

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

**RSA No.383 of 1989 (O&M)
Date of Decision.09.05.2019**

Sarmukh and others ...Appellants
Vs
Ajmer Singh and others ...Respondents

2. RSA No.384 of 1989 (O&M)

Sarmukh and others ...Appellants
Vs
Manohar Lal and others ...Respondents

3. RSA No.2547 of 1989 (O&M)

Dharam Paul and others ...Appellants
Vs
The State of Haryana and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Jammu, Advocate
for the appellants.

Mr. Pawan Kumar Jangra, Addl. A.G., Haryana.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of three appeals bearing Nos.383 and 384 of 1989 arising out of Civil Suit No.83 of 1985 titled as “Sarmukh and others Vs. The State of Haryana and others” and 2547 of 1989 arising out of civil suit No.1046 of 1986 titled as “Amar Singh and others vs. The State of Haryana and others”.

The aforementioned suits were filed by the plaintiffs for declaration challenging the impugned order dated 28.12.1976 passed by SDO (Civil) exercising powers of Prescribed Authority/Allotment Authority, Sirsa allotting the land to defendants No.3 to 21 to be illegal, null and void and not binding on the rights of plaintiffs with permanent injunction restraining defendants from interfering into

lawful possession of plaintiffs.

It was alleged that they are owners in self-cultivating possession of the suit land being small land owners and there was no surplus land in their hands. Defendant No.2 allotted suit land to defendants No.3 to 21 on 28.12.1976 under the provisions of the Haryana Utilization of Surplus and Other Areas Scheme, 1976. The order was passed in the absence of plaintiffs without affording any opportunity of hearing or notice. Plaintiffs were entitled to allotment of three units and in case of allotment, there was, therefore, no scope any land left as surplus for allotment to the defendants.

Defendants No.1 and 2 filed their written statement by raising objections qua maintainability, jurisdiction of the Court as per provisions of Section 26 of the Haryana Ceiling on Land Holdings Act, 1972 and Section 25 of the Punjab Act, non-service of notice under Section 80 CPC and also being barred by limitation. On merits, it was stated that surplus land vested in the State on 24.01.1971. Possession of 92 kanals 2 marlas of land out of suit land was delivered to the allottees whereas the land of plaintiffs was declared surplus long back under the then prevalent Punjab Law.

Private defendants also filed written statement and alleged themselves to be bona fide allottees.

Defendant No.10 filed separate written statement and contended that land measuring 40 kanals out of suit land was allotted to resettled tenants after determination of tenants' permissible area.

Since parties were at variance, the trial Court framed the following issues:-

- “1. Whether the order dated 28.12.76 passed by defendant No.2 whereby he allotted the suit land to defendants No.3 to 21 is wrong, illegal, null and void, against law and facts, inoperative and is not binding on the rights of the plaintiffs as alleged in the plaint? OPP*
- 2. Whether the Civil Court has no jurisdiction to try the present suit? OPD*
- 3. Whether the suit is bad for not giving notice u/s 80 CPC? OPD*
- 4. Whether the plaintiffs have not filed any revision under the Haryana Ceiling Act, if so to what effect? OPD*
- 5. Whether the suit is not barred on good intention if so to what effect? OPD*
- 6. Whether the suit is time barred? OPD*
- 7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 8. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 9. Relief.”*

Plaintiffs examined three witnesses and brought on record Ex.P1 to P4 whereas defendants examined three witnesses and brought on record Ex.D1 to D8.

The trial Court after noticing evidence decreed suit holding that the allotment letter issued by defendant No.2 was without notice to the plaintiffs and though vide roznamcha Ex.D3 to D8 noticed the factum of delivery of possession to defendants No.3 to 21 on 26.05.1984, but no entries were found in the revenue record, therefore, restrained defendants from interfering into the possession of the plaintiffs. Three appeals were filed by the affected parties i.e. defendants. The lower Appellate Court after noticing provisions of

Haryana Ceiling Act, particularly, Section 12(3) reversed judgment and decree of the trial Court and dismissed the suit.

Mr. Jammu, learned counsel appearing on behalf of the appellants-plaintiffs submitted that it is settled law that jurisdiction of the Civil Court can be invoked if the impugned order of allotment has been passed without affording any opportunity of hearing to plaintiffs, for, the allotment was done at their back, *de hors* of the fact that possession of the suit land was with the plaintiffs. The provisions of Haryana Utilization of Surplus and Other Area Scheme, 1976 would only come into play in case of any surplus land at the hands of original land owners or tenants permissible area is left out. Though defendant No.10 claimed allotment of 40 kanals of land after re-determination of the tenants permissible area but declaration of surplus qua plaintiffs' share was not done properly. Law with regard to re-determination of surplus land even at the second appellate stage or Hon'ble Supreme Court is no longer *res integra*.

Per contra, Mr. Jangra, learned counsel appearing for the State submitted that the suit was *ex facie* barred as the area declared surplus as per Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972 stood vested in the State government with effect from the appointed date i.e. 24.01.1971, thus, urges this Court for dismissal of the appeals.

I have heard learned counsel for the parties, appraised paper book, records of Courts below and of view that following Substantial Question of Law arises for determination by this Court:-

“Whether the civil suit for declaration challenging

allotment of defendants in view of provisions of Section 12 (3) and Section 26 of the Haryana Ceiling on Land Holdings Act, 1972 was maintainable or jurisdiction of the Civil Court was barred?

I would be apt to reproduce Section 12 (3) of the Act *ibid*, which is as under:-

“12. Vesting of surplus area.

xxxxx

xxxxx

xxxxx

(3) The area declared surplus or tenants permissible area under the Punjab Law and the area declared surplus under the Pepsu Law, which has not so far been vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared in pending proceedings to be decided under the Punjab Law or Pepsu Law shall be deemed to have vested in the State Government with effect from the date of such declaration.”

Sub-section 3 of Section 12 was inserted vide Act No.17 of 1976 holding that area declared surplus or tenants permissible area under the Punjab Law and the area declared surplus under the Pepsu Law, which has not so far been vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day. The aforementioned Act received assent of the President on 22.12.1972 and the appointed date was 24.01.1971. Against the procedure for vesting of the land, there is remedy of appeal, review and revision under Section 18 against the order of Prescribed Authority. As per Section 26 of the Act, jurisdiction of the Civil Court is barred. For the sake of brevity Section 26 of the

Act of 1972 is reproduced as under:-

“26. BAR OF JURISDICTION.--(1) *No Civil Court shall have jurisdiction to -*

(a) entertain or proceed with a suit 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; or

(b) Settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector, or the Prescribed Authority made under or in pursuance of this Act shall be called in question in any court.

In view of aforementioned circumstances, suit for declaration assailing the order passed by the Prescribed Authority was *ex facie* not maintainable, rightly so, has been held by the lower Appellate Court. The Substantial Question of Law is answered against the appellants-plaintiffs and in favour of the respondent-State. The judgment and decree of the lower Appellate Court is upheld and the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 09, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No