

STATE OF HARYANA AND ANR.

.....Appellants

Versus

MAM KAURI AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Pritam Singh Saini, Advocate for the appellants.
Mr. R.D. Bawa, Advocate and
Mr. Randhir Bawa, Advocate for the respondents.
Mr. S.P. Chahar, Advocate for
the applicants in CM-715-C-2021.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 30.03.1989 passed by the Court of learned Addl. District Judge, Sirsa, whereby, a judgment and decree dated 22.08.1988 passed by the Court of Sub Judge, First Class, Dabwali, District Sirsa, dismissing the suit for declaration, filed at the instance of respondents-plaintiffs was reversed.

2. Briefly stating, the case pleaded on behalf of respondents-plaintiffs was that plaintiff No.1 was a big landowner under the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as '1953 Act') who gifted out an area measuring 123 acres in favour of her daughters namely Shanti and Manohari through gift deed dated 02.01.1957 followed by mutation No.499 sanctioned in their favour on 31.01.1958. In a separate but related development, the Collector vide its order dated 30.05.1961 declared an area of 38.08 standard acres belonging to respondent No.1 as surplus area.

3. Aggrieved thereof, the daughters of respondent No.1

plaintiff No.1 preferred an appeal before the Commissioner Ambala Division, Ambala Cantt. which came to be decided vide order dated 10.09.1962 and the matter was sent back to Collector for determining the permissible area afresh. Pursuant thereto, the Collector passed a fresh order dated 07.06.1963 declaring 93.28 ordinary acres as surplus area of the big landowner. In pursuance thereof, the surplus area was allotted in favour of certain private individuals being tenants vide order dated 18.12.1981 and 28.01.1982. Primarily challenge in the suit was made to the passing of order dated 07.06.1963 and the allotments dated 18.12.1981 and 28.01.1982, being in violation of natural justice or opportunity of hearing and thus, prayed for declaring the same as illegal, null and void.

4. The suit was contested at the instance of appellants-defendants while submitting that it was hit by Section 80 of CPC as no notice was served upon the appellants-defendants before filing of the suit besides objecting that the civil Court was having no jurisdiction to decide the suit challenging the orders passed by the authorities under 1953 Act.

5. The trial Court vide judgment and decree dated 22.08.1988 dismissed the suit filed at the instance of respondents-plaintiffs. Aggrieved thereof, respondents-plaintiffs filed First appeal, the same was allowed vide judgment and decree dated 30.03.1989 passed by Addl. District Judge, Sirsa thereby decreeing the suit in favour of respondents-plaintiffs while reversing the judgment and decree dated 22.08.1988, passed by the trial Court.

6. Impugning the aforesaid judgment and decree passed by the First Appellate Court, learned counsel for the appellants being unable to justify the passing of the order dated 07.06.1963 by the Collector being in violation of principles of natural justice prayed that in the given circumstances the First Appellate Court was at least required to afford an opportunity to the appellants-defendants for passing a fresh order in terms of directions issued by the Commissioner Ambala Division, Ambala Cantt. vide its order dated 10.09.1962 for fresh determination of the permissible area.

7. In response, learned counsel representing respondents-plaintiffs fairly points out that though, order dated 07.06.1963 was passed against them in violation of principles of natural justice, however, undoubtedly, the authorities under 1953 Act were required to be given a chance to pass fresh order in terms of observations made by Commissioner Ambala Division, Ambala Cantt. in its order dated 10.09.1962 for fresh determination of permissible area by the Collector. He further submits that the factum of non-serving of notice or absence of opportunity of hearing to the respondents-plaintiffs was even admitted by DW-1 Patwari, Surplus Area in his deposition before the trial Court.

8. In view of the aforesaid submissions made by learned counsel representing the parties, the judgment and decree dated 30.03.1989, passed by the learned First Appellate Court is modified and the present appeal is disposed of while granting liberty to the appellants

through Collector, exercising powers under 1953 Act to pass fresh order as regards the determination of permissible land in terms of order dated 10.09.1962 (Ex. P-4) passed by the Commissioner Division Ambala, Ambala Cantt. Considering the fact that the issue relating to determination of permissible area is sub-judice for the past almost seven decades, the Collector is directed to determine the same within a period of six months from today, upon affording of opportunity of hearing to the respondents-plaintiffs by passing a speaking and reasoned order thereupon.

9. In view of the aforesaid, no orders are required to be passed on the application under Order 1 Rule 10 CPC, the same thus stands disposed of.

10. Pending application(s), if any, shall also stand disposed of.

06.03.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>