IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.4350 of 2014
Date of decision: 27.01.2016

Sudhir Kapoor and others

... Appellants

Versus

The State of Haryana and others **... Respondents**

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the appellants.

AMOL RATTAN SINGH, J.

This is the second appeal filed by the appellants after their suit seeking a decree for possession and for recovery of Rs.2,50,000/- from respondents No.1 to 79, was dismissed by the learned Civil Judge (Jr. Divn.), Karnal, vide his judgment dated 18.11.2010. The first appeal was also dismissed by the learned Additional District Judge, Karnal, vide his judgment dated 04.04.2014.

2. As per the appellants-plaintiffs, Dewan Hari Kishan Kapoor was their predecessor-in-interest, who was allotted 132 Standard Acres and 14 ½ Standard Units of land in Village Sheikhpura Manchuri, Tehsil and District Karnal, Village Nissing, Tehsil and District Karnal, Village Taraf Insar and Village Taraf Rajputan, Tehsil Panipat (then District Karnal) after he immigrated from West Pakistan to India in the wake of the partition of 1947. In addition to the aforesaid land, he was allotted 7 Standard Acres and 1¼

Standard Units of garden land in Village Rasulpur, Tehsil and District Karnal. In the year 1956, he transferred the land situated in Village Shekhpura Manchuri and in Village Nissing, to his five sons, i.e. the late father of appellant No.1, Dewan Hira Lal Kapoor, the late father of appellant No.2, Dewan Kundan Lal Kapoor, the late father of appellant No.3, i.e. Ram Nath Kapoor, the late father of appellant No.7, Dewan Vidhya Sagar Kapoor and to Dewan Chaman Lal Kapoor (who in the civil suit was represented by his wife Sushila Rani, though she was not shown in the array of parties in the present appeal, obviously having also passed on).

The transfer is stated to have been made through two registered 'tamleeknamas', dated 19.12.1956 and 30.12.1956. However, vide order dated 20.05.1961, the Collector (Agrarian), Karnal, computed the entire land in the hands of late Dewan Hari Kishan Kapoor, including the 7 Standard Acres and Standard Units of garden land, of which 82 SAs and 4 ¼ SUs were declared to be surplus in his hands and were allotted to the father of respondents No.4 to 9 (Arjan son of Bhola Ram), as also to respondent No.16 (Krishna son of Shiv Lal), respondent No.17 (Lal Singh son of Phulla Ram), as also to the predecessors-in-interest of the other respondents, arrayed upto Sr. No.79 in the array of respondents. Respondents No.80 to 83 have been shown to be proforma respondents, i.e. successors-in-interest of Dewan Chaman Lal Kapoor (respondents No.80 to 82) and Ram Nath Kapoor (respondent No.83). These proforma respondents/their predecessors-in-interest were plaintiffs along with the present appellants, before the learned Civil Judge (Jr. Divn.).

3. Some of the allottees sold their shares to some of the other

respondents, who are either co-allottees or complete strangers.

Possession of the land so allotted, from the surplus land of Dewan Hari Kishan Kapoor, is also stated to have been handed over to the allottees but allegedly against the provisions of Rules 20-B, 20-C, 20-D of the Punjab Security of Land Tenures Rules, 1956 (in short the "the Rules of 1956"). The said provisions pertain to the method of delivery of possession, the condition of resettlement and the consequences of not taking possession. Violation of Section 18 of the Punjab Security of Land Tenures Act, 1953 (in short "the Act of 1953"), was also alleged by the plaintiffs in their suit. That provision relates to rights of certain tenants to purchase land which had been under their occupancy for 6 years or more.

As per the suit, the ownership rights continued to be with the owners, with the tenants settled on the land declared as surplus shown to be tenants under the original owners.

4. Dewan Hari Kishan Kapoor is stated to have died on 09.12.1970 and it was contended in the suit that his sons and the legal representatives of a pre-deceased son became small land owners under the Act and remained so even up to the date of enforcement of the Haryana Ceiling on Land Holdings Act, 1972 (in short "the Act of 1972"). The sons and the legal representatives of his pre-deceased son Dewan Kundan Lal Kapoor, are stated to have moved an application before the Collector under Section 10-A(b) of the Act of 1953, for grant of the benefits of inheritance, on the ground that they had now become small land owners and as such, the benefits envisaged under Section 10A of the Act of 1953 would be available to them.

5. On 22.12.1972, as stated in the plaint, the Act of 1972 came into

force and allegedly in the process of segregation of land, the lower revenue authorities illegally sanctioned mutation of land belonging to the appellants, situated in village Manchuri, in favour of the State Government on 24.10.1978 and 16.12.1978. In respect of the land in village Nissing, such mutation is stated to have been sanctioned on 12.03.1979.

As per the appellants, these mutations, during the pendency of their application for exemption/inheritable rights of small land owners, upon demise of the big land owner, were without jurisdiction. Subsequently, the application moved by the appellants under Section 10-A(b) was rejected by the Prescribed Authority (by respondent No.3) under the Act of 1972, vide order dated 08.09.1983, holding that the land declared surplus under the Act, had already been utilized during the lifetime of the big land owners and as such, no rights would accrue to the small land owners. (The order was seemingly obviously, passed in terms of Section 10-B of the Act of 1953).

6. The appeal against that also having been dismissed, the appellants filed a revision petition before the Financial Commissioner, Haryana, which too was dismissed on 22.12.1998.

7. In the plaint, the appellants contended that they applied for a copy of the said order on 29.12.1998, which was not made available to them till 01.06.1999. (The date when the order was passed by the Financial Commissioner, though not forthcoming in the judgment of the learned Civil Judge, is stated to be 22.12.1998 and has been annexed with this appeal, having been exhibited before the Courts below).

The order in revision, is alleged to have been passed without touching the merits of the case, against which the appellants filed CWP

No.8687 of 1999 before this Court, impugning the orders of the revenue authorities up to the Financial Commissioner, on the ground that such orders were without jurisdiction, since no notice was issued to the bona fide transferees purchasers of the property who had become owners prior to 30.07.1958 and as such, were protected under Section 8 of the Act of 1953.

8. That writ petition was dismissed by this Court *in limine* vide order dated 08.07.1999. The Special Leave Petition filed by the appellants was also dismissed by the Supreme Court on 05.01.2000.

9. Despite the above proceedings having reached finality, the appellants still filed Civil Suit No.323 of 2010 (obviously renumbered as the suit is shown to be actually instituted on 25.06.2000), stating therein that despite the earlier round of litigation having reached its final conclusion, the orders dated 25.05.1961, 20.10.1972, 08.09.1983 and 16.05.1985 (passed by the Collector) were *void ab initio* and *nonest* in the eyes of law. Hence, jurisdiction of the Civil Court to interfere in such orders, despite dismissal of the writ petition and the SLP, was contended to be still not barred, especially because the Financial Commissioner had dismissed the revision petition solely on the ground of limitation and consequently, the writ petition and SLP would also actually be a confirmation of the said order of the Financial Commissioner (with no adjudication on the issue of jurisdiction).

In other words, the contention in the suit, as also right up to this Court, is that an order *void ab initio*, is still challengeable on that ground alone before the Civil Court, despite any other litigation having reached culmination before different authorities and upto the last Court.

10. Mr. Aashish Aggarwal, learned Senior counsel appearing for the

appellants relied upon the judgment of the Supreme Court in **State of M.P. Vs. Bhailal Bhai**, AIR 1964 SC 1006, to support his contention to the effect that the "special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defences legitimately open in such actions" (Para 17 of Bhailals' judgment, supra).

Thus, learned Senior counsel submitted that since the writ petition filed by the appellants (CWP No.8687 of 1999), challenging the order of the Financial Commissioner, was dismissed, that was only an affirmation of the order of the Financial Commissioner, by which the revision before him was dismissed on the ground of delay. He submitted that the orders of the revenue authorities, being *void ab initio* for other reasons, would still be challengeable under the normal process of law and as such, the suit from which these proceedings arise, would be maintainable.

Before going into that contention among others made by the learned Senior counsel, first, the judgments under challenge in this appeal, need to be looked at.

11. The case set up by the appellants before the learned Civil Judge (Jr. Divn.), Karnal, was that no part of the land of the appellant-plaintiffs could have been declared surplus, in view of the fact that it had already been transferred by two registered *Tamleeknamas* (deeds of settlement and conveyance), prior to 1958. Thus, Dewan Hari Kishan Kapoor had ceased to be owner of the land to the extent that was alienated vide the aforesaid two documents and as such, the land could not have been declared to be surplus in his hands.

It was further contended that Dewan Hari Kishan Kapoor having died before the coming into force of the Haryana Celling on Land Holdings Act, 1972, as such, the benefits of Section 8(i) of that Act would enure to the benefits of the appellants. This would be more so, as contended, as under the Act of 1972, only such land as was in excess of the permissible area under the PEPSU law or the Punjab law, on 30.07.1958, could be declared to be surplus. In the present case, the transfer to the appellants having been made in the year 1956, the land could not have been declared surplus in the hands of Dewan Hari Kishan Kapoor.

Consequently, the allotment to the respondents/their predecessors-in-interest, after declaration of the land to be surplus, was also illegal, null and void and not binding on the appellants, as per the plaint filed by them before the learned Civil Judge.

Hence, it was contended that they were entitled to be in possession of the suit land and in fact, were required to be paid mesne profits by those in whose (alleged) illegal possession it was.

12. In the written statement filed on behalf of the respondent-State (respondents No.1 to 3), to the plaint, preliminary objections with regard to locus standi and maintainability of the suit were taken, on the ground that after it had been declared surplus, the land vested in the State Government with mutation accordingly sanctioned and had been utilized to the knowledge of the appellants, as they had moved an application before the Prescribed Authority, i.e. the SDO (Civil), exercising powers of the Collector, Karnal, on 16.07.1971.

It was also contended that the Civil Court had no jurisdiction to entertain the suit, as jurisdiction was specifically barred under the Act of 1972 (by Section 26 thereof). It was further contended that the suit was also barred on the principle of res judicata with the appellants having lost the battle up to the Supreme Court and simply by changing the form of the suit, they could not circumvent the bar applicable under that principle.

12. On merits, the fact of late Dewan Hari Kishan Kapoor having been allotted 132 Standard Acre and 14.5 Standard Unit of land in Village Manchuri was admitted but the transfer vide the deeds dated 19.12.1956 and 20.12.1956 was denied.

It was further contended that vide his order dated 25.05.1961, the Collector (Agrarian) had correctly computed the surplus land in the hands of Dewan Hari Kishan Kapoor and whatever benefit was admissible to the appellants, had already been granted to them, vide the order dated 20.12.1972, passed by the Collector while deciding the application moved under Section 10A of the Act of 1953. The remaining land had been utilized as per law and all procedures as were required to be followed under Rules 20-B, 20-C and 20-D of the Rules of 1956, had been duly complied with.

13. The separate written statement filed by the private respondents before the learned Civil Judge, also essentially reiterated the stand taken by the State, though by giving further details of the procedures adopted in allotting the surplus land to them.

No replication was filed.

14. The learned Civil Judge framed the following issues for consideration:-

> "1. Whether the impugned orders dated 25.05.1961 passed by the Collector, Karnal, whereby the suit land was declared surplus and order

dated 20.12.1972 passed by the Assistant Collector Ist Grade, Karnal, in the alleged application under Order 10-A of the Punjab Security of Land Tenures Act and order dated 08.09.1983 passed by the Prescribed Authority on the alleged application under Section 8(i)(a) of the Haryana Ceiling on Land Holdings Act and order dated 16.05.1985 passed by the Collector are illegal, null and void and not binding on the rights of the plaintiffs? OPP

2. If issue No.1 is proved in affirmative whether the plaintiffs are also entitled to the decree of possession of the suit property?OPP

3. If both above referred issues are proved in affirmative whether the plaintiffs are entitled to recover an amount of Rs.2,50,000/- from defendants Nos.4 to 81 as user and occupation charges of suit land?OPD

4. Whether the suit of the plaintiffs is within limitation?OPP

6. Whether the suit is not maintainable?OPD

7. Whether the plaintiffs have no locus-standi or cause of action to maintain the suit in its present form?OPD

8. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties?OPD

9. Whether the civil Court has no jurisdiction to try and entertain the present suit?OPD

10. Relief."

Issues No.1 to 4 were taken up together and it was held that the orders dated 25.05.1961 and 22.12.1998 having reached culmination by dismissal of the SLP on 05.01.2000, the appellants were debarred from raising the issue afresh.

A contention was also raised on behalf of the appellants that as the allottees had not applied under Section 18 of the 1953 Act for purchase of the land, the ownership thereof would still lie with the appellants.

That contention was negated by the learned Civil Judge, holding that once the land had been declared surplus, it would vest in the State (and the question of it reverting to the land owner, due to any defeciency in the procedure of allotment, did not arise).

On the issue of limitation, it was held by the learned Civil Judge that even if the order dated 25.05.1961 is presumed to be ultra vires, null and void, it would still have to be challenged within a period of three years and not after a gap of 40 years, as had been done.

The contention that since Form 'F' had to be prepared by the Collector, in terms of Rule 6 (7) of the Rules of 1956, (pertaining to preparation of a settlement of the land owned by the land owner) and that form was not issued, hence, the suit was not barred by limitation, was also negated by the first Court.

15. It was further held that the appellants were also barred from raising any other issue (specifically pertaining to Sections 5 and 6 of the Act of 1953), as had not been raised by them before the Financial Commissioner in any case, especially as the orders of the Financial Commissioner, this Court and the Supreme Court were passed in the presence of the parties with full opportunity granted to them. Hence, the matter could not be agitated afresh.

All the authorities cited by the appellants on different points and issues were also negated by the learned Civil Judge on the aforesaid reasoning, i.e. essentially the bar on the principle of *res judicata,* under Order 2 Rule 2 and on grounds of limitation, other than the fact that as per the trial Court, the land stood vested in the State Government once it had been declared to be surplus.

However, on the issue of maintainability of the suit, it was held that if an order is challenged on the ground of it being null and void, the Civil Courts' jurisdiction would not be barred and as such, since the contention of the appellants-plaintiff was that the impugned orders dated 25.05.1961, 20.12.1972, 08.09.1983 and 16.05.1985 were ultra vires Sections 5 and 6 of the Act of 1953 and other provisions, the suit was (in that respect), maintainable.

16. The learned first appellate Court, on issues No.1 to 3, i.e. the essential issues on the basis of which relief was claimed, held that the matter already having been agitated up to the Supreme Court, the impugned orders were very much legal and as such, the findings of the trial Court could not be assailed.

On issue of limitation (issue No.4) also, it was held that the impugned orders being of the years 1961 and 1972 and (the order of the Financial Commissioner being of the year) 1998, the suit was barred on the ground of limitation, it having been filed in the year 2000.

The first appeal was also, accordingly, dismissed.

17. Before this Court, Mr. Aggarwal, the learned Senior counsel, first submitted, as already noticed, on the issue of maintainability of the suit, in terms of what has been held in **Bhailals'** case (supra).

On query by the Court, he submitted that even if no liberty was granted by the writ Court, or in the SLP, to agitate the matter afresh, it could still be so done by approaching the civil Court, as the appellants were within their rights to approach that Court, on the ground of the impugned orders being non-est in the eyes of law. In this regard, he also cited a judgment of the Supreme Court in the case of **State of Gujarat Vs. Patel Raghav Natha and others**, (1969 AIR (SC) 1297).

It was held therein, in the context of various provisions of the Bombay Land Revenue Courts Act 1879, that when a question of title arises, the Commissioner should not go into that question and should refer the parties to a competent Court (civil Court).

Thus, learned Senior counsel submitted, that in this case also the revenue authorities should have actually referred the matter themselves to the civil Court, as it involved a question of title of the appellants qua the allottees and the respondent-State and the said (revenue) authorities not having done so and further, this Court and the Hon'ble Supreme Court only being seized of the orders of the Financial Commissioner dismissing the revision petition on ground of delay, the issue of title and of a void order being challengeable before the civil Court, could be taken by the appellants to such competent Court, even after dismissal of the writ petition and the SLP.

18. With regard to the bar under Section 26 of the Act of 1972 and by extension under Section 25 of the Act of 1953, he contended that would also not debar the appellants from approaching the civl Court. Towards that contention, he relied upon a judgment of a Division Bench of this Court in the case of **Anoop Singh and others Vs. the State of Haryana and others**, 2008 (2) PLR 603.

He also submitted that the said judgment also holds that limitation, in a case where preparation of a statement of surplus land is to be made in form 'F' (referred to earlier), would start running from the date of service of the said form on the land owners and where such form is not served upon them, the question of limitation would not arise and the surplus proceedings themselves would stand vitiated.

Hence, learned Senior counsel submitted that in the present case form 'F' not having been served upon the appellants and their predecessors-in-interest, who by virtue of the transfer/conveyance deeds dated 19.12.1956 and 20.12.1956 had become owners of the land, the entire proceedings stood vitiated and consequently, the order dated 25.05.1961 is to be held to be an order *null and void ab initio* and therefore, challengeable before a civil Court at any time, because no limitation would run qua the true land owners who had not been served with notice of form 'F'.

Learned Senior counsel further relied upon a Full Bench judgment of this Court in **State of Haryana and others Vs. Vinod Kumar and others**, (1986 PLJ 161: 1986(1) PLR 222), wherein it was held by a five Judge Bench, that when no opportunity of hearing has been given to a land owner, as envisaged in Rule 6 of the Rules of 1956, the order is a nullity and a civil suit to challenge the validity of such order is maintainable, despite the bar under Section 25 of the Act of 1953.

Mr. Aggarwal again submitted in that context, that since the true land owners, i.e. with the appellants and the predecessors-in-interest (other than Dewan Hari Kishan Kapoor), had not been given any opportunity of hearing, the order declaring the land to be surplus in the hands of Dewan Hari Kishan Kapoor was void and a nullity and consequently, is challengeable before a civil Court.

19. Learned Senior counsel next submitted that as regards Rules 20A, 20B, 20C and 20D of the Rules of 1956 not having been complied with, pertaining to the procedure laid down for utilization of the land, the allotment to the private respondents/predecessors-in-interest, was also wholly vitiated on that count and consequently, the land would revert to the appellants.

(These rules, as already noticed, relate to the conditions of resettlement and issuance of certificates to tenants of big land owners in form 'K-6', clearly describing the land allotted to each tenant, delivery of possession of surplus area to the allottee, the conditions of resettlement of the tenants and the consequences of a tenant not taking possession of the surplus area allotted to him).

20. Mr. Aggarwals' next contention was that tenants holding lands in the capacity of "Gair Marusis", without showing evidence of payment of rent, could not have been allotted the land, as no tenancy in their favour was proved. Hence, the question of allotment of land under the Punjab Security of Land Tenures Act, 1953 would not arise, to a person who is not proved to be a tenant. In this regard, learned Senior counsel cited the Supreme Courts' judgment in the case of **Financial Commissioner, Haryana Vs. Kela Devi**, AIR 1980 SC 309.

In that judgment, it was held that the procedure prescribed in the aforesaid Rules was mandatory, to complete the process of utilization of surplus land. That judgment was also later relied upon to hold so, in the case of **Brij Lal (Dead) by LRs and others Vs. State of Haryana and others**, JT 2008 (1) SC 55: (2007) 14 SCC 332.

21. Next, Mr. Aggarwal submitted that as regards vesting of the land in the State Government, after it was declared to be surplus, Section 8(1) (a) of the Act of 1972, stipulates that land transferred by a big land owner, prior to 30.07.1958, would be saved from the rigors of the Act of 1972 and would not be declared to be surplus under that Act. Therefore, in the present case, Dewan Hari Kishan Kapoor having transferred the land to the predecessors-in-interest of the appellants in December 1956, vide two transfer deeds,

(referred to earlier) the question of such land, acquired under the Act of 1953, vesting in the State in terms of Section 12(3) of the Act of 1972, would also not arise. (Section 12(3) of that Act lays down that land declared surplus under the Punjab law, i.e. the Act of the 1953, which had not so far vested in the State, would be deemed to have so vested with effect from the appointed day, i.e. 24.01.1971).

Towards that contention, learned Senior counsel cited judgments in the cases of **Narpat Singh Vs. State of Haryana**, 1985 PLJ, 221, **State of Haryana and others Vs. Chandgia**, 1981 PLJ 494, **Jaswant Kaur and another Vs. The State of Haryana and another**, 1977 PLJ 230 and **Surender Singh Vs. State of Haryana and others** (LPA No.541 of 2013, decided on 20.08.2013).

22. Learned Senior counsel then submitted that the proceedings before a revenue Court being in the nature of summary proceedings, the principle of *res judicata* would not apply and as such, a suit would lie before the civil Court, even after proceedings before revenue Courts had attained finality up to the Supreme Court.

In this regard, he cited judgments in the cases of **Ram Sarup and others Vs. State of Haryana and others**, 2006 (4) RCR (Civil) 350, **Inder Singh and another Vs. The Financial Commissioner, Punjab and others**, 1997 (1) PLJ 52, **State of M.P. Vs. Bhailal Bhai**, AIR 1964 SC 1006.

Mr. Aggarwal submitted that if a suit is filed even today, in respect of an order passed in 1961 by the first revenue authority, it would still be maintainable, in view of Article 65 of the Schedule to the Limitation Act, it being a suit for possession based on title.

On the above proposition, he cited judgments in the cases of **Indira Vs. Arumugam**, 1998 (2) PLJ 109, **Malkiat Singh Vs. Surjit Kaur and others**, 1999(3) CivCC 512 (RSA No.1111 of 1996, decided on 06.11.1998), **Pehalwan Singh Vs. Laddo Bibi**, 2001(2) PLJ 54 and **C. Natarajan Vs. Ashim Bai and another**, 2007(4) RCR (Civil) 736. He further cited a judgment in the case of **Mohinder Singh VS. Kashmira Singh**, 1985 PLJ 82 (DB).

23. Having considered the judgments of the Courts below and the arguments of the learned senior counsel, there is no doubt that the proceedings to declare the land of Diwan Hari Kishan Kapoor as surplus under the Act of 1953, initiated vide order dated 25.05.1961, reached finality upto the Supreme Court after going through the channel of revenue authorities and this Court by way of a writ petition. Hence, it would, at the first instance itself, appear that a second round of litigation on the same cause of action, initiated before a different forum, i.e. a Civil Court, would in any case, be barred on the principle of *res judicata* alone.

However, what is to be examined is the contention of the learned senior counsel that the orders of the revenue authorities, starting with the order of 1961, being void *ab initio,* with no adjudication on merits thereupon beyond the level of the Collector, the orders would be still challengeable before the Civil Court, on that ground.

To appreciate that contention, it must first be determined as to whether the order dated 25.05.1961 was actually void *ab initio,* as contended, or not.

24. The contention of the learned counsel is that the order is void on

account of the fact that notice was not served on the sons of Diwan Hari Kishan Kapoor, even though they had become small land owners of their fathers' estate, after the 'Tamleeknamas' (transfer/relinquishment deeds), dated 19.12.1956 and 30.12.1956. Mr. Aggarwal therefore relied upon the judgments of a Division Bench and a Full Bench of this Court, as noticed, in Anups' and Vinod Kumars' cases (supra), to submit that an order with regard to 'surplus proceedings', issued without notice to the land owners, is a void order.

It is not anybodys' case that the order dated 25.05.1961 was not passed by a competent authority, or that even the subsequent orders of 20.10.1972, 08.09.1983 and 16.05.1985, or the orders passed in between these dates, were passed by authorities that were not competent to issue them. Thus, in the opinion of this Court, when an order is issued by a competent authority, whether the order is good or bad, would not render it void *ab initio*. If it is to be declared to be void on other grounds, such as non-service of notices etc., those would be procedural irregularities and in the opinion of this Court at least, even that would not make them void orders, though they may be bad orders that may be declared to be illegal on account of such irregularities, or on account of the fact that conditions precedent to passing such orders were not complied with.

25. In the present case, it is therefore to be seen whether the orders passed by the revenue authorities can be, ipso-facto, declared to be void, without any finding to the effect that such notices/Form 'Fs' were actually required to be issued to Diwan Hari Kishan Kapoors' sons. To arrive at that conclusion, the provisions of the Act of 1953 and the Rules of 1956 would

have to be examined and considered, to determine, first of all, whether Diwan Hari Kishan Kapoors' sons (predecessors-in-interest of the appellants) could actually be declared to be small land owners in terms of that Act or not and if so, whether such notices were required to be issued to them, and still further, whether they were, factually, validly issued or not.

That exercise, in the opinion of this Court, simply on an assertion made to that effect, cannot be gone into now, once the earlier proceedings under the Act of 1953 have reached finality. The Collector Agrarian, under that Act, and the Prescribed Authority under the Act of 1972, were the competent authorities to declare any land to be surplus and those orders, on any grounds whatsoever, were challengeable before the authorities prescribed therein, which channel the appellants/their predecessors-in-interest duly availed of.

No doubt, after the Collectors' orders of 16.05.1985, the matter was not adjudicated upon the merits thereof, by the Financial Commissioner, who dismissed the revision petition before him, essentially on the ground of delay in filing it, (7 years after the order dated 16.05.1985), as also on the ground that his suo- motu powers had been invoked without first exhausting the remedy of approaching the Commissioner of the Division concerned, against the order of the Collector. But that order of the Financial Commissioner having attained finality, as already repeated, upto the Supreme Court, it would not be open to the appellants to get the initial issue re-opened on merits in a second round of litigation, as to whether or not notices were required to be issued to Diwan Hari Kishan Kapoors' sons and if so, whether they were validly issued or not.

26. Thus, in view of the fact that the order of 25.05.1961 was not an order void *ab initio*, having been passed by a competent authority, it could only be declared to be void upon a finding that it was a void order on account of necessary notices/Forms, as prescribed, not having been issued. That finding not having come about in the earlier 39 year round of litigation, starting from the Collector Agrarians' order dated 25.05.1961 and culminating in the order of the Supreme Court dated 05.01.2000, it would not be open to the appellants to seek a finding to that effect in a Civil Court subsequently, in a suit filed in the year 2000.

27. Though, as already said, in the opinion of this Court, an order of the revenue authorities, declaring land to be surplus, would not be void on grounds of procedural irregularities of non-issuance of notice etc., even though it may be a wholly bad order which may be liable to be quashed; however, that issue is not open to this Court to go into, in view of the judgment of the Full Bench of this Court in the State of Haryana v. Vinod Kumar and others (supra), wherein it was held that such an order would be a void order. This Court is, obviously respectfully bound by the ratio of the law laid down therein; and in the present context, there would be no reason to even try and give reasoning contrary to the above, so as to have the matter reconsidered by reference to a larger Bench than this one, in view of what has been held hereinabove; i.e. that the issues of whether or not the sons of Diwan Hari Kishan Kapoor were first to be declared small land owners and then whether notices/Form-F was required to be issued to them and thirdly, whether they were so issued or not validly, are issues which are not re-openable in a second round of litigation.

Therefore, in view of the discussion hereinabove, the orders of the revenue authorities having been held to be not void *ab initio,* in my opinion, a second round of litigation, before a Civil Court even in terms of the judgment cited by learned senior counsel, is not maintainable.

28. Mr. Aggarwal next, laid specific emphasis on the judgment in *Patel Raghav Nathas' case* (supra), wherein it was held that the Commissioner under the Bombay Land Revenue Code, 1879, should not have gone into the question of title and should have referred the authorities to a competent Civil Court.

He contended that in the present case also, as the question was of the title of Diwan Hari Kishan Kapoors' sons to the suit land after they became small land owners, the revenue authorities should have referred the matter to the civil court.

That argument is wholly flawed, because the title to the property could only revert to the sons of Diwan Hari Kishan Kapoor once the 'Surplus proceedings' were held to be void or illegal.

In fact, the only procedure by which the surplus land declaration (vide the order of 25.05.1961) could be declared to be illegal, was as per the process provided in the Act of 1953. To yet again repeat, that process was duly adopted by the predecessors-in-interest of the appellants, which they could not succeed in, upto the Supreme Court. Thus, the judgment in Raghav Naths' case also, is wholly inapplicable to the facts of the present case, in the opinion of this Court.

29. Just to notice for the record, it needs to be stated here that though the suit filed by the appellants, out of which this second appeal arises,

was one for possession and mesne profits, such possession was based on what is claimed to be the title of ownership of Diwan Hari Kishan Kapoors' sons, in the suit land. Obviously, such possession could not have been delivered without first a declaration that the order dated 25.05.1961 was either void or illegal, and therefore, the title to the land would revert to Diwan Hari Kishan Kapoors' sons, either in their own right as small land owners w.e.f. December 1956, or as legal heirs of Diwan Hari Kishan Kapoor. Thus, though it was projected to be a suit for possession, it really was a suit first seeking a declaration that the order dated 25.05.1961, be declared tobe null and void, or at least illegal. Such a declaration, to hold the order of 25.05.1961 to be illegal, could only have been by way of the proceedings that the appellants' predecessors-int-interest chose to resort to, in the earlier round of litigation, before the revenue authorities, finally resulting in the order in the SLP.

30. Of course, the chicken and egg question that Mr. Aggarwal tried to raise, was that unless the surplus proceedings are examined on merit by a judicial, rather than a quasi-judicial Court, the question of the order dated 25.05.1961 being a nullity or not, cannot be determined.

Undoubtedly, that is so. However, the orders of the revenue authorities having been duly examined by this Court, first in Civil Writ Petition No.8687 of 1999 and then by the Supreme Court in SLPs No.290-291 of 2000, in my opinion, a 2nd round of litigation to determine even that question, would not lie.

31. To sum-up the above discussion, it is held that the institution of the civil suit out of which this second appeal arises, was barred by the

principle of *res judicata,* as has been held by the learned Courts below.

The orders of the revenue authorities cannot be held to be void *ab initio* and consequently, the appellants cannot re-agitate, by way of a civil suit, the issue of whether or not the surplus land proceedings were void due to non-service of notices/declaration Forms etc., to persons who claim to have become small land owners.

32. Having held as above, though it is not necessary to do so, it must also be stated that even if a civil suit may have been instituted by the appellants' predecessors-in-interest, to seek a declaration that the order dated 25.05.1961 was an order null and void, such a civil suit could only have been filed to obtain such decree of nullity, within three years of 25.05.1961, i.e. by 24.05.1964. The present suit having been instituted on 15.06.2000, it was obviously barred by limitation by 36 years.

Though no specific plea to that effect has been taken, however, a plea under Section 14 of the Limitation Act would also not lie, to contend that the predecessors-in-interest of the appellants chose a wrong remedy, because as a matter of fact, they chose the correct remedies available under the Acts of 1953 and 1972, and only because at the stage of the Financial Commissioner, they delayed filing the revision petition, a different remedy cannot be availed of, at this stage.

33. Thus, having found no merit in the appeal, on the ground of *res judicata* alone, but still having looked into the issue of limitation, in a hypothetical situation of a suit being maintainable at the initial stage, upto 1964 only, the other arguments made by Mr. Aggarwal, on the merits of the surplus land proceedings, including alleged lack of proper procedure in

declaration, the non-vesting of land declared surplus in the hands of Government, the alleged ineligibility of the allottees to be allotted the surplus land and the alleged illegality and non-compliance of the procedure of allotment, are not being gone into by this Court, having held that the suit out of which the present appeal arises was not maintainable in the first place.

34. Thus, finding no merit in the appeal, the same is dismissed *in limine,* with no orders as to costs.

27.01.2016 **(AMOL RATTAN SINGH)**
vcgarg/nitin **JUDGE**