

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

**Reserved on 21st of March, 2024
Pronounced on 29th May, 2024**

Regular Second Appeal No.2019 of 1991

Tansukh

....Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ashok Verma, Advocate
for the appellant.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J.

Plaintiff is in appeal.

2. One Chuni son of Sarwan was declared as big landlord. On 4th of April, 1983 suit land was declared surplus in his hands under the provisions of Haryana Ceiling on Land Holdings Act, 1972. Suit land was allotted to one Nand Ram/defendant No.3 as 'C' category tenant vide order dated 11th of April, 1984. The present suit was instituted assailing the said order along with consequential relief of permanent injunction. The plaintiff claimed that he has been in cultivating possession of the suit land as tenant since 1946-47. He being tenant in possession was required to be heard before allotment of the suit land. His superior right for getting the suit land allotted in his favour stands

defeated by non-issuance of notice and thus the order of allotment was bad. Private parties were proceeded *ex parte*. Only State contested the suit. The claim of the plaintiff was resisted on the ground that the plaintiff himself was owner of 71 Kanal 2 Marlas of agricultural land. He collusively transferred the same in favour of his sons vide Civil Court Decree dated 7th of November, 1987. Thus, he was not entitled for allotment of the suit land in his favour. It was claimed that before allotment *munadi* was effect in the village which was duly recorded vide *Rapat Roznamcha* No.302 dated 5th of April, 1984. Both the Courts below have dismissed the suit filed by the plaintiff.

3. Counsel for the appellant/plaintiff has placed heavy reliance upon Full Bench judgment of this Court rendered in **State of Haryana and others vs. Vinod Kumar and others, 1986 AIR (P&H) 407** to submit that where no opportunity of hearing was given to land owner as envisaged under Section 6 before declaring the land surplus under the Punjab Security of Land Tenures Rules, 1956, the order is in nullity and civil suit to challenge the validity of such order is maintainable. Further relies upon law laid in **Dharam Singh vs. The Financial Commissioner, Haryana and others, 1980 PLJ 93**, **Makhan Singh vs. State of Haryana and others, 2005(3) R.C.R. (Civil) 512**, **Sube Singh vs. State of Haryana, 1989(1) R.R.R. 289**, **Jagroop Singh Gill and others vs. State of Punjab and others, 1995 PLJ 166**, **Bahadur Ram and others vs. State of Punjab and others, 1969 PLJ 372** and

Kesho Dass and another vs. Financial Commissioner, Haryana and others, 1968 PLJ 366 to submit that where an opportunity of hearing is not given to the tenant being interested party, order is in nullity and cannot be sustained.

4. Per contra, State Counsel submits that the plaintiff has not challenged the order declaring the land surplus. He has challenged the order dated 11th of April, 1984 passed by Sub Divisional Officer (Civil), Sirsa allotting the land to defendant No.3. The said order is appealable as provided under the Act. Sufficient notice was given by way of *munadi* effected in the village and *Rapat Roznamcha* dated 5th of April, 1984 at Serial No.302 stands proved. He further submits that the plaintiff was otherwise also not eligible being owner of 71 Kanal 2 Marlas of agricultural land himself, the present suit was filed only to prolong the illegal possession over the suit land.

5. I have heard counsel for the parties and have carefully gone through records of the case with their able assistance.

6. There is no dispute w.r.t. declaration of the suit land as surplus in the hands of Chuni son of Sarwan. This is a case wherein the land was declared surplus under Section 9 of the 1956 Act and not Section 10. Land was declared surplus on 4th of October, 1983 and was allotted to defendant Nand Ram vide order dated 11th of April, 1984. *The precise allegation of the plaintiff was that he was not served with the notice prior to the passing of the said order, is to be considered.*

Defendant/State claims that once *munadi* was effected it can't be said that the plaintiff was not put to notice. Thus, the issue for consideration gets narrower. In view of counter stands taken by the parties the precise issue will be '*whether the plaintiff was entitled to be served with notice personally prior to allotment or munadi can be deemed to be sufficient service?*'

7. The order of allotment in favour of the defendant has been passed under Section 15.

8. Section 15 of the Haryana Ceiling on Land Holdings Act, 1972 deals with disposal of surplus area. The same reads as under :

“15. DISPOSAL OF SURPLUS AREA.--(1) The surplus area acquired or vested under section 12 shall be at the disposal of the State Government.

(2) The State Government may, by notification, frame a scheme for utilising the surplus area by allotment of land to members of the Scheduled Castes and Backward Classes, landless persons, agricultural workers, tenants, ex-servicemen, tenants liable ejectment, or persons owning (land measuring less than two hectares of the category specified in clause (c) of sub-section (1) of Section (4) or land of equivalent valued:

Provided that -

- (i) a tenant holding land declared as the tenant's permissible area under the Punjab Law or the Pepsu Law, as the case may be, may be allotted land to the extent of the area held by him or the permissible area under this Act, whichever is less; . .
- (ii) a tenant who was allotted and given possession of land in the surplus area by the State. Government under the Punjab Law or the Pepsu Law, may be allotted land to the extent of the 'area so allotted to him;
- (iii) a tenant liable to ejectment as a result of an ejectment order

or decree passed against him under clause (i) of sub- section (1) of Section 9 of the Punjab Law or subsection (1) of Section 7A of the Pepsu Law, may be allotted land to the extent of the area mentioned in Section 9A of the Punjab Law or Section 7 A of the Pepsu Law 'as the case may be;

(iv) a tenant, settled on the surplus area by the landowner before Kharif, 1968, who is not-

- (a) landowner's relation of the category specified in clause (9) of Section 2 of the Punjab Law or the rules made thereunder; or
- (b) the landowner's relatives of the category specified in the rule made under subclause (ii) of clause (g) of Section 2 read with Section 52 of the Pepsu Law; or
- (c) the landowner's relation of the category specified in the rule made under clause (s) of Section 3 read with Section 31 of this Act;

may be allotted land to the extent of two hectares of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value subject to the condition that the land so allotted and the land held by him, if any do not exceed two hectares of land of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value; and

(v) a person from any other eligible category may be allotted land to the extent 'Of two hectares of the category specified in clause (0) of sub section (1) of Section 4 or land of equivalent value subject to the condition that the land so allotted and the land held by him, if any, do not exceed two hectares of land of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value:

Provided further that were a sub-tenant, except that of a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity is in possession of land, the

allotment shall be made to him to the exclusion of the tenant;

Provided further that until the scheme for utilising the surplus area under this Act is finalised and notified, the surplus area and the tenants permissible area vested in the State Government under sub-section (3) of Section 12, may be taken possession of and utilized for the resettlement of tenants liable to be rejected from the permissible area, reserved area or exempted area of a landowner under the Punjab Law or the Pepsu Law. (Vide Act No. 17 of 1976)

(3) Any scheme framed by the State Government may provide for the priorities among the persons mentioned in sub-section (2), the extent of land and the terms and conditions on which the land in the surplus area is to be allotted.

(4) The purchase price of the land, along with interest at the rate of five per cent per annum, shall be payable by the allottee in whose favour the proprietary rights are conferred in ten annual equated instalments, at the rate not exceeding that mentioned in column 1 of the table in sub-section (1) of Section 16.

(5) On payment of full price or the first instalment thereof, as the case may be, the allottee shall be deemed to have become the owner of the land and the prescribed authority, where the allottee is not already in possession, shall put him in possession thereof. The allottee shall, however, become the owner of the land on payment of the full price:

Provided that the allottee shall not be competent to transfer, sell, lease or mortgage the land allotted to him or any part thereof or transfer his rights, title or interest therein, in any manner whatsoever, to any person for a period of five years from the date of his taking possession in pursuance of the allotment under the scheme framed for utilizing the surplus area under this Act, even though the full purchase price has been in a lumpsum or in instalments alongwith interest within the aforesaid period:

(6) Notwithstanding anything contained in sub-section (5) the allottee shall be competent to mortgage or create a charge on the land allotted to him for raising loan from any co-operative society, bank, scheduled bank or any corporation owned or controlled by the Government for the purpose of making

improvements in the land and for other agricultural purposes].

(7) Notwithstanding anything contained in Section 21 a person who secures an allotment by furnishing information which is false or which he knows or has reason to believe to be false or which he does not believe to be true and who is or has to any time been in possession of any surplus area to which he is or was not entitled under the law shall for the period for which the surplus area remains or has remained in his possession, be charged a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area. (Vide Act No. 40 of 1976).”

9. State of Haryana has framed Rules in exercise of powers conferred under Section 31 of the 1972 Act. Rule 16 provides for manner of service of notice or orders. Rule 16 reads as under :

“16. MANNER OF SERVICE OF NOTICE OR ORDERS.
(Section 31).- Save as otherwise provided in these rules, notices or orders under the Act "be served in the manner provided in Section 90 of the Punjab Tennacy Act,1887 (Act XVI of 1887).”

10. Section 90 of the Punjab Tenancy Act, 1887 reads as under :

“90. Mode of service of summons.—(1) A summons issued by a Revenue-officer or Revenue Court shall, if practicable, be served (a) personally on the person to whom it is addressed, or failing him on (b) his recognized agent or (c) an adult male member of his family who is residing with him.

(2) If service cannot be made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or, if that person does not reside in the district in which the Revenue-officer is employed or the Revenue Court is held, and the case to which the summons relates has reference to land in that district, 32 then by posting a copy of the

summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue-officer or Revenue Court so directs, be served by delivery of a copy thereof to such of those persons as the officer or Court nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may if, the Revenue-officer or Revenue Court so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the Indian Post Office Act 1866 (XIV of 1866).

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the officer or Court may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.”

11. The specific case of the State is that *munadi* was effected and the same was recorded in *Rapat Roznamcha* No. 302 dated 5th of April, 1984. It has been further stated that the same was not traceable.

12. From the interplay of the afore-reproduced provisions as contained in Haryana Ceiling on Land Holdings Act, 1972 and the Punjab Tenancy Act, 1887, it is evident that the law prescribes service on the person or on his recognized agent or on an adult male member of his family who is residing with him. *Munadi* has been prescribed only as a substituted service and that too after the authority records satisfaction that there are numerous persons having the same interest,

on all of whom personal service is not reasonably practicable. Thus, it is evident that the plaintiff was required to be served personally or through his recognized agent or an adult male member of his family who was residing with him. The same was admittedly not served. Thus, allotment order was passed without service on the plaintiff. Coming on to the next question which still remains is that '*whether the suit will be maintainable in the light of provision contained under Section 26?*

13. Section 18 deals with appeal, review and revision. The same reads as under:

“18. APPEAL, REVIEW AND REVISION.--(1) Any person aggrieved by any decision or order of the Prescribed Authority, not being the Collector, may, within [Fifteen days] (Vide Act No. 17 Of 1976) from the date of the decision or order, prefer an appeal to the Collector in such form and manner as I may be prescribed: Provided that the Collector may entertain the appeal after the expiry of the said period of [fifteen days] (Vide Act No. 17 of 1976) if he is satisfied that t the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by a decision or order of the Collector (whether acting as Prescribed authority or not) not being a decision or order made in an appeal under sub-section (1), may, within [fifteen days (Vide Act No. 17 of 1976) from the date of decision or order, prefer an appeal to the Commissioner in such from and manner as may be pre· scribed: Provided that the Commissioner may entertain the appeal after the expiry of the said period of [fifteen days] if he is satisfied that the appellant was presently by sufficient cause from filing the appeal in time.

(3) Omitted vide Act No. 40 of 1976.

(4) Any person aggrieved by an order of the Collector under sub- section (1), may within (Thirty days) from the date of the

order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit The order of the Commissioner shall be final.

(5) Omitted vide Act No. 40 of 1976.

(6) Notwithstanding anything contained in the foregoing sub- sections, the Financial Commissioner may suo moto at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

(7) No appeal under sub-section (1) or sub-section (2) or revision under sub-section (4) shall be entertained unless the appellant or the petitioner, as the case be, has deposited a sum equal to thirty times the land holdings tax payable in respect of the disputed surplus area or has furnished a bank guarantee of the equal amount as security with the appellate or revisional authority;

(8) Notwithstanding anything contained in Section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area, (Vide Ac No. 34 of 1980)

(9) Omitted vide Act No. 34 of 1980”

14. Thus, it is evident that against the order passed by defendant No.2 the statute provides appeal under Section 18(1) before the Collector. Section 26 provides for bar on the jurisdiction of the Civil Court and the same reads as under :

“26. BAR OF JURISDICTION.--(1) No Civil Court shall have jurisdiction to -

(a) entertain or proceed with a suit for specific

performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

- (b) Settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector, or the Prescribed Authority made under or in pursuance of this Act shall be called in question in any court.”

15. Full Bench of this Court in the case of **Vinod Kumar and others vs. Vinod Kumar and others** (supra) held as under :

“8. Though according to the rule laid down in Amar Singh's case (supra) respondents had no right to file either an appeal or a petition for review or revision against the impugned order of the Collector to which they were not parties, but even if it may be accepted for the sake of argument that they could file appeal with the permission of the Appellate Authority or move for review even then it cannot be said that concurrent or alternative remedy of filing a suit for getting the declaration that the impugned order was non est so far as they were concerned would be barred by the provisions of the said Section 25 of the Punjab Act. It is well established that in the case of alternative or concurrent remedies it is open to the party to choose anyone of them. The existence of the remedy under the Act, if any, therefore, would not bar the remedy of the suit if it otherwise was available to the respondents. Not a single case could be cited by the learned counsel for the State at the bar wherein it may have been held that the remedy of suit by a person who is not a party to the order nor has been served with any notice, for declaration that such an order was non est so far as he was concerned was held to be barred even though the validity and legality of the orders passed were expressly stated to be not open to challenge under the statute. All the decisions relied upon by the learned counsel for the State

were such in which the suit was filed by the person who was a party before the Tribunal of exclusive jurisdiction. The observations made in all those decisions, therefore, have to be understood in the context of the situation available there and in none of these decisions, as observed in Dhaunkal Sheo Ram's case(AIR 1970 Punjab and Haryana 431) (FB) (supra) the rule laid down in Mask Co.'s case (supra) was adversely commented upon. We would, therefore, hold that the present suit was not barred by the provisions of Section 25 of the Punjab Act and answer the question referred to Full Bench in the affirmative.”

(emphasis supplied)

16. The same is based upon the conclusions rendered by Constitution Bench in the case of **Dhulabhai etc. vs. State of Madhya Pradesh and another, 1969 AIR (SC) 78** wherein it was observed as under :

“The Special Bench refrained from either accepting the dictum of Mask Co.'s case, 67 Ind App 222 or rejecting it, to the effect that even if jurisdiction is excluded by a provision making the decision of the authorities final, the civil courts have jurisdiction to examine into cases where the provisions of the particular Act are not complied with.

32. Neither of the two cases of Firm of Illuri Subayya, 1964-1 SCR 752 or Kamla Mills, 1966 1 SCR 64 can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the

fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

(emphasis supplied)

17. Thus in view of the above stated binding precedents, this Court is of the opinion that Section 26 will not come to the aid of State to claim ouster of jurisdiction as the order dated 11th of April, 1984 was in the teeth of the provisions of the statute.

18. In view of above, this Court finds that the present appeal deserves to be accepted. Suit filed by the plaintiff is decreed. Impugned order dated 11th of April, 1984 whereby the land was allotted in favour of defendant No.3 by defendant No.2 is hereby set aside. Defendant No.2 is directed to pass order afresh after issuing notice to the plaintiff and giving him adequate opportunity of hearing.

19. Keeping in view that the issue is pending consideration before the Courts since the year 1988, this Court is sanguine that the needful will be done by defendant No.2 within a period of **3 weeks** from the date of receipt of certified copy of this order.

May 29, 2024
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes