

2024:PHHC:052149

for the respondents in RSA-2476-1994, 1612-1994 and
RSA-43-1997

Mr.J.S.Pannu, AAG, Haryana
for the respondent in RSA-2406-2005 and
for the appellants
in RSA-2476-1994, 1612-1994 and 43-1997 and

ANIL KSHETARPAL, J (Oral)

1. With the consent of the learned counsel representing the parties, a batch of four connected Regular Second Appeals shall stand disposed of by a common order. These three appeals (RSA-2476-1994, 1612-1994 and RSA-43-1997) have been filed by the State of Haryana against the concurrent findings of fact arrived at by the courts below in three separate suits whereas the fourth appeal RSA-2406-2005 has been filed by the plaintiff to challenge the correctness of judgment passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial court.

2. Learned counsel representing the State admits that for the first time Sh.Jagdish was declared big landowner under the Haryana Ceiling of Land Holdings Act, 1972 (hereinafter referred to as '1972 Act') on 06.01.1984. In other words, it is admitted case of the State of Haryana that there was no declaration to the effect that Sh.Jagdish was a prominent landowner under the provisions of the Punjab Security of Land Tenure Act, 1953 (hereinafter referred to as '1953 Act'). While acknowledging the family settlement, a civil court passed a decree on 05.01.1971, declaring that four sons of Sh.Jagdish namely Surinder, Uma Kant, Kuldeep and Hemant Kumar are owners in possession of the

respective parcels of land. These four suits were filed by the aforesaid children of Sh.Jagdish claiming that the order passed by the prescribed authority on 06.01.1984 is illegal, null and void as they were not given any opportunity of hearing, although, they were owners of the property by virtue of a family settlement, it was later on acknowledged in the civil court decree dated 05.01.1971. As per the provisions of 1972 Act, the appointed day is 24.1.1971. In this case, acknowledging that four sons of Jagdish had become owners, the civil court decree has been passed before the appointed day. As per Section 12 of the 1972 Act, the surplus area of the landowner was deemed to have been acquired by the State Government for public purpose from the date on which it was declared as such. Section 8 of the 1972 Act provides that certain transfer or disposition shall not affect the surplus area. Any transfer of permissible area except the bonafide transfer or disposition after the appointed day shall not affect the rights of the State Government. Thus, even if it is assumed that the civil court decree dated 05.01.1971 results in transfer of the property, however, the said decree has not been passed after the appointed day.

3. In RSA-2406-2005, the First Appellate Court has reversed the judgment and decree passed by the trial court on the ground that the suit was filed beyond the prescribed period of limitation and the civil court had no jurisdiction. The court has held that cause of action to file the suit arose on 06.01.1984. Hence, the suit filed on 29.09.1993, was filed beyond the prescribed time.

4. In this case, the First Appellate Court has not held that these four plaintiffs were given any notice before passing the order on 06.01.1984. The First Appellate Court also did not find that the plaintiffs were aware of the order passed on 06.01.1984, prior to the filing of the suit. The land which was declared surplus was never utilized. It is evident that the prescribed authority passed the order in violation of the fundamental principles of natural justice i.e right of hearing or notice to the owners. Thus, the First Appellate Court erred in declaring that the suit filed by the plaintiffs was filed beyond the prescribed the period of limitation. The period of limitation will not begin to run from 06.01.1984, the date of order.

5. With reference to the jurisdiction of the civil court, by now it is well settled legal principle that if an order passed by the Special Tribunal created under the Special Act proceeds in violation of the basic principles of natural justice, the civil court can interfere. Reliance in this regard can be placed on Five Judge Bench of the Supreme Court in **Dhulabhai And Others vs The State Of Madhya Pradesh And Another 1968 (3) SCR 662**, which was followed by the Supreme Court in AIR 1971 SC 71. The Supreme Court in **Dhulabhai's case (supra)**, while laying down six conclusions, held as under:-

“32. Neither of the two cases of Firm of Illuri Subayya(1) or Kamla Mills(2) 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 Courts' 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.”

6. The Five Judge Bench of this Court in **State of Haryana and others vs. Vinod Kumar and others 1986 PLJ 161** has also held that the order of Collector declaring land as surplus, without giving an opportunity of hearing to the landowners, is nullity and the civil suit to challenge the validity of such order is maintainable despite Section 26 of the 1972 Act.

7. In RSA-43-1997 the only distinguishable feature is that the trial court dismissed the suit however, the same was reversed by the First Appellate Court.

8. The learned counsel representing the State has relied upon the judgment passed in **Davinder Singh and others vs State of Haryana and another 2006 AIR (SC) 2850** to contend that the civil court jurisdiction is barred under Section 26 of the 1972 Act. This Court has carefully read the aforesaid judgment. In that case the big landowner initially challenged the correctness of the order passed by the prescribed authority in appeal and in revision petition. Subsequently, he filed the civil suit. It was the allegation of the plaintiffs that their case under the provisions of 1953 Act was decided on 30.12.1961. Hence, **Davinder Singh's case (supra)** does not apply to the facts of the case at hand.

9. Consequently, RSA-2406-2005 shall stand allowed and the judgment passed by the First Appellate Court shall stand set aside and the trial court shall stand restored. Remaining three appeals i.e RSA-2476-1994, 1612-1994 and RSA-43-1997 shall stand dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

16.04.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE