

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

**RSA No.2545 of 1988 (O&M)
Date of Decision : 13th October, 2017**

Rajinder Singh and others

..... Appellants

Versus

State of Punjab

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. H.S.Dhandi, Advocate
with Mr. Vishal Khatri, Advocate for
for the appellants.

Mr. Manoj Bajaj, Addl. A.G., Punjab.

RAJ SHEKHAR ATTRI, J.

The plaintiffs have come up in this Regular Second Appeal by assailing the judgment of learned trial Court vide which Civil Suit No.477 of 15.11.1985 was dismissed and also that of the first appellate court dated 24.12.1987 vide which appeal preferred by them was dismissed.

Indisputedly, earlier Harminder Singh, Purshotam Singh, Narrautam Singh were the erstwhile owners of the suit property. The same was declared surplus under the provisions of Punjab Land Reforms Act, 1972 (in short 'Act of 1972) and mutated vide mutation Nos.2076 and 2077 (Ex.D1 and Ex.D2 respectively) in the name of State of Punjab. The Punjab Utilization of Surplus Area Scheme, 1973 (for brevity 'the Scheme')

was formulated for the purpose of utilization of the surplus area. The Scheme has been enacted in pursuance of Section 11 of the Act, 1972. Consequently, the surplus area was proposed to be allotted to Ram Singh son of Mangal Singh vide order dated 12.08.1975 (Ex.D5) and dated 01.07.1975 (Ex.D6). However, it has been stipulated in Ex.D6 that the fair rent had not been assessed and that after its assessment, the compensation shall be imposed upon the allottee and allotment certificate shall be issued to him on payment of the compensation/consideration.

Instead of awaiting issuance of the allotment certificate, mutations (Ex.D3 and D4) have been sanctioned in the name of Ram Singh.

Said Ram Singh, while asserting himself to be the exclusive owner had transferred the suit land by way of sale deed No.4530 dated 16.12.1980 (Ex.D1) in favour of Rajinder Singh, Darshan Singh and Jaspal Singh sons of Baldev Singh to the extent of $\frac{1}{2}$ share and Charanjit Singh and Jujhar Singh sons of Tehal Singh to the extent of $\frac{1}{2}$ share for a total consideration of Rs.40,000/-.

It is provided under Clause 10 (d) of the Scheme that allottee shall become owner only on the payment of entire amount of compensation as assessed by the Collector. Further, the condition is imposed under Clause 10 (e) of the Scheme that the allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owner or before the expiry of 15 years of the date of possession, whichever is later.

It is apparent on the record that neither said Ram Singh nor vendees/plaintiffs had paid nothing towards the compensation as required under clause 10 of the Scheme. Resultantly, the allotment rendered to be

cancelled.

When it came to the notice of the State that abovesaid Ram Singh had not paid the requisite compensation rather he had transferred the allotted area in favour of abvoesaid Rajinder Singh and others in complete violation of Clause 10(e) *ibid*, the said allotment was cancelled and also the mutation Ex.D10 was re-entered and sanctioned in the name of the State on 13.02.1985.

After sanctioning of the said mutation Ex.D10, instant suit No.477 was filed on 15.11.1985 by abovesaid vendees Rajinder Singh and others for declaration to the effect that they are owners in possession of the suit property as described in the head note of the plaint and sought permanent injunction restraining the State of Punjab from alienating the suit property to anybody and from interfering in any manner into proprietary rights of the plaintiffs in the suit land and also restraining the State of Punjab from dispossessing the plaintiffs from the suit land except in due process of law. It is specifically averred in the plaint that they had purchased the suit land from said Ram Singh after making all possible inquiries in respect of title of their vendors and paid whole consideration before the Sub Registrar. They claimed, to be the bonafide purchasers for consideration and without any notice, restriction, limitation or defect in the title of the vendor.

It has also been alleged in the plaint that the plaintiffs have come to know that subsequently mutation No.2320 (Ex.D10) has been sanctioned in favour of State of Punjab without any notice and without giving any opportunity to them.

The suit was contested by the respondent-State, *inter alia*, that

the Civil Court has no jurisdiction and that no notice under Section 80 CPC has been served upon defendant-State. However, it is admitted that Ram Singh son of Mangal Singh was allotted the land under the provisions of the Scheme on 12.08.1975 but without payment of compensation. It is further admitted that said Ram Singh had executed abovesaid sale deed Ex.P1 in favour of plaintiffs. However, it is added in the written statement that said sale deed is in complete violation of the conditions as laid down under Clause 10(e) of the Scheme and, thus, the said allotment had been cancelled by the Collector-cum-SDO, Kharar vide his Office Order dated 12.10.1984 and thereafter mutation No.2320 (Ex.D10) had been sanctioned in favour of the State. The following issues were framed:-

- (i) Whether the plaintiffs are the bonafide purchasers for consideration without any notice of any restriction or limitation or defect in the title of the vendor regarding the suit land. If so, its effect ? OPP*
- (ii) Whether the plaintiffs are entitled for declaration as prayed for ? OPP*
- (iii) Whether the plaintiffs are entitled for the injunction as prayed for ? OPP*
- (iv) Whether no notice under Section 80 CPC has been served by the plaintiffs upon the defendant. If so, its effect ? OPD*
- (v) Whether the suit suffers from laches, if so, its effect ? OPD*
- (vi) Whether the civil court is not the proper forum. If so, its effect ? OPD*
- (vii) Whether Ram Singh sold the suit land to the plaintiffs before the expiry of 15 years and as such violates the provisions of Section 10 of the Punjab Utilization of Surplus Area Scheme, 1973. If so, its effect ? OPD*
- (viii) Whether this Court has no jurisdiction to try the suit as*

provided under Section 21 (1) of the Punjab Land Reforms Act, 1972 and Section 25 of the Punjab Security of Land Tenure Act, 1953 ? OPD

(ix)Relief.

The trial Court has afforded adequate opportunities to the parties to adduce evidence. Although both the parties had led evidence yet issue Nos.6 and 8 were ordered to be treated as preliminary vide order dated 16.12.1986. It was held that the Civil Court had no jurisdiction and the proper forum is to approach the agrarian_ authorities under the provisions of Act of 1972. As such suit was dismissed. The first appellate court also took the similar view. As such, the first appeal was dismissed.

I have heard learned counsel for the parties and have gone through the record.

In this case, it is admitted fact that allotment in the name of Ram Singh was made vide order dated 12.08.1975 (Ex.D-5). However, in the order 01.07.1975 (Ex.D6), it is specifically mentioned that the fair rent has not been assessed yet and compensation shall be imposed after determination of the fair rent.

During the trial, allottee Ram Singh had appeared as PW4. He admitted in the cross-examination that he did not pay any amount towards the compensation after allotment but asserted that infact the plaintiffs/appellants undertook to pay the entire amount to the State. He also admitted that he has no right to sell the land in question. Thus, it is clear very much that nothing was paid to the State either by allottee Ram Singh or by the subsequent vendees.

Clause 10(e) of the Scheme reads as under:-

“the allottee shall not be competent to transfer his rights the land allotted to him to any person till he becomes the owner or

before the expiry of a period of 15 years of the date of possession whichever is later:”

From a bare perusal of the Scheme, it is provided that the allottee shall be restrained from alienating the transfer of the suit property for a period of 15 years or until payment of the entire consideration till he becomes owner whichever is later on. Ostensible transferor Ram Singh was neither owner nor he waited for a period of 15 years as stipulated as one of essential conditions of allotment. Further, condition Clause 11 of the Scheme provides for cancellation of allotment in case of infringement of any of the conditions. Thus, said Ram Singh was not competent to execute the sale deed in favour of the appellants. This condition is absolute and based upon the public policy. The purpose behind utilization of the surplus land was to strengthen the social and economical justice as engraved in our Constitution. The spirit behind the enactment of Scheme was to distribute the surplus area among the landless peasants with the sole purpose to provide them social and economic justice. The purpose and object have been completely defeated by transfer of allotted area in the names of plaintiffs.

In this view of the matter, Ram Singh was not competent and eligible to transfer the proprietary rights in favour of the appellants and mere sanctioning of mutation in favour of Ram Singh does not confer any right or title upon the plaintiffs.

Now coming to issue No.6 as to whether Civil Court is the proper forum to seek the proper remedy. Section 18 of the Act of 1972 specifically provides the remedy of appeal, review and revision. Admittedly, no such remedy has been availed by the appellants. Further

under:-

“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.”

Thus, from the perusal of the above said provisions, it is very much clear that the validity of any proceedings or order taken or made under the Act of 1972 shall not be called in question in any court or before any other authority.

It is apparent from a bare perusal of mutation No.2076 (Ex.D1), mutation No.2077 (Ex.D-2) and Mutation No.2320 (Ex.D-10) that the land was re-mutated in the name of State of Punjab before filing the suit. This fact is very much mentioned in Jamabandi (Ex.P-2) which is produced by the plaintiff at the time of filing the suit. Even the plaintiffs had not disputed this fact. They have specifically pleaded in para No.4 of the plaint as under:-

“That now the plaintiffs had come to know that the mutation No.2320 has been sanctioned without any notice and without giving any opportunity to them and had further threatened that the possession of the land shall be taken by the State Government through its officers forcibly within few days or it shall be allotted to some influential person who take the possession of the suit land by force.”

The said suit had been filed on 15.11.1985 whereas mutation

jamabandi (Ex.P-2). A bare perusal of mutation (Ex.D-10) makes it clear that the said mutation has been sanctioned on the basis of order No.246/PK dated 12.10.1984 of Collector (Agrarian), Kharar. It is, thus, evident that allotment in favour of Ram Singh had been cancelled and the suit land was mutated in the name of State of Punjab and fell into the surplus pool.

Surprisingly, order of Collector dated 12.10.1984 has never been challenged. Injunction has been sought restraining the defendants from allotting the suit land to anybody. Infact, now the plaintiffs are claiming allotment of the surplus area. They are also questioning the validity of the proceedings before the Collector vide which land has been declared surplus in pursuance of the order of the Collector (Agrarian) dated 12.10.1984 (ibid) and said order has been passed under the provisions of Act of 1972.

Strong reliance has been placed by the appellants upon the judgment of this Court in case State of Punjab versus Natha Singh and others (Regular Second Appeal No.1364 of 1989, decided on 13.05.1991). However, the facts of that case are distinguishable. Even in that case also, it was held that the allottee who had transferred the land in violation of Clause 10(e) of the Scheme was not competent to execute the sale deed. In the case in hand, it is nowhere pleaded if the order of cancellation, cancelling the allotment of the surplus area has been issued at the back of the allottee. Even allottee Ram Singh has not been impleaded as a party.

To the mind of this Court, the ultimate relief claimed by plaintiffs through this suit is to challenge the validity of the proceedings and the said order of the Collector (Agrarian) vide which the allotment has been cancelled. In this view of the matter, the jurisdiction of the Civil Court

stands barred.

Thus, this Court is of the considered opinion that both the Courts below have correctly observed that the Civil Court has no jurisdiction.

As a sequel to my above discussion, this appeal is devoid of any merit and the same is hereby dismissed with no order as to costs. The judgment and decree under Appeal stand upheld.

(RAJ SHEKHAR ATTRI)
JUDGE

13th October, 2017
mamta-M

Whether speaking/reasoned	Yes/No
<i>Whether Reportable :</i>	<i>Yes/No</i>