasons stated in paragraphs 2 and 3 of the application, which is accompanied by the affidavit of applicant-appellant No.1, the application is allowed and the delay of 9 days in refiling the appeal is condoned.

RSA Nos.1859 and 2410 of 2013 (O&M)

1. These two appeals arise out of two civil suits bearing numbers 285 and 286 dated 5.10.2005, filed by the present appellants, before the learned Additional Civil Judge (Senior Division) Samana (RSA No.1859 of

2013 arises out of Civil Suit No.285 and RSA No.2410 of 2013 arises out of Civil Suit No.286).

In both these suits, the appellants-plaintiffs had sought a declaration to the effect that they are owners in possession of the suit land, fully described in the plaints filed by them, situated in Village Harchandpura, Tehsil Samana, District Patiala. They further sought a decree of permanent injunction restraining the defendants and their agents etc. from interfering or taking possession of the suit land from them, illegally and forcibly.

It was further stated that the suit land had been purchased by both sets of the appellants-plaintiffs from one Gurmeet Singh son of Hazara Singh, vide sale deeds dated 11.9.2002, pursuant to which mutations were also entered in favour of the appellants-plaintiffs and possession handed over by Gurmeet Singh to the plaintiffs.

The appellants-plaintiffs further contended that they were bonafide purchasers of the suit land.

2. However, on 6.10.2004 and 27.12.2004, the Sub Divisional Officer/Collector, Samana, issued notices to both sets of the plaintiffs and thereafter entered a report of possession of the suit property having been taken, in the *Roznamcha* (daily diary), on 7.1.2005.

The said notices are stated to have been issued under Section 9 (1) of the Punjab Land Reforms Act, 1972 (for short 'the Act of 1972'). (Though that fact is not forthcoming from the judgment of the learned Civil Judge, but has been stated by learned counsel for the appellants and which will be adverted to subsequently).

3. Against the aforesaid notices and entry in the *Roznamcha*, the appellants-plaintiffs filed a revision petition under Section 18 of the Punjab Land Revenue Act, 1887, before the Commissioner, Patiala Division, Patiala, who vide his order dated 2.2.2005, stayed the operation of the impugned order, but allegedly in violation of the said order, the Collector, Samana, directed the Halqa Patwari not to make any entry regarding the implementation of the order of the Commissioner and auctioned the suit land, which was then purchased by one Santokh Singh son of Amar Singh, for a sum of Rs.1,28,000/-.

Thus, it is the notices dated 6.10.2004 and 27.12.2004, the *Roznamcha* entry dated 7.1.2005, and the action of the Collector, Samana, of auctioning the suit land, that came to be challenged before the learned Additional Civil Judge (Senior Division), Samana, in the suits out of which these appeals arise, further seeking a decree of declaration and permanent injunction, as already noticed above.

4. Upon notices issued to the official respondents, i.e. defendants no.1 to 3 in the suits, they filed their written statements, stating therein that land measuring 13 standard acres 31 units had been declared surplus in the hands of one Pritpal Singh, out of which 11 standard acres 88 units fell within the revenue estate of Village Harchandpura, Tehsil Samana, District Patiala.

Another order dated 4.10.1978, giving details of *khasra* numbers of the land declared surplus, was also passed, against which Major Singh son of Hazara Singh, who had purchased the suit land from the big landowner, i.e. Pritpal Singh, filed an appeal before the Commissioner,

Patiala Division, Patiala, which was allowed and the matter was remanded to the Collector (Agrarian) Samana, to decide the matter afresh. The Collector (Agrarian), Samana, vide his order dated 17.3.1987, again confirmed the earlier order dated 4.10.1978, against which another appeal was filed before the Commissioner, which was dismissed vide his order dated 3.8.1981.

5. As per the impugned judgment of the learned Civil Judge, Major Singh and others filed a revision petition before the Financial Commissioner Revenue, Punjab, claiming to be bona fide purchasers of 624 kanals of land from Gurmeet Singh son of Hazara Singh, “which was illegally sold as the same was declared to be surplus during the life time of the big landlord Pritpal Singh”.

(Though this is the stand shown to have been taken in the written statements filed by the official defendants, in reply to the suits of the appellants-plaintiffs, however, Mr.Markan, learned counsel for the appellants, submits that, as a matter of fact, Gurmeet Singh and Major Singh being brothers, along with others, had actually both purchased the suit land from Pritpal Singh himself and they had all claimed to be bonafide purchasers).

Be that as it may, the revision petition was also dismissed by the Financial Commissioner Revenue, against which remedy was also taken before this Court, presumably by way of writ petition, which is also stated to have been dismissed, as is stated by the learned Civil Judge, as per the stand taken in the written statements filed by the official defendants, which fact is again controverted by learned counsel for the appellants in the present

appeals, to the effect that at that stage, no writ petition was filed.

It was further stated in the written statements that due to long drawn litigation, possession of the surplus land could not be taken by the State and therefore, finally, on 6.10.2004 and 27.12.2004, notices under Section 9(1) of the Act of 1972, were issued for taking possession of the surplus area, and ultimately the possession was taken on 7.1.2005 with the help of police and a *Roznamcha* entry was made accordingly. Thereafter, Mutation No.1772 is also stated to have been entered on 10.1.2005, in favour of the State.

Thus, it was contended by the State that the plaintiffs were neither the owners nor in possession of the suit land, it already having been declared surplus in the hands of the big landlord, Pritpal Singh, and any subsequent sale of the suit land by the said Pritpal Singh was wholly illegal, null and void.

It was further contended that the present appellants-plaintiffs further having bought the suit land from Gurmeet Singh son of Hazara Singh, who had purchased it from Pritpal Singh, such sale/purchase was also wholly illegal, null and void on the ground that, as a matter of fact, Gurmeet Singh had knowledge of the litigation with the State. Gurmeet Singh also tried to sell the land to one Darshan Singh, who, when he came to know of the litigation, got an FIR registered on 11.9.2002, on the ground that a fraud had been played on him by Gurmeet Singh, Gurdeep Singh, Mukhtiar Singh, Dalip Singh, Virsa Singh and Rajinder Singh (some of whom are the appellants-plaintiffs).

6. The auction purchaser, Santokh Singh, also filed a separate

written statement, stating that defendant No.3, i.e. the Tehsildar, Samana, had played a fraud upon him by auctioning the land in question, by concealing a material fact, that the State was actually not in possession of the suit land.

7. Replications having been filed by the plaintiffs, the following issues were framed by the learned Additional Civil Judge:-

- “1. Whether the plaintiffs are entitled to the declaration to the effect that they are owners in possession of the suit land by virtue of sale deed dated 11.9.2002 executed by Gurmeet Singh? OPP
2. Whether the plaintiffs are bonafide purchasers of the suit land for consideration without notice? OPP
3. Whether the plaintiffs are entitled to permanent injunction restraining the defendants from taking possession of the suit land illegally and forcibly? OPP
4. Whether the plaintiffs have not approached this Court with clean hands? OPD
5. Whether the plaintiffs have filed a false and frivolous suit to which they have no locus standi? OPD
6. Relief.”

8. Evidence having been led by the parties on both sides, eventually the learned Civil Judge came to the conclusion that the State had never tried to take forcible possession, rather had proceeded as per law by issuing notices dated 6.10.2004 and 27.12.2004, and that the State taking forcible possession “cannot be even imagined”.

Consequently, finding that the suit land had been taken possession of by due process of law, the suits filed by the present appellants were dismissed, vide judgments and decrees dated 4.3.2010 (in both the suits).

9. The said judgments and decrees were challenged by the present appellants by way of first appeals before the learned Additional District Judge, Patiala, who also, after considering the pleadings, evidence and the judgments of the learned Civil Judge, came to the finding that firstly, it could not be accepted that the plaintiffs did not know that the suit land was already in litigation, having been declared to be surplus in the hands of Pritpal Singh, as there was long drawn litigation by Gurmeet Singh and his brothers upto this Court (as stated in the judgment of learned lower appellate Court) and secondly, in any case the notices dated 6.10.2004 and 27.12.2004 had been validly issued as per law and therefore, even the subsequent proceeding of taking possession on 7.1.2005, was very much legal and valid.

As regards possession of the appellants-plaintiffs, it was held that as per the *Jamabandis* (Exs.P-1, P5 and P-6), it was proved that they were in cultivating possession of the suit land.

However, despite the finding that possession of the suit land was with the appellants-plaintiffs (prior to 7.1.2005), in view of the fact that it was found that they were dispossessed by due process of law, pursuant to the land having been declared to be surplus in the hands of a big landlord, the first appeals were also dismissed, leading to the filing of the present appeals before this Court.

10. While dismissing the appeals, the learned first appellate Court also recorded a finding that neither Gurmeet Singh, vendor of the appellants, nor the appellants-plaintiffs themselves, had acquired any title in the suit land because it had already vested in the Government, on it having been declared to be surplus in the hands of the big landlord, Pritpal Singh. (Reference paragraph 17 of the judgment of the learned first appellate Court, impugned in RSA No.2410 of 2013).

11. In these appeals filed against the aforesaid judgments and decrees, vide order dated 1.8.2016, this Court had noticed the fact that the present lis eventually arises out of 'surplus land proceedings' by which the land was declared surplus and that the orders passed in such proceedings, including the notices dated 6.10.2004 and 27.12.2004 and the order dated 7.1.2005, had already been challenged before the authorities prescribed under the Pepsu Tenancy and Agricultural Lands Act, 1955 (for short "the Act of 1955") and the Act of 1972, and that under Section 47 of the Act of 1955 and Section 21 of the Act of 1972, there is a bar on the jurisdiction of the civil Court on adjudicating upon matters arising out of proceedings declaring land to be surplus in the hands of any landowner.

At that stage, Mr.Markan, learned counsel for the appellants, had also submitted that an application under Order 41 Rule 27 of the CPC had been filed before the learned lower appellate Court but it had not been decided and on that ground alone, the matters need to be remanded back to that Court. However, this Court had, prima facie, opined at that stage that even that issue could only be considered if it was held that the civil Court actually had jurisdiction to deal with the matter.

It had been submitted by learned counsel for the appellants on 1.8.2016, as he has submitted today also, that in any case, the land not having been utilized and further, succession having opened with the death of Pritpal Singh, then in terms of Section 11(5) of the Act of 1972, the issue whether the land remained surplus or not would need to be redetermined by the Collector/prescribed authority under the Act of 1972 and that with succession having opened at the time when the land remained un-utilized, Pritpal Singh having died on 5.12.1983, the land could not be held to have vested in the State.

In this regard, the judgment of a Full Bench of this Court in Ajit Kaur and others vs. Punjab State and others, AIR 1981 (P&H) 8, has been cited today by learned counsel for the appellants.

12. Having considered the aforesaid arguments, though undoubtedly the land has not been declared to be surplus in the hands of at least the appellants-plaintiffs, who claim to be bonafide purchasers, the basic issues that would need to be determined would be, firstly, whether the land was correctly declared to be surplus in the hands of Pritpal Singh or not; secondly, whether it vested in the State or not, in view of what has been contended herein above; and lastly, whether the appellants are bonafide purchasers thereof or not.

As regards the issue of the appellants-plaintiffs being bonafide purchasers, the learned Courts below have held that their vendors, Gurmeet Singh and Major Singh, having been fully in the knowledge of the surplus proceedings, they having duly challenged the same before the authorities under the Acts of 1955 and 1972, and the appellants-plaintiffs being the

residents of the same village in which revenue estate is located, i.e. Harchandpura, and the surplus land proceedings having been continuing at least before 1978, it cannot be accepted that the appellants-plaintiffs were not in the knowledge of such proceedings.

Consequently, even though they (appellants) are subsequent vendees who purchased the land from the original vendees, who had purchased the suit land from the big landowner, Pritpal Singh, I see no reason to interfere with that finding of the learned Courts below, as it is not possible to accept that the appellants did not know that the suit land, in their own village, had been declared to be surplus in the hands of Pritpal Singh in 1962 and had further been the subject matter of protracted litigation since 1978.

13. Coming then to the issue of whether the land was correctly declared to be surplus or not and whether, thereafter, it actually vested in the State of Punjab or did not so vest for any reason whatsoever.

In the opinion of this Court, that issue is not one which a civil Court could have gone into, in view of the bar contained in Section 47 of the Act of 1955 and Section 21 of the Act of 1972, which read as under:-

The Act of 1955:

“47. Bar of jurisdiction.- (1) No civil court shall 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 Collector or the prescribed authority.

(2) 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.”

The Act of 1972:

21. Bar of jurisdiction.- (1) Save as provided by or under this Act, the validity of any proceedings or order taken or made under this Act shall not be called in question in any court or before any other authority.

(2) No civil court shall have jurisdiction to entertain any suit, or proceed with any suit instituted after the appointed day, for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act.”

14. On 1.8.2016, learned counsel for the appellants had also apprised this Court, that against the order of the Financial Commissioner Revenue, Punjab, dated 22.7.2015, allowing the revision petition filed against the order of the Commissioner, Patiala Division, Patiala, dated 15.6.2015, Civil Writ Petition No.14982 of 2016 has also been filed by the appellants in these appeals, along with some of the legal heirs of the original landowner, i.e. Pritpal Singh. Accordingly, the case file of that writ petition had also been called for by this Court vide that order and as noticed in the order dated 19.9.2016 (in these appeals), the writ petition has been dismissed by a coordinate Bench, vide its judgment dated 24.8.2016.

Learned counsel submits that against that judgment, a Letters Patent Appeal has been filed, which is still to be listed.

Thus, the appellants have already availed of appropriate remedies available to them, first under the Acts of 1955 and 1972, and thereafter, by way of a writ petition and a letters patent appeal. Therefore, the issue of the validity of the surplus proceedings and any consequences thereof, would have already been gone into by the appropriate authorities under the Acts, and this Court in writ jurisdiction, and are still under consideration of the 'Letters Patent Bench'.

In any case, with the statutory bar contained in Section 21 of the Act of 1972, even the effect of any sale of land pursuant to such land having been declared to be surplus in the hands of a landowner, is not an issue which the civil Court could have gone into.

It must be stated here that nothing has been pointed out to this Court that the proceedings under the Acts of 1955 and 1972 were in violation of the principles of natural justice, thereby making any order passed thereunder to be a void order and on that ground, conferring jurisdiction upon the civil Court to go into that limited issue. In fact, no such issue could have been raised either, in these proceedings, as what was challenged in the civil suits, were not the proceedings under the Acts of 1955 and 1972, against the big landlord, i.e. Pritpal Singh, but only the subsequent notices issued to the appellants, and the mutation entered on 7.1.2005, with regard to possession of the land having been taken by the State from the appellants. Thus, only the consequence of the 'surplus land proceedings' were subject matter of the civil suits out of which these appeals arise.

That issue would also therefore, be subject matter of the

proceedings now before the Division Bench, in the LPA stated to have been filed (if so filed).

Further, the appellants already having availed of the available remedies under the Acts of 1955 and 1972, and by way of a writ petition eventually, parallel proceedings before the civil Court were not sustainable for that reason also.

15. Having held as above, the necessary outcome would be that, with the bar on the civil Courts' jurisdiction, as regards the issue of validity of the surplus proceedings themselves and the vesting/non-vesting of the suit land in the respondent-State of Punjab, the findings of the learned lower appellate Court and the Civil Judge cannot be sustained, that being subject matter of the writ petition and now the Letters Patent Appeal stated to have been filed.

Consequently, the findings of the Courts below on the merits of the controversy are set aside, while even upholding the decrees to the extent of dismissal of the suits of the plaintiffs-appellants.

Needless to say, if the appellants succeed in the LPA or any subsequent proceedings, the question of their purchase of land from Pritpal Singh/his successors-in-interest, would obviously, be a matter inter se the parties to the contract of the sale and purchase of the suit land.

Naturally, nothing said herein above, would affect what has already been held by a coordinate Bench in CWP No.14982 of 2016, with regard to the validity or otherwise, of the proceedings arising out of the Acts of 1955 and 1972 and the consequences thereof, both for the reason that this Court also, being seized of these appeals in civil appellate jurisdiction, lacks

jurisdiction to adjudicate upon the merits of the controversy with regard to the proceedings under those Acts and the consequences thereof.

16. Thus, while dismissing these appeals in limine, the findings of the learned Courts below, including the finding of the lower appellate Court recorded in paragraph 17 of its judgment, with regard to vesting of the land in the State of Punjab are set aside, on the ground of lack of jurisdiction of those Courts. However, the dismissal of the suits of the plaintiffs, out of which these two appeals arise, by the learned Courts below is upheld but on the ground that the civil Court and the first appellate Court thereafter, lacked jurisdiction to entertain the suits.

Decree sheets be drawn up accordingly.

30.9.2016
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No