

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

1. RSA No.3962 of 2012 (O&M)

Naranjan Singh

... Appellant

Versus

State of Punjab & others

... Respondents

2. RSA No.3963 of 2012 (O&M)

Chhota Singh

... Appellant

Versus

State of Punjab & others

... Respondents

3. RSA No.3964 of 2012 (O&M)

Pal Singh

... Appellant

Versus

State of Punjab & others

... Respondents

4. RSA No.3965 of 2012 (O&M)

Shamsher Singh

... Appellant

Versus

State of Punjab & others

... Respondents

5. RSA No.3966 of 2012 (O&M)

Kiru Singh

... Appellant

Versus

State of Punjab & others

... Respondents

6. RSA No.3967 of 2012 (O&M)

Bachan Singh
... Appellant
Versus
State of Punjab & others
... Respondents

7. RSA No.3968 of 2012 (O&M)

Jagdev Singh
... Appellant
Versus
State of Punjab & others
... Respondents

8. RSA No.3969 of 2012 (O&M)

Amrik Singh
... Appellant
Versus
State of Punjab & others
... Respondents

9. RSA No.3970 of 2012 (O&M)

Bahadur Singh
... Appellant
Versus
State of Punjab & others
... Respondents

10. RSA No.3971 of 2012 (O&M)

Bhagwan Singh
... Appellant
Versus
State of Punjab & others
... Respondents

11. RSA No.4033 of 2012 (O&M)

Jaswant Singh
... Appellant
Versus
State of Punjab & others
... Respondents

Date of decision: 26th April, 2018

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Mohd. Yousaf, Advocate for the appellants.
Mr. B.S. Sewak, Addl. Advocate General, Punjab
for respondents No.1 to 4/State.
Mr. T.V.S. Lehal, Advocate
for respondent No.5.

FATEH DEEP SINGH, J.

Since all these regular second appeals, as detailed above, though by different sets of plaintiffs/appellants but have been filed against same set of respondents wherein similar facts are pleaded on similar cause of action and therefore involving common question of law and facts, for the sake of brevity are being taken up and disposed off together through this common judgment. The facts have been drawn from RSA No.3962 of 2012.

The brief facts that needs to be enumerated are that all the plaintiffs have filed separate suits for declaration to the effect that the they were owners in possession being proprietors (khewatdar) of village Dirba over respective suit properties comprising of residential premises which form part of the land detailed, described and depicted in the head-note of the plaint, situated in the revenue estate of village Dirba, Tehsil Sunam, District Sangrur as per the revenue record alleging that the defendants have no concern with the suit property as they are neither owners nor in possession of any part of the same. The plaintiffs further challenged mutation order No.7455/B dated 15.12.1998 passed by the

then Assistant Collector Grade-I, Sunam whereby the entire land, subject matter of this dispute in various suits, has been ordered to be sanctioned in the name of Nagar Panchayat, Dirba – defendant No.5 and alleged that the same was absolutely wrong, illegal, null and void ab-initio as a result of collusion of respondent No.5 with the revenue authorities, alleging further that the same did not have any affect upon the rights of the plaintiffs and further that proceedings initiated under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short, ‘the Act’) by defendant No.5 against the respective plaintiffs and the impugned orders dated 29.06.2006 passed by defendant No.4 – Assistant Collector 1st Grade, Sunam for eviction of the plaintiffs from the property in question was absolutely wrong, illegal, null and void; without right or authority, and have sought consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiffs over their respective properties and thus, restraining them from dispossessing the plaintiffs from the same on the basis of any such order passed by the defendants.

It was upon appearance, the defendants have moved an application under Order VII Rule 11 CPC for rejection of the plaint. In their stand, the defendants have taken multiple objections, the suit being bad for non-service of notice under Section 49 of the Punjab Municipal Act, Civil Court having no jurisdiction and being barred by limitation besides the jurisdiction of the Civil Court to try the matter.

Plaintiffs in their reply to the application have taken legal objections as to locus standi, cause of action as well as maintainability claiming that the application was filed only to harass the plaintiffs, and on merits claimed that since the suits have been filed in an urgent capacity, the application for exemption from filing prior notice was also moved and claimed that the suit was very much maintainable and the Civil Court has jurisdiction to try and decide the matter. The Court of learned Additional Civil Judge (Senior Division), Sunam through order dated 14.09.2010 allowed the application and ordered return of the plaint. The same was challenged in a civil appeal by the respective unsuccessful applicant/plaintiffs and the Court of learned District Judge, Sangrur through impugned judgment dated 06.01.2011 upheld the findings of the Court below and consequentially dismissed the appeals of the plaintiffs. That is how each of these unsuccessful plaintiffs have come up before this Court in these respective regular second appeals.

Heard Mr. Mohd. Yousaf, Advocate for the appellants; Mr.B.S. Sewak, Addl. Advocate General, Punjab representing respondents No.1 to 4/State and Mr. T.V.S. Lehal, Advocate appearing on behalf of respondent No.5 and perused the records of the case.

The undisplaced facts that are much in abundance highlighted from the stand of the parties, from the records as well as submissions that after carving out of Nagar Panchayat Dirba, the State Government through notification No.16 dated 17.05.1950 have notified Dirba to be a Nagar Panchayat and thus, all properties of Dirba stood vested in the

Nagar Panchayat. To the very specific query of the Court, Mr.Yousaf learned counsel for the appellants could not convince by what means the appellants have been able to establish the nature of the land to be Jumla Malkan Hasab Rasad Rakba Khewat and rather it ensues that the same vested in the Gram Panchayat and therefore Government land by all means. The claim of the plaintiffs that they were in possession of their respective premises for the last more than 40 years could also not be established to the satisfaction of this Court. Mutation admittedly has been duly sanctioned on the basis of the orders of the Collector on 15.12.1998 and the suits for declaration which as per the law of limitation ought to have been filed by the affected person within three years of the cause of action, have been filed on 14.09.2010, after around 12 years, further makes it imperative to hold that even such a suit is hopelessly and apparently much delayed and barred by the principle of limitation. However, the moot rallying point that crops up out of the heated debate between the two sides revolves around the very jurisdiction of the Civil Court. By now, it is well enunciated principle of law, reference of which can be taken note of a Single Bench and a Division Bench views of this Court in **‘Mini Gagan Cinema v. Municipal Corporation’ 2007(2) RCR (Civil) 78; and ‘Darbara Singh & another v. State of Punjab & others’ 2017(5) RCR(Civil) 75** and another prior view of the Hon’ble Supreme Court in **‘Balawwa v. Hasanabi’ 2001(3) RCR (Civil) 621** where it has been very well laid down that it is well settled that when a special authority is carved under a special Statute and jurisdiction of the

Civil Court is sought to be ousted under the said Statute, then jurisdiction of the Civil Court is certainly barred.

Hon'ble the Division Bench of this Court in **Darbara Singh's case** (ibid) has placed reliance on another view of the Hon'ble Apex Court laid down in **AIR 1969 SC 78 titled as 'Dhulabhai etc. v. State of M.P. & another'** where the following observations were made:

“(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.”

It is not the case of the appellants before this Court that there has been violation of the provisions of the Statute governing the property in question resulting in miscarriage of justice or there is due circumvention of the process of law. It is even readily accepted on behalf of the appellants that the notification transferring this land of the Panchayat in favour of Nagar Panchayat till date has never been assailed of and still holds good. A Civil Court cannot in any manner check the legality, validity and enforceability of such a notification issued by the Government where power certainly vests in the Constitutional Courts.

With the Act No.40 of 1971, The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was legislated and enacted to provide for eviction of unauthorized occupants from public premises and for certain incidental matters. It is not the case where by the impugned order of the learned Collector, there has been exercise of jurisdiction not vested to it under the Act and under the provisions of this Act, competent authority can certainly, after adopting due process, order eviction of the unauthorized occupants from the public premises. It is not the case of the appellants that there has been no issuance of notice to show cause against the order of eviction when the parties had adhered to the very provisions of *audi alteram partem* and merely because the plaintiffs have been in long illegal possession does not invest in them any inherent right to seek insulation from their eviction from public premises. As is so and is there apparently Government is the owner of these properties and there has been due adherence to the provisions of Section 5 of the Act in ordering

eviction of unauthorized occupants and which has too been undertaken by a speaking order and by virtue of Section 15 of the Act expressly excludes the jurisdiction of a Civil Court to issue injunction against such an order of ejectment passed under the Act and which in a catena of case law has been held to be mandatory in nature. In the impugned findings of the appeal before the learned District Judge, due consideration has been taken note of the ratios cited before the Court at the bar. Even if, for the sake of arguments the submissions of learned counsel for the appellants that it is a bachat land left over after consolidation proceedings, even by that analogy attracts the provisions of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and under Section 42 of this Act by any such order or act of the consolidation authorities, no recourse can be had to the Civil Court, and Section 44 of this Act specifically bars jurisdiction of a Civil Court to entertain any suit. Even the argument that has feverishly been put forth that the land stands covered under the Punjab Village Common Lands (Regulation) Act, 1961, is of no help to the appellants in view of the bar contained in Section 13 of this Act wherein jurisdiction of the Civil Court has been barred, for which a competent authority has been carved out for that very purpose. As it flows from the arguments of the two sides, the orders passed by the Assistant Collector dated 15.12.1998 giving recommendation to the rights of respondent No.5 who was vested with this property and which is an authority of the State, has neither been challenged before the competent authority and it is by virtue of order

dated 29.06.2006 the Collector, Sub Division, Sunam has ordered eviction of the plaintiffs and thus, being unauthorized occupants, Section 15 of the Act debars them from coming to the Civil Court.

Thus, in the light of what has been detailed and discussed above, neither any illegality much less perversity can be found out with the impugned judgment which is correct appreciation of the factual scenario and the legal position and needs to be upheld. The concurrent findings of the two courts below including the impugned findings are hereby upheld and all these appeals, being devoid of any merit, stand dismissed.

(FATEH DEEP SINGH)
JUDGE

April 26, 2018

rps

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