IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 24994 of 2018
Date of decision : February 15, 2023

ISHWAR SINGH ....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS ....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. K.L. Saini, Advocate, for the petitioner.

Mr. P.P. Chahar, Deputy Advocate General, Haryana for respondents No. 1 and 3 to 6-State.

None for respondent No. 2

Mr. Chand Ram Olla, Advocate for respondent No. 7.

Respondent Nos. 8 to 12 – *ex-parte.*

KULDEEP TIWARI,J.

The petitioner has knocked the doors of this Court by invoking the jurisdiction envisaged under Articles 226/227 of the Constitution of India seeking quashing of award dated 15.11.2013 passed by Daily Lok Adalat under the Project of National Lok Adalat, Hisar, on the grounds that the same has been procured by collusion and fraud and the land which belong to Gram Panchayat was illegally exchanged with the private respondent Nos. 8 to 12 in violation of the provisions of Rule 5 of the Haryana Village Common Lands

(Regulation) Rules, 1964 (in short, 'Rules of 1964')

The private respondent Nos. 8 to 12 had filed a suit before the civil court for declaration to the effect that they became the owners in possession in equal shares to the extent of 11 feet X 200 feet, out of land comprised in Khasra Number 48//20 (8-0), bearing Khewat No. 485 min/434, Khatauni Number 572, situated in Village Mingni Khera, Tehsil and District Hisar, as per Jamabandi for the years 2010-11 in place of the Gram Panchayat (defendant in the suit) and the Gram Panchayat became owner in possession of land measuring 11 feet X 220 feet out of land comprised in Khasra Number 47//16(8-0), bearing Khewat Number 393/344, Khatauni Number 475, situated at village Mingni Khera, Tehsil and District Hisar as per Jamabandi for the years 2010-11, in place of respondent Nos. 8 to 12 by way of oral mutual exchange and they are entitled to get incorporated their names into the revenue record as owners in possession in place of each other.

During the pendency of the civil suit, the then Sarpanch of the Gram Panchayat passed a resolution No. 2 dated 2.11.2012 to the effect that in order to increase the income of the Panchayat and to decrease the problems faced by the other farmers, 2 Karam passage i.e. 11 x 220 feet towards east-west-south be given out of Killa No. 48/20 of Gram Panchayat and the private respondents are ready to give 2 karam passage i.e. 11 x 220 feet towards east-west-south part of land out of Rect. No. 47/16. This resolution was placed before the learned Civil Court and the Sarpanch also filed a written statement admitting the claim of the private respondents (plaintiffs therein). Thereafter, the matter was referred to Lok Adalat, upon which, the learned Daily Lok Adalat, Hisar passed the impugned award on 15.11.2013. The present petitioner challenges this award on the grounds that the land vests with the Gram Panchayat, therefore, in view of the provisions of Section 13 of the Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), civil court has no jurisdiction to entertain the said civil suit. Further more, the petitioner avers that this exchange between the Gram Panchayat and private respondent Nos. 8 to 12 has been allowed in gross violation of Rule 5 of the Rules of 1964.

The official respondents No. 1 and 3 to 6 have filed their written statement admitting that the Daily Lok Adalat has bypassed the procedure mentioned under Rule 5 of the Rules of 1964, by virtue of which, the power to accord approval for exchange of Gram Panchayat land with the land of private persons, is with the Government.

We have examined the entire record and find merit in the submissions made by counsel for the petitioner. Rule 5 of the Rules of 1964 requires an approval of the State Government for exchange of any *shamlat deh* land. Further more, it is also required that the Panchayat should make an opinion that the necessity of exchange of land is for the benefit of the inhabitants of the village. Rule 5 of the

Rules of 1964 read as under:-

> "**5. Exchange of land. Sections 5 and 15(2)(f)**.- A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may, with the prior approval of the State Government, transfer any land in shamilat deh by exchange with the land of an equivalent (market) value to be determined by the Deputy Commissioner in whose jurisdiction the land is situate:
>
> Provided that State Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned:
>
> Provided further that for the purpose of allotment of residential plots to the eligible families identified under the scheme approved by the State Government, to allot house-sites to the Scheduled Castes (Backward Classes) families and the families living below poverty line, the concerned Deputy Commissioner or Sub-Divisional Officer (Civil), as may be authorized by the State Government, shall be competent to accord approval for transfer any land in shamilat deh, by way of exchange, with the land of equivalent value."

On perusal of the resolution dated 2.11.2012, Annexure P/2, passed by the Gram Panchayat, respondent no. 7, we do not find any plausible reasons assigned in resolution which reveals that the exchange was proposed for the benefit of inhabitants of the village. The word *'benefit of inhabitants of the village'* does not mean for the benefit of one or two persons amongst the inhabitants, but is for the benefit of entire village proprietary body. Further-more, there is no prior approval of the State Government enabling the Sarpanch to file written statement admitting the claim of private respondent Nos. 8 to 12. It seems that the present exchange is result of collusion between the office bearers of Gram Panchayat respondent no. 7 and the private respondent Nos. 8 to 12. Even otherwise, there is a specific jurisdictional bar created in Section 13 of the Act of 1961 against the civil court to entertain such a claim. Thus, the said civil suit was ill constituted besides the award as made thereon by the Daily Lok Adalat concerned, is also vitiated by the vice of jurisdictional incompetence. Section 13 of the Act of 1961 read as under:-

> "13. **Bar of Jurisdiction.--** <u>No civil court shall have jurisdiction</u>---
>
> (a) to entertain or adjudicate upon any question whether----
>
> (i) any land or other immovable property is or is not shamlat deh;
>
> (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;
>
> (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or
>
> (c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act."

In other words, a perusal of Section 13 of the Act of 1961 makes it clear that the civil court has no jurisdiction over the subject matter of the dispute. Therefore, any order passed by the civil court would be *coram-non-judice,* thus a nullity. In making the above conclusion (supra) support is gathered from a judgment of Hon'ble Supreme Court passed in **Hasham Abbas Sayyad v. Usman Abhas 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. [See Chief Justice of Andhra Pradesh and Another v. L.V.A. Dikshitulu and Others, AIR 1979 Supreme Court 193 &MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., 2003(4) RCR (Civil) 767 : (2004)8 SCC 619].*
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> *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."

[See also Zila Sahakari Kendrya Bank Maryadit v. Shahjadi Begum & Ors., 2007(1) SCT 419 : 2006(9) SCALE 675 and Shahbad Co-op. Sugar Mills Ltd. v. Special Secretary to Govt. of Haryana & Ors., 2007(1) RCR (Civil) 113 : 2007(1) SCT 112 : 2007(1) R.A.J. 144 2006(11) SCALE 674 - para 29]

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 award which was passed by the learned Daily Lok Adalat is beyond the jurisdictional competence of the said Lok Adalat concerned and therefore, is a nullity.

In view of the facts and circumstances stated above, we find merit in the present writ petition, therefore, the same is allowed. The impugned award dated 15.11.2013, Annexure P/2, as passed by learned Daily Lok Adalat, Hisar is quashed.

A copy of this order be sent to the Principal Secretary to Government of Haryana, Department of Development and Panchayats, Haryana, Chandigarh for issuing necessary instructions to the concerned authorities to ensure that such kind of collusive transfers of Panchayat land by way of exchange through civil court decree should not happen in future.

(SURESHWAR THAKUR
JUDGE

(KULDEEP TIWARI)
JUDGE

February 15, 2023
'dalbir'

Whether speaking/reasoned ? *Yes/No*
Whether Reportable ? *Yes/No*