

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-14142-2019****Date of decision : 11.07.2023**

HUKMI DEVI (NOW DECEASED) THROUGH LRS

-PETITIONERS

VERSUS

STATE OF HARYANA AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. Pankaj Gautam, Advocate
for the petitioners.Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishal Pundir, Advocate
for the petitioner No.1(iii).

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Jagdish Manchanda, Advocate and
Mr. Gurpreet Jayia, Advocate
for the respondent No.3.

KULDEEP TIWARI, J.

1. The petitioners have, through the instant writ petition, assailed the validity of the orders drawn on 29.11.2018 (Annexure P-11) and on 30.05.2017 (Annexure P-10), respectively by the learned Commissioner concerned and by the learned Collector concerned.

2. Since the present case has a chequered history, therefore, before proceeding to deal with the submissions of the learned counsels and before embarking upon the process of answering the questions of law, as become raised in the instant petition, it would be apposite to initially succinctly

enumerate the factual backdrop of the case.

FACTUAL BACKGROUND

3. The genesis of the present case dates back to early 1950s. As per the Jamabandi for the years 1950-1951 and 1955-1956, the total area of village Bhuna is 22334 Bighas 14 Biswas, therefrom, an area of 15648 Bighas is recorded as “shamlat deh”, area whereof includes an area of 2408 Bighas 4 Biswas thus recorded as “Banjar Qadim”. Upon enactment and coming into force of the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the “Act of 1953”), the “shamlat deh” lands in a village came to statutorily vest in the Gram Panchayat and accordingly, a Mutation bearing No. 670, pertaining to the entire “shamlat deh” land of the revenue estate of Village Bhuna, was sanctioned on 20.6.1954 in favour of the respondent- Gram Panchayat concerned. Dissatisfied with the sanction of mutation (supra), the predecessor-in-interest of the present petitioners had instituted a declaratory suit before the Assistant Collector Ist Grade, Guhla at Cheeka (hereinafter referred to as the “Assistant Collector”), thereby claiming the nullification of mutation (supra). The foundation of the relief claimed was laid on the bedrock of the un-amended proviso to Section 2(g)(5) of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as the “Act of 1961”), proviso whereof contemplated, that if the area of “shamlat deh”, at least to the extent of 25% of the total area of the village, does not exist in the village, then the land described as “Banjar Qadim” and used for common purposes of the village, according to revenue records, shall fall within the definition of “shamlat deh” and shall vest with the Gram Panchayat concerned. It was claimed that since the area of “shamlat deh”

(15648 Bighas) was far in excess of 25% of the total revenue area of the village concerned, therefore, the area of “Banjar Qadim” (2408 Bighas 4 Biswas) does not indeed vest with the Gram Panchayat concerned by dint of un-amended proviso attached to Section 2(g)(5) of the Act of 1961, rather it vests in the proprietors of the village concerned.

4. The Gram Panchayat concerned controverted the averments (supra), as pleaded in the suit, by contending that the predecessor-in-interest of the petitioners and other alleged proprietors were unauthorized occupants over the disputed land, and, as such in the garb of the title suit, they were intending to grab the suit property. Moreover, the mutation (supra) was claimed to be validly sanctioned.

5. The learned Assistant Collector, vide order dated 21.03.1986, decreed the suit while holding that since the Gram Panchayat concerned already had an area of “shamlat deh” but in excess of 25% of the total area of the village, therefore, by virtue of the relevant un-amended proviso to Section 2(g)(5) of the Act of 1961, the area measuring 2408 Bighas 4 Biswas, designated as “Banjar Qadim”, neither falls within the definition of “shamlat deh” nor vests in the Gram Panchayat concerned. The learned Assistant Collector further held that the mutation (supra) rather holds no binding effect upon the predecessor-in-interest of the petitioner along with the other plaintiffs therein, given theirs being the lawful right holders and Biswedars of the village concerned.

6. The order made by the Assistant Collector on 21.03.1986 caused grievance to the Gram Panchayat concerned and led it to institute a statutory appeal against the said order before the learned Collector concerned. The

learned Collector concerned found the appeal to be well merited on the ground that neither the Assistant Collector had recorded any clarification in his order (supra) as to which 25% of land shall vest in the Panchayat nor recorded any specific khasra numbers therein. Consequently, the appeal was allowed vide order dated 06.10.1987 and the case was remanded to the Assistant Collector for the making of a fresh decision thereon. The hereinafter extracted observations were recorded by the learned Collector concerned in his order of 06.10.1987:-

“I have heard both the learned counsel for the parties and have perused the file. From the same, it is found that in the judgment of the lower court, it has not been made clear as to which of 25% of the land will be kept for the Panchayat. Khasra Nos. have not been given. In this same way, the lower court has not given clear findings regarding the land in question. In view of these facts, the judgment of the lower court is discrepant which is hereby reversed and the appeal is hereby accepted. The case is hereby remanded to the lower Court with a direction that this case may be decided afresh by taking evidence of both the parties, according to law. The parties are directed to appear before the lower court on 23.10.1987.”

7. The predecessor-in-interest of the petitioners made a challenge to the order (supra) of the first appellate authority by filing a revision before the learned Commissioner concerned, however, vide order dated 24.11.1987, it was dismissed in limine.

8. Dismissal of the revision constrained the predecessor-in-interest of the petitioners to access this Court, through CWP-263-1988, whereby the orders dated 06.10.1987 and 24.11.1987, passed respectively by the learned first appellate authority and by the learned revisional court, were challenged. However, the writ petition (supra) was also ultimately dismissed through an

order drawn on 25.11.2010 and the remand order drawn on 06.10.1987 by the first appellate authority was affirmed. The relevant extract of the order dated 25.11.2010 is extracted hereunder:-

“Counsel for the petitioners, primarily contends that the order of remand passed by the Collector, is incomprehensible as the Assistant Collector has held on the basis of legal and valid evidence that the land in dispute does not vest in the Gram Panchayat. The argument, in my considered opinion must fail. The Assistant Collector was not only required to decide whether excess land was assigned for the Gram Panchayat but also whether the land is Jumla Mushtarka Malkan or Shamilat Deh Hasab Rasad Zare Khewat. As the Assistant Collector failed to decide this point, the Collector was justified in remanding the matter to the Assistant Collector. It would also be necessary to point out that during pendency of the writ petition, the provision that confined Shamilat Deh to 25% of the total land of a village has been deleted by way of an amendment in the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act). The questions raised by the petitioners would have to be re-determined not only in accordance with the order of remand but also in view of a large number of statutory amendments that have been carried out during pendency of the writ petition. In this view of the matter, I find no reason to interfere with the impugned orders. The writ petition is disposed of accordingly.”

9. The efforts of the predecessor-in-interest of the petitioners did not pause here, as she went on to challenge the order dated 25.11.2010, as drawn by the learned Single Judge, through filing LPA-182-2011. The LPA (supra) also met the same fate and was dismissed on 01.02.2011 by a Division Bench of this Court. However, the Assistant Collector was directed to take a decision without being influenced by any observation made in the verdict drawn by the learned Single Bench.

10. Upon remand of the matter, the learned Assistant Collector while taking into account the latest amendment, i.e. insertion of Section 13-A in the Act of 1961, whereby the jurisdiction to decide a title suit was withdrawn from Assistant Collector and was vested with the Collector, thus vide order 30.08.2011, dismissed the suit filed by predecessor-in-interest of the petitioners, wherein, it was held that the suit was not maintainable before the court of Assistant Collector. Against this order, an appeal, at the instance of the petitioners, was preferred before the Collector Kaithal, however, through an order drawn on 15.11.2012, it was also dismissed on merits, whereas the order of learned Assistant Collector became affirmed. The litigation did not end here, as the petitioners instituted an executive appeal before the learned Commissioner concerned, who through an order made on 15.05.2013 remanded the lis to the learned Assistant Collector, thus for a fresh decision but by specifically taking into account the directions issued by the Single Bench of this Court in its order dated 25.11.2010.

11. During the course of hearing of the remanded lis, an application under Order 1 Rule 10 CPC was filed seeking impleadment of some individuals as plaintiffs in the said suit, application whereof became allowed. Ultimately, the Assistant Collector decreed the suit vide order dated 24.08.2016 and also recorded the specific killa numbers along with the description of occupation and possession over such killa numbers. The suit was decreed in favour of the petitioners and the newly impleaded plaintiffs. The reason for decreeing the said suit was founded upon the un-amended proviso attached to Section 2(g)(5) of the Act of 1961. Since in terms of the said un-amended proviso, land in excess of 25% of the total land existing in

the village concerned was evidently depicted in the relevant revenue record to be “shamlat deh”, besides when the area falling within the apposite description of “Banjar Qadim” land was not proven to be used according to the revenue records for the benefit of the village proprietary body or for the benefit of a part thereof, therefore it was concluded that the present petitioners were entitled to a decree of declaration. In consequence, the attestation of mutation (supra) and also the making of entries in the revenue records, on the basis of the said mutation, was concluded to be holding no effect upon the right, title and interest of the present petitioners, vis-a-vis the disputed lands.

12. The order (supra) of Assistant Collector was again assailed by the Gram Panchayat by instituting a statutory appeal before the learned Collector concerned, primarily on the ground that since after insertion of Section 13-A in the Act of 1961, in the year 1991, whereby, the Assistant Collector ceased to hold any jurisdictional competence to decide the question of title, therefore, he was enjoined to transfer the lis to the court of learned Collector concerned, who in terms of the said inserted provision, became vested with the jurisdictional competence to do so. It was further claimed that the impleadment application, as moved under Order 1 Rule 10 CPC, on 18.8.2016, was untenably decided on the very date, given the Assistant Collector completing the hearing of the main case on 10.8.2016 itself, thereby no opportunity to oppose the said application got afforded to the Gram Panchayat concerned, whereby, the rules of natural justice were breached. Finding vigour in the contentions advanced by the Gram Panchayat concerned, the learned Collector concerned, vide order dated 30.5.2017, allowed the appeal on merits, and, set aside the order (supra) of the Assistant Collector, on

the ground that the same was drawn by a jurisdictionally incompetent court.

13. The order dated 30.05.2017 led the petitioners to file a revision petition before the learned Divisional Commissioner concerned. However the same was, vide order dated 29.11.2018, dismissed by holding that the names of the petitioners surfaced for the first time in the Jamabandi for the year 1988-1989 and that too in the capacity of “Gair Marusi”, and, as illegal occupants. It was further held that neither it could be ascertained nor proved from the record as to how much land is possessed by the petitioners or how much share of their land is incorporated in “shamlat deh” (on pro rata basis). Moreover, by placing reliance upon judgment passed in *Orion Infrastructure Ltd. V/s The Commissioner, Gurgaon Division, Gurgaon and others, 2012 (2) LAR 337 (P&HDB)*, the learned Divisional Commissioner held the Assistant Collector to have exercised vitiated jurisdiction and thereby erred in deciding a suit under Section 13-A, which consequently rendered his decision (supra) to be stained with the vice of nullity.

14. Now the instant writ petition has been filed challenging the impugned verdicts (supra).

ANALYSIS OF THE RELEVANT STATUTORY PROVISIONS

15. Before advertng to adjudicate the controversy involved in the instant case, let us first make a brief survey of the pre-amendment Section 13-A and post-amendment Section 13-A of the Act of 1961.

16. The hereinafter extracted Section 13-A was omitted, through Haryana Act No.9 of 1992, from the Act of 1961.

“13A. Adjudication.-(1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social

Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may, within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the court of the Assistant Collector of the first grade having jurisdiction in the area wherein such land or other immovable property is situate.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.”

Thereafter, the new Sections 13-A and 13-AA were inserted in the Act of 1961, through Haryana Act No.9 of 1999, which are reproduced hereinafter:-

“13-A. Adjudication.- *(1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is Shamilat Deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:*

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has

been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).

13AA. Appeal and revision.- *(1) Any person, aggrieved by an order passed under sub-section (1) of section 13A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioner in such form and manner, as may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit.*

(2) The Financial Commissioner may, suo motu or on an application made to him by any person aggrieved by an order passed under sub-. section (1), call for the record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

17. A conjoint reading of all the above extracted provisions along with all the hereinabove extracted amendments, amplifies that by substitution of Section 13-A in the Act of 1961, through Haryana Act No.9 of 1999, the jurisdiction to decide a title suit ceased to vest in the Assistant Collector concerned, rather it came to vest with the Collector concerned. Therefore, by virtue of this substitution, now the Assistant Collector has no subject jurisdiction to decide a title suit, rather he has only a limited jurisdiction to decide the issue of title, in a case where eviction proceedings under Section 7 of the Act of 1961 are pending and any person claims title in the suit land, or,

if he believes that a question of title is raised, then he can accordingly first decide the issue whether the question of title is involved in the proceedings under Section 7 of the Act of 1961 or not. However, a fresh suit on the original jurisdiction, for deciding the question of title, is not at all maintainable before the Assistant Collector. Significantly, no proceedings under Section 7 of the Act of 1961 were drawn before the Assistant Collector, nor there was any opportunity for the estate-holders concerned to raise therein any question of title, nor the Assistant Collector could become well capacitated to decide the said question of title. Contrarily, the estate-holders concerned filed a declaratory suit, thereby, when through the Haryana Act No.9 of 1999, jurisdictional competence to decide the said title suit got snatched from the Assistant Collector and got vested in the learned Collector concerned, thereby obviously, as stated (supra), no jurisdictional competence was vested in the Assistant Collector to decide the said title suit.

ANALYSIS OF THE CURRENT SUBJECT MATTER

18. Though this Court has herein alluded to the submissions respectively addressed before this Court by the learned counsel for the petitioners and also by the learned counsel appearing for the respondent- Gram Panchayat. Moreover, this Court has also alluded to the submissions made before this Court by the learned State counsel. However, a substantial part of their arguments, as became addressed before this Court, relate to the merit-worthiness of the claim raised by the petitioners, plaintiffs in the title suit. It is nonetheless not deemed necessary to adjudicate upon the merits of the lis, as the moot question which requires adjudication, rather appertains to the jurisdictional competence of the Assistant Collector to, after insertion of new

Section 13-A in the Act of 1961, through Haryana Act No.9 of 1999, make a decision on merits of the title suit. Therefore, the primary or the cardinal issue, warranting an adjudication, becomes hereinafter extracted:-

“Whether the Assistant Collector had exercised able jurisdiction in deciding the principal suit concerning issue of title, when the jurisdiction to do so, at the time of decision of said suit, became vested in the Collector concerned, through insertion of Section 13-A in the Act of 1961, through Haryana Act No.9 of 1999?”

19. Before commencing to adjudicate the issue (supra), let us first make a concise scrutiny of the term “jurisdiction”. By “jurisdiction”, is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, character or commission under which the court is constituted, and may be extended or restricted by similar means. (Sourced from The Law Lexicon)

20. Furthermore, “jurisdiction” may be local, pecuniary, personal, or, with reference to subject matter of the suit. The Black’s Law Dictionary has defined the term “jurisdiction” as a court’s power to decide a case or issue a decree.

21. It is only a statute, which confers jurisdiction upon the Court of law and same has to be decided within the limits of authority and not beyond it. Lack of necessary subject jurisdiction bars a court from deciding such a suit. If a court having lack of subject jurisdiction, tries and decides a lis, such a decision would become a nullity and would be hit by the doctrine of “*coram non judice*”.

22. Now, insofar as the issue (supra) is concerned, it is indisputable that the Assistant Collector had wrongly exercised the subject jurisdiction while deciding the title suit on 24.08.2016, whereas, the subject jurisdiction was no longer vested in him on the relevant date, rather came to vest in the Collector concerned way back in 1999, by virtue of substitution of Section 13-A in the Act of 1961, through Haryana Act No.9 of 1999. Therefore, the Assistant Collector was neither statutorily empowered nor well vested with an able jurisdiction to decide the title suit on 24.08.2016, the same being withdrawn from him through through Haryana Act No.9 of 1999, and therefore, such decision is a nullity in the eyes of law.

23. Moreover, in the face of the pendency of the title suit before the statutory authorities concerned, whether the insertion of Section 13-A in the Act of 1961, through Haryana Act No.9 of 1999, did cause erosion in the jurisdictional competence of the Assistant Collector, who rather had initially assumed jurisdiction over the title suit in the year 1985 and who subsequently became divested from exercising jurisdiction thereon, especially in the wake of the amendment (supra).

24. Though normally the pendency of a title suit before the court concerned or before the statutory authorities concerned, especially when it has not fully terminated, may become the moot plank, for assessing whether the averments made in the title suit, which gained support by cogent evidence, whether thereupon prima facie irrespective of insertion of a statutory provision, thereby divesting the jurisdiction of the statutory authority, who had rather made the said decision at a stage when it enjoyed the jurisdictional competence to try the lis, rather thus prima facie would or not be concluded to

be stained with the vice of nullity. Moreover, whether concomitantly also, the pleadings raised in the suit, when become rested upon the then prevalent statutory provisions, which as stated above become supported by cogent evidence, thus can be deemed to suffer any erosion. Resultantly, whether upon subsequent deletion(s) of any statutory provision, whereupons become earlier rested any pleading, and/or, in respect whereof, cogent evidence becomes adduced, thus resulting in a binding and a conclusive decision being made on the relevant lis, by the then jurisdictionally competent court, rather would result in the said decision begetting nullification. The answer thereto is but obviously, that any subsequent amendment(s), but cannot snatch the substantive rights pleaded in the plaint, especially when such substantive rights become proven by adduction of cogent evidence, leading thus as above stated, to a binding and conclusive decision. Therefore, if any binding and conclusive decree is made on the relevant civil suit, earlier to the insertion of any amending provision, thereby the relevant provision, thus snatching the jurisdiction of the court, which earlier made such a binding and conclusive decree rather would not affect the jurisdictional value of the conclusive and binding decree. However, the above inference may not apply fully to a situation, where the lis is yet subjudice.

25. Be that as it may, it is in the light of the above prima facie inferences, that it has to be determined whether the relevant lis thus had become completely rested, through a conclusive and binding decision becoming made thereons. In the above regard, it is relevant to mention that initially the Assistant Collector had, on 21.3.1986, proceeded to make the espoused declaratory decree in favour of the petitioners, plaintiffs in the civil

suit. Conspicuously, at that stage, he had the jurisdictional competence to both try and to also make an adjudication on the relevant lis. However, through Haryana Act No.9 of 1999, Section 13-A became inserted in the Act of 1961, whereby the jurisdictional competence, as earlier vested in him, got snatched from him.

26. Now, had the lis rather terminated in a binding and conclusive verdict, thereupon, as stated (supra), irrespective of Section 13-A becoming inserted in the Act of 1961, thus the jurisdictional value of the said decision, as, made on 21.3.1986, thus would not become robbed of its efficacy.

27. However, for the reasons to be assigned hereinafter, the lis never terminated thus in a binding and conclusive decision, as the decision of the Assistant Collector was assailed before the learned Single Judge of this Court, who however through a decision made on 25.11.2010, made an order of remand or for re-trial of the lis, to the Assistant Collector. Resultantly, on remand of the lis, the same was restored to its original number. The date of restoration to its original number, of the remanded lis, becomes the relevant date for assessing whether at that stage, both the pleadings as well as the jurisdictional competence to try them and to make an effective adjudication thereon, got completely vested in the Assistant Collector.

28. It is on the anvil of the direction (supra), as made by this Court, that an argument is posed before this Court, that the jurisdictional vigour of the decision made by the Assistant Collector on 30.08.2011, thereby non suiting the present petitioners, plaintiffs therein, did thereby suffer an erosion, as then there was no binding and conclusive decision on the lis, which emerged inter se the contesting litigants. However, this Court concludes that

the decision made by this Court on 25.11.2010, whereby it relegated the lis to the Assistant Collector, is but however per incuriam, the engraftment of Section 13-A, through Haryana Act No.9 of 1999, whereby the jurisdictional competence of the Assistant Collector, to try a declaratory suit, thus became snatched. Moreover, the order of remand is not a final, binding and conclusive termination of the lis. The reason for making the above inference becomes sparked from the trite factum, that through the engraftment of the relevant provision, thus thereby the jurisdictional competence of the Assistant Collector to try a title suit, rather became snatched and that too, when as stated (supra), the lis had not terminated through a binding and conclusive verdict becoming made thereon, but had remained alive but through an order of remand being made by this Court, which but only results in the restoration of the lis to its original number. Moreover, as above stated, the date of restoration of the lis to its original number, becomes the date, wherefrom a computation is made, whether then the jurisdictional competence becomes vested or not become vested in the Assistant Collector. Obviously but on the above plank, it is to be concluded that when, on its remand to the Assistant Collector, thus the lis became restored to its original number, besides when at the above stage, through engraftment of Section 13-A, through the Haryana Act No.9 of 1999, whereby the jurisdictional competence of the Assistant Collector to try a title suit, rather became snatched. Consequently, in the garb of the direction (supra) as became made by this Court, the challenged orders cannot become clothed with any aura of legality.

29. Be that as it may, reiteratedly the fortified reason for making the above decision is centered upon the fact, that when a lis is remanded by this

Court, or, by any other statutory forum, thus the said order of remand is but plainly per incuriam the statutory provisions, thereby but obviously the lis does not terminate. In other words, when on remand of the lis to the remandee court, if the remandee court has jurisdictional incompetence to decide the same, thereupon any decision on merits as become rendered by a jurisdictionally incompetent court or a jurisdictionally incompetent statutory forum, is but stained with a vice of nullity and thereto no sanctity can be assigned.

30. The further natural corollary of the above prima facie inferences and conclusions, are but, that though in the declaratory suit, as became instituted, though became rested on the plank of the proviso to Section 2(g)(5) of the Act of 1961, which but carries the hereinafter extracted contemplations, but since the said proviso became deleted through the Haryana Act No.9 of 1992. Resultantly the remand of the lis to the remandee court, which but leads to its becoming restored to its original number, besides when the date of its restoration to its original number, becomes the relevant date for determining the permissibility of raising of such pleas, which became subsequently deleted. Therefore, when on remand of the lis on 30.08.2011, but when it became restored to its original number, thus the said proviso became deleted. As a sequel, on deletion of the said proviso, the pleadings in consonance therewith, may not prima facie yet survive, nor would be amenable for any issue becoming framed in respect thereof, nor any evidence proposed to be adduced in respect thereof can be lawfully permitted to be adduced, nor any adjudication can be made thereon. Importantly also, when the remandee court, irrespective of direction (supra), was at the stage of remand or on the date of

remand, when the lis became restored to its original number, did not enjoy any jurisdictional competence.

“2. Definitions.-

(g) "shamilat deh" includes-

xx xx xx xx

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records:

Provided that shamlat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village;”

31. The above conclusion stands fortified by the judgment delivered by a larger Bench of the Hon’ble Supreme Court of India, in the case titled ***“Kiran Singh and ors. V/s Chaman Paswan and ors.”, 1954 AIR (Supreme Court) 340***, wherein, while dealing with the issue of lack of subject jurisdiction, it was held that a decree passed by a court, without jurisdiction, is a nullity and the defect of jurisdiction, in respect of the action subject matter, strikes at the very authority of the court to pass any decree and such a defect cannot be cured even by the consent of parties. The relevant paragraph carrying the hereinabove discussed observations are extracted hereinafter:-

“6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a 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 execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured

even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District, Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position.

7. Section 11 enacts that notwithstanding anything in Section 578 of the Civil Procedure Code an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate court, except as provided in the Section. Then follow provisions as to when the objections could be entertained, and now they are to be dealt with. The drafting of the Section has come in - and deservedly-for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as, what it would be but for the Section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that Section and not otherwise.

The reference to Section 578, now Section 99, C.P.C., in the opening words of the Section is significant. That Section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction as a result of over-valuation or under-valuation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a Court based on over-valuation or under-valuation shall not be entertained by an appellants Court except in the manner and to the extent mentioned in the Section. It is a self-contained

provision complete in itself, and no objection to jurisdiction based on over-valuation or under-valuation can be raised otherwise than in accordance with it.

With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99, C. P. C. and Section 11 of the Suits Valuation Act is the same namely, that when a case had been tried by a Court on the merits and judgement rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.”

32. In addition, a Division Bench of the Hon’ble Supreme Court of India, in its judgment rendered in the case titled **“Chief Engineer, Hydel Project & ors. V/s Ravinder Nath & ors.”, 2008 AIR (Supreme Court) 1315,** while dealing with the subject matter of jurisdiction, has held as under:-

“19. Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone

and the appeal is liable to be allowed. In view of this verdict of ours, we have deliberately not chosen to go into the other contentions raised on merits. We, however, make it clear that we have not, in any manner, commented upon the rights of the plaintiffs-respondents, if any, arising out of the Labour Jurisprudence.”

33. Moreover, this Court also had a couple of occasions to deal with the subject matter of jurisdiction, while deciding CWP-6780-2022, titled **“Tarsem Lal V/s Director, Rural Development & Panchayat Department & ors.”**, and, CWP-24994-2018, titled **“Ishwar Singh V/s State of Haryana & ors.”**, and a view similar to the one taken by the Hon’ble Supreme Court, on the issue of “*coram non judice*”, was taken by this Court. The relevant extract from **Tarsem Lal’s case** (supra) is extracted hereunder:-

“....Perusal of the above extracted Section makes it clear that the civil court has no jurisdiction over the subject matter of dispute. Therefore, any order passed by the civil court would be coram-non-judice, thus a nullity. The above conclusion gathers support from a judgment of Hon'ble Supreme Court passed in Hasham Abbas Sayyad v. Usman Abbas Sayyad, 2007 AIR (Supreme Court) 1077, wherein it has been held as under:-

“21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to.

22. This aspect of the matter has recently been considered by this Court in Harshad Chiman Lal Modi v.

DLF Universal Ltd. and Another, 2005(4) RCR (Civil) 260 : [(2005)7 SCC 791], in the following terms :

"We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

23. We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Civil Procedure Code; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

Therefore, the judgment and decree dated 08.06.1989, passed by the Civil Court concerned, is beyond its jurisdictional competence and therefore, is a nullity."

34. In **Orion Infrastructure Ltd. (supra)**, a Division Bench of this Court has held that after insertion of new Section 13-A and 13-AA in the Act of 1961, vide Haryana Act No.9 of 1999, a title suit could be filed before Collector and an appeal thereagainst before Commissioner, as jurisdiction of

Assistant Collector was thereby snatched. The title suits which were pending before Assistant Collector could not be decided by him, after insertion of new Section 13-A in the Act of 1961, and, if the Assistant Collector is permitted to decide the pending title suits, then the very purpose of the amendment would be defeated. The Assistant Collector could transfer said suits to the Collector concerned by recouring the mandate of Order 7 Rule 10A.

35. Lastly, in the judgment drawn in the case titled “**Dinesh Kumar V/s Smt. Chander Kala & ors.**”, 2013(1) RCR (Civil) 960, a Single Bench of this Court has held that only if it is found that the petition is maintainable, the court can further go into the merits of the case, however, if it is found that the petition is not maintainable, then Court should not go into merits because whatever is said or found on merits, then would be without jurisdiction.

36. In view of the hereinabove discussed settled propositions of law, reiteratedly, this Court unhesitatingly holds that the Assistant Collector had no subject jurisdiction, at the relevant time, to decide the title suit under Section 13-A of the Act of 1961, rather the original subject jurisdiction was vested in the Collector concerned.

37. Therefore, the basic order drawn by the Assistant Collector on 24.08.2016, is declared to be a nullity and is hereby set aside, being defectively drawn despite utter lack of vestment of subject original jurisdiction in him. Since the basic order is itself tainted with the vice of improper exercise of subject jurisdiction, we deem it appropriate to remand the case to the Collector concerned.

FINAL ORDER

38. In sequel, the orders dated 29.11.2018 and 30.05.2017, as

impugned in the instant writ petition, are also hereby set aside, being orders drawn on an order, which itself is a nullity. Further, the Assistant Collector is directed to immediately transfer the lis to the court of learned Collector concerned, who after giving adequate opportunity of hearing to all the affected parties, shall in accordance with the provisions of the Act of 1961, decide the lis within a period of four months from today.

(SURESHWAR THAKUR)
JUDGE
11.07.2023
devinder

(KULDEEP TIWARI)
JUDGE

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