

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

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**RSA No.1509 of 1987 (O&M)
Date of Decision : 25.09.2018**

State of Haryana through the Tehsildar
(Sales), Ambala

..... Appellant

Versus

Shamsher Prakash Singh (since died) through
his LRs. & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Dr. Sushil Gautam, DAG, Haryana
for the appellant.

Mr. Rajesh Goel, Advocate for
Mr. Pritam Saini, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed by the State of Haryana against the judgment of the lower appellate Court reversing that of the trial Court and thereby decreeing a suit filed by the respondents.

The respondents had filed a suit dated 11.03.1981 claiming that they were residents of House No.8652, Ward No.5, Naya Bass, Ambala City since before 1960 and were refugees. As per them the house was owned by Muslims and they had purchased the mortgagee rights. They further pleaded that since the mortgage was of 1946 the period to redeem it had

expired and consequently they challenged an order dated 03.05.1977 passed by the appellant-State of Haryana whereby the competent officer decided that since the property belong to a Muslim it was evacuee property and the department should pay the mortgage charges and redeem the same. In those proceedings the respondents were represented. As regards their claim that they should be allotted the house in dispute the same was left undecided with liberty to the respondents to approach the Rehabilitation Department. The respondents approached the Rehabilitation Department but unfortunately their case was rejected up to the Financial Commissioner by an order dated 19.09.1980. It is thereafter that they filed the instant suit for permanent injunction restraining the appellant-State from interfering in their possession. The appellant-State brought on record the order dated 03.05.1977 and took amongst others, a plea that in any case the injunction suit could not be decided without setting aside the order dated 03.05.1977. The trial Court dismissed the suit but an appeal filed by the respondents was allowed by the lower appellate Court on the ground that before passing the order dated 03.05.1977 it was incumbent upon the State to have declared the property as an evacuee property and after taking recourse to Section 7 of the Administration of Evacuee Property Act, 1950 and this not having been done the order was void. It is from that judgment that the State of Haryana had filed the appeal.

Learned Deputy Advocate General has argued that before passing the order dated 03.05.1977 the respondents were heard. They accepted that order and that is why they moved to Rehabilitation Department. If they were not satisfied with the rejection of their claim they

could have further agitated the matter but they allowed that to become final. He has further argued that the relief could only be granted to the respondents by setting aside the order dated 03.05.1977 and by the time they filed the suit more than 3 years had elapsed and they could not side step the issue of limitation by just jugglery of words. He has pointed out that to grant them the relief the lower appellate Court has in fact held that the order dated 03.05.1977 is an illegal order.

Counsel for the respondents has argued that the order dated 03.05.1977 is completely illegal and therefore this Court should not uphold such an illegal order.

In my opinion, the appeal has to be allowed. No doubt, in the plaint the respondents did not claim that the order dated 03.05.1977 had to be set aside. That is just intelligent drafting. The fact is that no relief could be granted to them without setting aside the order and if they wanted to challenge that order the limitation ended on 02.05.1980. However, as mentioned above, the suit was filed after about 44 months, on 11.03.1981. Moreover, once the respondents had accepted the order and had moved the Rehabilitation Department for allotment of the house on reserve price it would not then lie in their mouth to turn back to challenge that order.

Counsel for the respondents has then argued that if the order is void there is no limitation. I am afraid, I cannot accept this argument as the matter has now been concluded right since 1991 in ***State of Punjab Vs. Gurdev Singh, (1991) 17 ATC 287***. Subsequently also, the Courts have taken the same view.

Appeal stands allowed and the suit filed by the respondents is consequently dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

25.09.2018

Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No