IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2100/2019

Date of decision: 21.11.2022

Manjit Singh

………..Petitioner

Vs.

Major Singh and others

………..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok Verma,Advocate for the defendant no.1./petitioner.

None for respondent no.1 despite service.

Mr. V.S.Rana, Advocate for respondent no.2.

Nidhi Gupta,J.

Challenge in the present revision petition is to the order dated 21.11.2018 (Annexure P-4) passed by Civil judge (Junior Division) Sirsa whereby the application under Order 7 Rule 11 read with Section 151 CPC filed by petitioner/defendant no.1 has been dismissed.

Brief facts of the case are that the contesting respondents/plaintiffs filed a suit for declaration to the effect that plaintiffs are owners in possession of the land as described in the head note of the plaint, situated within the revenue estate of Village Rori, Distt. Sirsa, read with allotment letter dated 7.1.1986.

It is submission of the learned counsel for the petitioner/defendant that the suit filed by the contesting respondents/plaintiffs is barred by provisions of Section 26 of The Haryana Ceiling on Land Holdings Act,1972 (for short 'the 1972 Act') under which the jurisdiction of the Civil Court to entertain and decide the matters which the authorities under the said Act are competent to decide, is barred. Section 26 of the 1972 Act reads 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 Collector or the Prescribed Authority.
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> (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.

It is accordingly, submitted that the ld. Civil Judge (Junior Division) Sirsa was in patent error of law and fact in passing impugned order dated 21.11.2018 dismissing the petitioner's application under Order 7 Rule 11 CPC, in view of the fact that challenge to aforesaid allotment letter dated 7.1.1986 is pending.

The above legal and factual position is not denied by the respondent/plaintiff that the allotment is under challenge.

I have heard ld. Counsel for the parties.

It is undisputed that in view of Section 26 of the 1972 Act, jurisdiction of Civil Court is barred thereunder. A perusal of the impugned order shows that though it has been clearly noticed by the learned Civil Judge (Junior Division) Sirsa that the allotment under letter dated 7.1.1986 is pending challenge by way of ROR before the Financial Commissioner, Chandigarh, wherein implementation of the order has also been stayed, yet, petitioner's application under Order 7 Rule 11 has been dismissed. Even this Court, in case **Radhey Shyam and others v State of Haryana and others, 2016(5) RCR (Civil) 306**, has held as follows in Head Note and para 4 of said judgment which are reproduced as under:-

> **"A. Haryana Ceiling of Land Holding Act, 1972, Sections 26 and 26(b) - Surplus land - The manner of vesting under the Act cannot be a subject of challenge through a civil suit - The suit itself was grossly an abuse of process - It ought to have been thrown out without even having to go through the trial - Held :-**
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> 4. The suit itself was grossly an abuse of process and it ought to have been thrown out without even having to go through the trial. The plaintiff had the benefit of trial that gave courage to an argument on behalf of the plaintiff that he can state that the suit was maintainable. The whole edifice is built on the fact that the proceedings treating the property as surplus in respect of banjar kadim was incompetent under the provisions of the Act and therefore, all the proceedings are vitiated. I would reject this contention as most untenable, for it was specifically brought out in evidence that the property was used as agricultural land and allotted to such persons on such vesting. It was also contended that the plaintiff's predecessor Dharam Pal had taken objection with reference to the proceedings initiated under the Act and his objection had been rejected. The manner of vesting under the Act cannot be a subject of challenge through a civil suit and the contention that no notice had been issued to him must have been brought at the instance of person against whom proceedings had been initiated and in whose name the registry had originally stood. If Dharam Pal had himself taken objection as regards the proceedings for vesting under the Land Ceiling Act, there was no question of the other subsequent purchasers to be served with notice. There is a clear bar for the suit itself by virtue of Section 26 of the Haryana Ceiling on Land Holding Act, 1972 which states that 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. Section 26(b) also states that no Civil Court will have jurisdiction to 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. If the contention was going to be that the property treated as surplus was banjar

> kadim and therefore, could not have been acquired, it was a jurisdictional issue which must have been put forth before the authority which was taking action and cannot be decided in any other forum. The issue of want of notice is equally unmerited since the person who was bound to be issued with notice had been served with notice and it is futile to argue that subsequent purchasers at various point of time after the statutory vesting would be served with independent notices".

In this view of the matter, this revision petition is allowed and the impugned order dated 21.11.2018 (Annexure P-4) is set aside and application dated 8.2.2016 (Annexure P-2) filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint is allowed. Needless to say, the respondent/plaintiff is at liberty to contest the matter before the Financial Commissioner.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

21.11.2022
Joshi

Whether speaking/reasoned **Yes**

Whether reportable **Yes/No**