

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
103/A**

C.M. Nos. 5572 to 5574-C of 2014 &
RSA No. 2301 of 2014

Date of Decision: 11.02.2016

State of Haryana and another

.....APPELLANTS

VERSUS

Rohit Talwar and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Rohit Arya, Assistant Advocate General, Haryana,
for the appellants

Mr. Sandeep Kotla, Advocate,
for the respondents.

AUGUSTINE GEORGE MASIH, J

C.M. No. 5572-C of 2014

Prayer in this application is for condonation of delay of 12 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the Collector Agrarian, Gurgaon, the present
application is allowed. Delay of 12 days in re-filing the appeal stands
condoned.

C.M. No. 5573-C of 2014

Prayer in this application is for condonation of delay of 3 days
in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the Collector Agrarian, Gurgaon, the present application is allowed. Delay of 3 days in filing the appeal stands condoned.

RSA No. 2301 of 2014

This appeal has been preferred by the State of Haryana challenging the judgment and decree passed by the Additional District Judge, Gurgaon dated 29.11.2013 whereby the appeal preferred by the respondents-plaintiffs against the judgment and decree dated 14.03.2011 passed by the Civil Judge (Junior Division), Gurgaon, by which the suit preferred by the respondents for declaration with the consequential relief of permanent injunction was dismissed, has been allowed.

2. It is the contention of the learned counsel for the appellants that the Lower Appellate Court has erred in law in interfering with the well-reasoned and detailed judgment passed by the Civil Judge (Junior Division), Gurgaon, wherein it was held that the suit was not maintainable in the light of bar as contained under Section 26 (1) (B) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as '1972 Act') and Section 25 of the Punjab Security of Land Tenure Act, 1953 (hereinafter referred to as '1953 Act') relying upon the judgment of this Court in **Rajmal vs. Garib Dass and others**, 1977 PLJ 383. His further contention is that the declaration, as has been granted by the Lower Appellate Court to the respondents-plaintiffs, is erroneous in law as the Court below has wrongly interpreted the Full Bench judgment of this Court in **State of Haryana vs. Chandgi Ram**, 1981 PLJ 494. He contends that once the proceedings have been finalized under the 1953 Act and the land has been declared surplus,

which proceedings have attained finality, there is no provision under the 1972 Act to re-open the proceedings finalized under the 1953 Act. He contends that the respondents-plaintiffs have not challenged the said proceedings under the Act especially when the jurisdiction of the civil court is barred and the remedy of appeal and revision has not been availed of by them. In support of this contention, he places reliance upon the judgment of the Supreme Court in **Amar Singh vs. Ajmer Singh**, 1994 (3) PLR 433. He, thus, contends that the impugned judgment and decree deserves to be set aside.

3. On the other hand, learned counsel for the respondents submits that the finding, as recorded by the learned Lower Appellate Court, is in accordance with law especially when the sale in favour of the predecessor-in-interest of the respondents-plaintiffs is dated 25.02.1957, which is prior to 30.07.1958, which is the cut off date fixed as per Section 8 of the 1972 Act. He, thus, contends that the said land has been exempted from consideration of the surplus area of a big land owner. Reliance has, thus, been placed upon the judgment of the Full Bench of this Court in **Chandgi Ram's case** (supra). He further contends that although the remedy of appeal and revision has not been availed of by the plaintiffs but the present suit would be maintainable as the impugned mutation No. 1949 dated 12.11.1991 of *Tabdeel Milkiyat* in favour of the State of Haryana has been sanctioned without issuing any notice to the owner of the property i.e. the big land owner. Even the order of declaring the land surplus dated 14.03.1961 has been passed at the back of the big land owner Smt. Sarbati Devi as also Smt. Punia, who had purchased the suit property on 25.02.1957 and was the owner in possession of the said land. The suit, therefore, has

rightly been entertained by the Lower Appellate Court as no opportunity of hearing was granted to the respondents-plaintiffs and the principles of natural justice have not been complied with. Prayer has, thus, been made for dismissing the appeal by upholding the order passed by the Lower Appellate Court.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned judgment.

5. The facts in this case need to be culled out to understand the correct position with reference to the statutory provisions, as applicable. The original owner of the suit property was Smt. Sarbati Devi, who was a big land owner. She sold 7 Kanal 11 Marlas of land to Smt. Punia w/o Mangal Singh vide sale deed dated 25.02.1957 and mutation No. 183 was sanctioned in favour of the purchaser. Smt. Punia having become the absolute owner in possession of the land further sold it vide two sale deeds dated 06.11.1987 and 10.11.1987 in favour of Mangal Singh, her husband, and Ram Chander sons of Kanhiya in equal shares. Ram Chander died and the land was inherited by Shanti Devi widow, Madan Lal, Rambir and Kishan Lal etc. and mutation of inheritance No. 1894 was sanctioned in their favour. Mangal Singh and Smt. Shanti Devi widow of Ram Chander and other legal heirs sold the suit property in favour of the respondents-plaintiffs vide sale deed No. 13181 dated 20.01.1995 for valuable sale consideration. They became the exclusive owners in possession of the said suit property. When they approached the Halqa Patwari for sanction of mutation of the said land in their favour, they came to know that mutation No. 1949 dated 12.11.1991 of *Tabdeel Milkiyat* has been sanctioned in

favour of the State of Haryana on the basis of a letter issued by the Sub-Divisional Officer (Civil)-cum-Prescribed Authority, Gurgaon, whereby on the basis of an order passed by the Collector, Rewari dated 14.03.1961 and the Special Collector, Haryana order dated 05.09.1990, the land at the hands of Smt. Sarbati Devi, the big land owner, was declared as surplus and the suit land vested in the State of Haryana under Section 12 (3) of the 1972 Act as on the appointed date i.e. 15.04.1953, Smt. Sarbati Devi was having 232 acres of land in surplus which was beyond the permissible land. The Halqa Patwari on this basis refused to enter and sanction the mutation in the name of the respondents-plaintiffs.

6. The respondents-plaintiffs moved an application to appellant No. 2 i.e. SDO (Civil)-cum-Prescribed Authority for exempting the suit land under Section 8 of the 1972 Act stating therein that the orders of declaring the land surplus as also the mutation No. 1949 dated 12.11.1991 were passed without jurisdiction and in violation of the principles of natural justice and, therefore, were void ab-initio especially when the land has already been sold by the big land owner Smt. Sarbati Devi on 25.02.1957 much before the date prescribed under Section 8 of the 1972 Act i.e. 30.07.1958. The said application was dismissed vide order dated 03.10.2002. It is at this stage that the suit for declaration with a consequential relief of permanent injunction was preferred by the respondents-plaintiffs on 07.10.2003 without availing their remedy under the 1953 Act and/or the 1972 Act.

7. The questions of law which arise in this case are: (1) whether the suit land, which has been sold by Smt. Sarbati Devi, big land owner on 25.02.1957, would be protected by Section 8 (1) of the 1972 Act or not? If

yes, the effect thereof on the orders dated 14.03.1961 passed by the Collector, Rewari and the order dated 05.09.1990 passed by the Special Collector, Haryana in the absence of challenge thereto? (2) Whether the suit is maintainable in the light of specific bar of jurisdiction of the Civil Court by Section 26 of the Haryana Ceiling on Land Holdings Act, 1972 and Section 25 of the Punjab Security of Land Tenures Act, 1953?

8. Answer to the first question:

Reference to Section 8 (1) of the 1972 Act would be necessary, the relevant portion thereof reads as follows:-

“ Certain transfers or dispositions not to affect surplus area.-(1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the Pepsu Law or the Punjab Law or by an heir by inheritance, no transfer or disposition of land in excess of:-

(a) the permissible area under the Pepsu Law or the Punjab Law after the 30th day of July, 1958; and

(b) the permissible area under this Act, except a bona fide transfer or disposition after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer or disposition:

Provided that any person who has received an advantage under such transfer, or disposition of land shall be bound to restore it, or to pay compensation for it, to the person from whom he received it.

(2) and (3) xxxx xxxx xxxx xxxx”

9. The Full Bench judgment of this Court has delved into this aspect in **Smt. Jaswant Kaur and another vs. The State of Haryana and another**, 1977 PLJ 230, wherein it was held that a harmonious way of construing Sections 8 and 12 (3) of the 1972 Act would be to give full effect to Section 8 (1) up to 23.12.1972, that is to say, to exclude from the operation of Section 12 (3), the transfers made up to 23.12.1972, which are protected by Section 8 (1) of the 1972 Act, namely, (1) acquisition of land by the State or Central Government, (2) acquisition by a tenant under the Pepsu Law or the Punjab Law, or (3) acquisitions by an heir by inheritance. The other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30.07.1958. Relying on these observations, the subsequent Full Bench in Chandgi Ram's case (supra), held that besides the transfers, which are protected by Section 8 (1) of the 1972 Act, other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30.07.1958.

10. Admittedly, the sale in favour of Smt. Punia, who is the predecessor-in-interest of the respondents-plaintiffs, is dated 25.02.1957, which is prior to 30.07.1958 the same would be protected as per the above referred Full Bench judgments. As the land was declared surplus vide order of the Collector, Rewari dated 14.03.1961, which order has not been challenged and the proceedings stand finalized, the same cannot be re-opened in the light of the judgment of the Supreme Court in **Amar Singh's case** (supra) where it has been held that where proceedings under the 1953 Act declaring the land as surplus has attained finality but the land un-

utilized until the 1972 Act came into force vesting the land in State, the surplus proceedings cannot be reopened as there is no provision for doing so under the 1972 Act. So merely because the land was not utilized till its allotment to respondent-defendant No. 3-Bhartu son of Khubi Ram vide allotment No. 345 dated 28.06.2002, that would not make any difference so far as the position in law is concerned keeping in view the language of Section 12 (3) of the 1972 Act, according to which, the area declared surplus or tenants permissible area shall vest in the State on 24.01.1971, the appointed day. The non-utilization of surplus land till the date of vesting is, thus, of no consequence and makes no difference as held by the Hon'ble Supreme Court in **Smt. Bhagwanti Devi and another vs. State of Haryana and another**, 1994 (3) RRR 115. The claim of the respondents-plaintiffs, on this ground, cannot be accepted.

11. Answer to the second question:

The basic question would be whether the suit would be maintainable in the light of specific bar, as contained under Section 26 (1) (B) of the 1972 Act and Section 25 of the 1953 Act. The relevant portion of Section 26 (1) (B) of the 1972 read as follows:-

“26. Bar of jurisdiction.- (1) No civil court shall have jurisdiction to

(a) xxx xxx xxx xxx xxx

(b) 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.

Section 25 of the 1953 Act is:

25. Exclusion of courts and authorities.- Except in accordance with the provisions of 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.”

12. A perusal of the above provisions of the two Acts would clearly show that the jurisdiction of the Civil Court is expressly barred . In support of this, reference can be made to the judgments of this Court in **Rajmal vs. Garib Dass and others**, 1977 PLJ 383, **Khushal vs. Nathu Lal**, 1999 (3) PLR 585 and **Radha Bai vs. State of Haryana**, 1997 (3) PLR 638. Further, there is no evidence on record that the big land owner, Smt. Sarbati Devi was not given any notice or was not served prior to declaration of the land as surplus. It appears that the Lower Appellate Court has proceeded on the assumption that no notice was issued to Smt. Sarbati Devi, the big land owner or that she had not been served on the basis of observations in the order of declaring the land surplus that by mistake this land was initially not included in the land of the big land owner and included subsequently, totally overlooking that the onus to prove violation of principles of natural justice was on the respondent-plaintiff as this was pleaded and asserted by him and thus, not on the appellant-defendants. This is the illegality committed by the Court.

13. As regards the contention of the learned counsel for the respondents that the learned Lower Appellate Court has primarily proceeded to entertain the suit on the ground that no notice has been issued prior to proceeding with the determination of the surplus area qua the big land owner, suffice it to say that in the light of the Division Bench judgment of this Court in **Ujagar Singh and others vs. State of Haryana and others**,

2012 (3) RCR (Civil) 960, the land owner is not entitled to any notice and also cannot claim re-distribution as by operation of Section 12 (3) of the 1972 Act, the surplus land stood vested in the State free from all encumbrances on and w.e.f. 24-1-1971 the appointed day irrespective of the fact whether the land was utilized or not. In view of the above settled preposition of law, the Lower Appellate Court has wrongly proceeded to hold that the Civil Court has jurisdiction to entertain the suit because of the violation of the principles of natural justice as notice has not been issued to the big land owners. It may not be out of way to mention here that no evidence has been produced by the respondent-plaintiff that no notice was issued to the big landlord or that she was not served.

14. In view of the above, the present appeal is allowed. The impugned judgment dated 29.11.2013 passed by the Additional District Judge, Gurgaon is hereby set aside and the judgment and decree passed by the Civil Judge (Junior Division), Gurgaon dated 14.03.2011 is restored. The suit of the respondents-plaintiffs stands dismissed.

C.M. No. 5574-C of 2014

In view of the disposal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

February 11, 2016*pj***(AUGUSTINE GEORGE MASIH)
JUDGE**