

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-805-1989 (O&M)
Reserved on: 01.05.2024
Pronounced on: 08.05.2024
2024:PHHC: 063999

NAR SINGH AND ANOTHER

. . . . APPELLANTS

Vs.

STATE OF HARYANA AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. P.S. Jammu, Advocate, for the appellants.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

This Regular Second Appeal is filed by the plaintiffs against the concurrent findings of the Courts below, whereby their suit for declaration and permanent injunction, regarding property in dispute, has been dismissed.

2. Trial Court record was called and the same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 Plaintiffs (*appellants herein*) purchased suit land measuring 84 kanal 0 Marla situated in village Gadrana, Tehsil and District Sirsa, from Makhan Singh and Jagrup Singh by virtue of three sale deeds Ex.P1 to Ex.P3 executed on May, 1980. It was claimed by the plaintiffs that they were in possession of the suit land since the time of purchase; that suit land was not surplus at the time of purchase made by them and so, could not be declared as surplus nor could be allotted, but the defendants No.1 & 2 (*respondent N: 1 & 2 herein*) i.e. State of Haryana and Sub Divisional Officer (C) with powers of

Prescribed Authority/Allotment Authority, Sirsa, had allotted the suit land in favour of defendants No.3 to 5 (*respondent N: 3 to 5 herein*) vide impugned order dated 12.06.1980, which was alleged by the plaintiffs to be null and void. They prayed for decree of declaration that they are owner in possession of the suit land and that the impugned order passed by the prescribed authority was illegal. They further prayed for injunction the defendants from interfering in their possession.

3.2 Apart from taking certain preliminary objections, including bar of jurisdiction of the Civil Court, it was pleaded by defendants No.1 & 2 that purchase made by the plaintiffs was illegal, inasmuch as suit land had been declared surplus in the hands of big landowner Tota Singh way back in 1965 and that after coming into force of the Haryana Ceiling on Land Holdings Act, 1972 [for short 'the Act'], the said land had vested in the State of Haryana from the appointed date i.e., w.e.f. 24.01.1971 and as such, the possession of the plaintiffs over the suit land was unauthorized. It was further submitted that the suit land had been allotted to the eligible allottees i.e. respondents No.3 to 5 as per Haryana Utilization of Surplus Area Scheme, 1976 and that this order was passed after giving notice to all concerned persons through munadi in the village.

3.3 The same stand was taken by defendants No.3 to 5 in their separate written statement. Necessary issues were framed. Evidence produced by the parties were taken on record.

4.1 Ld. trial Court found that surplus area case of Tota Singh, the big landowner, was decided on the basis of declaration form Ex.D6 and his total area in the village was declared as surplus, regarding which decision was made under the Punjab Security of Land Tenures Act, 1953 sometime in the

year 1965. It was further found that subsequently, Haryana Ceiling on Land Holdings Act, 1972 came into force and by virtue of Section 12 (3) of the Act, the area declared as surplus under the Punjab Law or under the Pepsu Law, which had so far not vested in the State Government, shall be deemed to have vested in the State Government from the appointed day i.e. 24.01.1971 and this way, the suit land declared as surplus under the Punjab Law, stood vested automatically in the State of Haryana w.e.f. 24.01.1971 and thus, Tota Singh was left with no authority to sell the suit land to anybody after 24.01.1971.

4.2 It was found further that despite above, Tota Singh sold the suit land to Makhan Singh & Jagrup Singh in 1977-1978, as evident from mutations Ex.D1 & D2 and they further sold the suit land to plaintiffs in May 1980, as evident from mutations (Ex.D3 to D5), based on sale deeds (Ex.P1 to P3). Ld. Court, thus, found that since Tota Singh had no authority to sell the suit land in favour of Jagrup Singh etc., and who had no authority to sell the suit land to the plaintiffs, so there was no question for granting any protection to the plaintiffs on the plea of *bona fide* purchaser for value. After 24.01.1971, it is only the State of Haryana, which had claim in respect of the suit land and so, all the subsequent transactions in respect of the suit land made by Tota Singh and Jagrup Singh etc were held to be without any significance. It was further found by the trial Court that under the Haryana Utilization of Surplus Area Scheme, 1976, the suit land was allotted to defendants No.3 to 5 by way of the impugned order dated 12.06.1980 (Ex.P4) and that said order was not illegal in any manner whatsoever.

4.3 The contention of the plaintiffs to the effect that no notices were sent to them under Section 16 of the Act was also considered by the trial Court and it was negated by holding that they were not entitled to any such

notice. It was also found by the trial Court that Civil Court did not have jurisdiction in the matter, as the same was barred under Section 26 of the Act.

With all these findings, suit was dismissed vide judgment and decree dated 10.12.1987.

5. The appeal filed by the plaintiffs against the aforesaid judgment and decree, was dismissed by the First Appellate Court. Apart from endorsing the view taken by the trial Court, it was also observed that the plaintiffs had not come to the Court with clean hands, inasmuch as they had alleged that suit land had not been declared surplus and that the same had been allotted without the same having been declared surplus or without affording any opportunity to them, while in fact the land had been declared surplus way back in 1965 and that the same had already vested in the State of Haryana under Section 12(3) of the Act w.e.f. 24.01.1971. With these observations, the appeal was dismissed vide judgment and decree dated 05.01.1989.

6. Assailing the aforesaid concurrent findings, ld. counsel contends that observations of the Court below that no notice was required to be served upon the plaintiffs-appellants is *per se* illegal and that plaintiffs being the interested persons, so on the basis of principle of natural justice, it was necessary to provide them opportunity of hearing. Ld. counsel also contends that no notice had been served upon the appellants before passing the impugned order.

7. After hearing ld. counsel for the appellants and ld. State counsel, who obviously opposed the appeal, this Court does not find any merit in this appeal.

8.1 Ld. counsel for the appellants has referred to Full Bench judgment of this Court rendered in *State of Haryana and others Vs. Vinod*

Kumar and others, 1986(1) PLR 222, wherein plaintiffs were recorded to be owners of the suit land and no notice was served upon them by the Collector before declaration of the surplus area. It was held that even if there existed a remedy to file appeal before the appellate authority or to move for review under the Punjab Security of Land Tenures Act, 1953, still the alternative or concurrent remedy was open to the party to approach the Civil Court.

8.2 I am afraid that the above said authority is of no advantage to the case of the appellants because in the present case, the suit land had already been declared surplus in the hands of big landowners way back in 1965 and had vested in the State of Haryana w.e.f. 24.01.1971, whereas plaintiffs-appellants purchased the suit land from vendees of Tota Singh in May 1980 i.e. almost 15 years later than the declaration of the suit land as surplus.

9.1 Ld. counsel for the appellants has also referred to a decision of this High Court in ***Darbara Singh and others Vs. Haryana State and others, 1989 PLJ 85*** to support his case, wherein land had been declared surplus under the Punjab Security of Land Tenures Act, 1953, but the landowner was not yet divested of ownership of the surplus area before the commencement of the Haryana Ceiling on Land Holdings Act, 1972. It was held by this Court that in such circumstances, the landlord is entitled to select permissible area for his family and each of his adult sons and that it is only after such selection that remaining land will be surplus land and will vest in the State under the provisions of Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972.

9.2 Cited authority is not at all applicable to the facts and circumstances of the present case, as it has been noticed earlier that suit land had been declared surplus way back in 1965 and had already been vested in

the State of Haryana in January 1971; whereas plaintiffs purchased the suit land from the vendees of the big landowner in 1980.

10. Apart from above, there is concurrent finding of fact that before making the allotment, simple effecting of the munadi in the village is sufficient under Section 16 of the Act so that the eligible allottees can put forward their claim. As plaintiffs were not recorded as owners of the suit land, so it was not essential to issue them any such notice under Section 16 of the Act.

11. In view of the aforesaid discussion, this Court does not find any illegality in the impugned judgments. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

Pending application(s), if any, shall stands disposed of.

08.05.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Whether reportable?

Yes

No

VIVEK PAHWA
2024.05.09 10:48
I attest to the accuracy and
integrity of this document

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