



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-12058-1999
Reserved on: 01.05.2024
Pronounced on: 27.05.2024

GAJE RAM AND ANOTHERPetitioners

Versus

GRAM PANCHAYAT BALBEHRA AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Varun Baanth, Advocate for
Mr. A.K.Jain, Advocate
for the petitioners.

Mr. Surender Singh Pannu, Advocate
for respondent No. 1.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners herein seek the quashing of orders Annexures P-3, P-4 and P-5.

Factual Background

2. One Lali and others filed a declaratory suit on 08.02.1989 under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (hereinafter for short called as the 'Act of 1961') against Gram Panchayat Balbehra claiming themselves as owners in possession of the disputed lands. The said suit became decreed in favour of the plaintiffs vide order dated 18.12.1991 (Annexure P-1) passed by the Assistant Collector First Grade, Guhla.



The declaration as became rendered on the said title suit (Annexure P-1) on account of its remaining unchallenged thus acquired binding and conclusive effect.

3. Thereafter, on the basis of the said decree, the plaintiffs-Lali and Chanda suffered a decree/sale deed on 09.03.1992, and mutation No. 1615 in this regard was entered in their favour.

4. Thereafter, Gram Panchayat, Balbehra through its Sarpanch instituted on 01.06.1994, a petition bearing No.302 under Section 7 (2) of the 'Act of 1961', seeking thereby the eviction of the defendants therein, who were plaintiffs in the title suit (supra), thus from the suit lands. The present petitioners also became impleaded therein, as defendants No. 3 and 4. The Assistant Collector First Grade, Guhla vide order dated 20.09.1995 (Annexure P-3) allowed the said petition and thus ordered for the eviction of the defendants/encroachers from the suit lands. Resultantly, the declaratory decree (Annexure P-1) became discountenanced.

5. Feeling dis-satisfied from the above, the defendants filed thereagainst a statutory appeal before the Collector, Kaithal. The learned Collector, Kaithal vide order dated 06.03.1998 (Annexure P-4) dismissed the said appeal by giving a specific finding that the title suit filed on 08.02.1989 under Section 13(A) of the 'Act of 1961', could not have been filed before the Assistant Collector First Grade after 11.02.1986, as Section 13 A of the 'Act of 1961' became repealed by the Government vide its notification dated 11.02.1986. The order dated 18.12.1991 (Annexure P-1) passed on the plaintiffs' title suit was



Panchayat concerned, was declared to be owner of the disputed lands.

6. Feeling aggrieved the defendants-petitioners herein preferred thereagainst a revision petition before the Revisional Authority concerned. The Revisional Authority concerned vide order dated 27.04.1999 (Annexure P-5) dismissed the revision petition and held that the order dated 18.12.1991 (Annexure P-1) passed by the Assistant Collector First Grade, Guhla is beyond jurisdiction and does not have any legal status, thereby he concurred with the orders passed by the statutory authorities below, respectively enclosed in Annexures P-3 and P-4.

Contention(s) of the learned counsel for the petitioners.

7. The learned counsel for the petitioners submits that the controversy relating to the purportedly ill assumed jurisdiction becoming made by the Assistant Collector concerned, on the title suit cast under Section 13-A of the 'Act of 1961', rather could not be construed to be an ill assumed jurisdiction thereovers, as no protest became raised by the defendant-Gram Panchayat concerned against the passing of Annexure P-1. In consequence, it is argued before this Court by the learned counsel for the petitioners, that as such the decision rendered on the title suit (Annexure P-1), was a well made adjudication. Moreover, he also submits that when in the face of the controversy relating to title vesting vis-a-vis the suit lands and qua the petitioners, thus became clinchingly rested, through a binding and conclusive decision being made through Annexure P-1, on the said title suit. Consequently, it is urged before this Court, that thereby the Gram



eviction in respect of the suit lands before the Assistant Collector concerned.

8. Furthermore, he also submits that thereby the verdicts of eviction, as became passed on the eviction petitions, cast under Section 7 of the 'Act of 1961' respectively by the Assistant Collector (Annexure P-3), by the Appellate Authority concerned (Annexure P-4) and by the Revisional Authority concerned (Annexure P-5) are required to be quashed and set aside.

Conclusions of this Court.

9. For the reasons to be assigned hereinafter, the above addressed arguments before this Court by the learned counsel for the petitioners are devoid of any merit, and, they are required to be rejected as such.

10. It is trite law that that when at the stage of the institution of the *lis* rather before the authority concerned, there exist a specific statutory bar, thus against the said authority either assuming jurisdiction thereovers, or passing an adjudication thereons but obviously therebys any adjudication, as made thereovers would be an ill made adjudication. Resultantly, when it is also a trite law that the parties to the *lis* also therebys become ill capacitated to either mete any consent to jurisdiction being yet available to be exercised, on the relevant *lis* by the statutory authority, which otherwise has no jurisdiction to either entertain the said *lis* or to make any valid adjudication thereovers.

11. In consequence, in the Gram Panchayat concerned, failing to make a protest against the otherwise ill laying of the title suit before



embodied in Section 13-A in the 'Act of 1961', provisions whereof become extracted hereinafter, whereunders a title suit could be laid either by the village proprietor or by the panchayat, thus in respect of *shamlat deh* lands, rather before the Assistant Collector concerned, but uncontrovertedly became deleted/abolished from the statute book through an amendment/ Government notification issued on 11.02.1986.

“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.”

12. The result of the above provision becoming deleted from the statue, on 11.02.1986 and with the title suit becoming instituted subsequently thereto on 08.02.1989. Consequently, when the title suit became instituted before the Assistant Collector, thus under the then repealed statutory provision (supra), or the title suit became instituted therebefore, but when the apposite statutory provision qua its



institution, and, as carried in Section 13-A of the 'Act of 1961', thus then was not in existence on the statute book. In sequel, there was no vestment of any able jurisdiction in the Assistant Collector concerned, to either entertain the title suit as cast under the said deleted provision, nor he became vested with any able jurisdiction to make any valid decision thereovers.

13. Be that as it may, even if there was no protest at the instance of the defendant-Gram Panchayat, against the ill assumption of jurisdiction by the Assistant Collector concerned, over the title suit as cast rather under a provision which was then not in force, yet the said consent made by the Gram Panchayat concerned, qua the assumption of jurisdiction over the said title suit, rather could not undo the effect of the ill assumption of jurisdiction over the title suit, by the Assistant Collector concerned, especially when it was laid before him under a statutory provision, which was then not in existence, especially when it became repealed by an amendment.

14. In other words, the consent of any party to the *lis* whereby any statutory authority becomes conferred with jurisdiction to entertain a *lis* rather laid under any statutory provision which was at the time of its institution, thus not on the statute book, but yet cannot lead to any conclusion that thereby the jurisdiction as became assumed under the then non existent provision rather was a well assumed jurisdiction.

15. Moreover, since Section 13 became inserted in the 'Act of 1961' through an amendment thereto becoming made in the year 1974 and deemed to have effect from 04.05.1961, whereby the civil Courts



deh lands.

16. Furthermore, since even on the date of institution of the title suit on 08.02.1989, thus before the jurisdictionally incompetent Assistant Collector concerned, rather the bar of jurisdiction created through Section 13 of the 'Act of 1961', against civil Courts trying a dispute involving *shamlat lands*, provision whereof, becomes extracted hereinafter, thus was also in existence. Resultantly thereby the plaintiffs could not have even accessed the civil court of competent jurisdiction.

[13. Bar of Jurisdiction in civil courts.-- No civil courts shall have jurisdiction-

(a) to entertain or adjudicate upon any question, whether

(i) any land or other immovable property is or is not shamilat 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 vests 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]

17. Nonetheless, yet the only remedy available to the plaintiffs was to, in terms of the proviso to Section 7 of the 'Act of 1961' inserted in the principal Act by the 'Amendment Act of 1981', provisions whereof become extracted hereinafter, thus well assert title to the suit



respondents in the eviction petition, and thereons on an objective affirmative decision being made by the Assistant Collector concerned, to the extent that such a question of title is really involved, thereupon, the Assistant Collector concerned may have been led to decide the said assertion to title, thus in a manner similar to trial of a civil suit by the Civil Court(s) of competent jurisdiction.

“7. Power to put Panchayat in possession of certain lands :-

(1) xxxxxx

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.”

18. Significantly, even in terms of the proviso to Section 7 of the 'Act of 1961', evidently no assertion of title became raised by the present petitioners, thereupon, the said remedy which was solitarily then available to the petitioners, thus also remained unavailed. Resultantly, non availment thereof, necessarily constitutes rather abandonment(s) and waiver(s) of the said remedy. Consequently, the petitioners are estopped to claim before this Court, that yet the said remedy be permitted to be availed by them.

19. In aftermath, the decision Annexure P-1, as aptly done by the statutory authorities below, is quashed and set aside and but with a natural corollary theretos, that the concurrent decisions (Annexures P-3, P-4 and P-5) passed by the statutory authorities below, on the eviction petitions are affirmed and upheld.



Final Order of this Court.

20. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders (Annexures P-3, P-4 and P-5) are maintained and affirmed.

21. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

27.05.2024

kavneet singh

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