

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.26909 of 2017

Date of Decision: November 27, 2017

Daya Ram @ Rajinder

. Petitioner

Vs.

The State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Amit Jhanji, Advocate, for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner along with others filed the Civil Suit No.626 of 15.6.1988 for declaration in the Court of Sub Judge IInd Class, Gurgaon, to the effect that they were small land owners on 15.4.1953 and 24.1.1971 and the order declaring their land as surplus is illegal. The suit was filed against the State of Haryana through Collector in which an objection was taken about the jurisdiction of the Civil Court in terms of Section 26 of the Haryana Ceiling Act, 1972. Issue No.3 was specifically framed by the Civil Court regarding its jurisdiction but the said issue was decided ultimately in favour of the petitioner on the ground that the Civil Court has the jurisdiction in terms of Section 9 of the Code of Civil Procedure, 1908 specially when the order passed by the Surplus Collector dated 24.6.1966 was not the one passed under the Act. After the judgment and decree dated 13.9.1988, two mutations were sanctioned in favour of the petitioners, namely, mutation No.4472 and 4473. The proceedings by which the mutation was sanctioned were challenged by way of appeal by the allottees. The District Collector, Gurgaon, vide his order dated 22.11.2001,

specifically ordered that it would affect the right of the allottees because they were not arrayed as parties in the civil suit. The petitioners filed appeal against the order of the Collector but remained unsuccessful upto the High Court. Ultimately, the SDO(C)-cum-Allotment Authority, Nuh passed the impugned order on 10.11.2017 by which mutation No.4472 was set aside.

Learned counsel for the petitioner has argued that though mutation No.4472 was ordered to be set aside on 22.11.2011 but there is no specific order with regard to mutation No.4473.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that there is no merit in this petition because the judgment and decree passed by the Civil Court by which rights have been conferred upon the petitioner of the property in dispute, declaring the order of surplus dated 24.6.1966 as illegal, is nonest because the Civil Court does not have jurisdiction to decide about the issue relating to declaration of surplus area much less about the validity of the order of the Surplus Collector. It has rightly been observed by the Civil Court while recording the finding on issue No.3 that *“it is a fundamental principle of law that a decree passed by the Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of the execution and even in collateral proceedings”*. Same is the position in the present case because the petitioner is claiming his right over the property in question on the basis of judgement and decree passed by the Civil Court dated 13.9.1988 though the Civil Court was not having jurisdiction and the mutation sanctioned in favour of the petitioner on the basis of Civil Court decree i.e. mutation No.4472 has already been set aside vide order dated 22.11.2001

may be on the ground that the allottees were not made party and only State Government was made as a defendant in that case.

Consequently, I do not find any merit and the same is hereby dismissed.

NOVEMBER 27, 2017

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No