

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

R.S.A. No. 250 of 1983
Date of Decision: 9.3.2010

The Punjab State and others.

..... Appellants through Shri
Surinder Kapoor, Additional
Advocate General, Punjab.

Versus

Shri Chanan Singh and others.

..... Respondents through Shri
Arun Jain, Senior Advocate
with Shri Anupam Sharma,
Advocate.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

Mahesh Grover,J.

This Regular Second Appeal is directed against judgment and decree dated 25.9.1982 passed by the Additional District Judge,Hoshiarpur (hereinafter described as `the first appellate Court') whereby the appeal of the plaintiffs-respondents, which was preferred against judgment & decree dated 15.12.1980, was partly accepted.

A suit for declaration and perpetual injunction was filed by the plaintiffs against the present appellants and one Smt.Sangeet Kaur daughter of Bedi Madhusudan Singh Sahib Una. It was pleaded that the lands which

were detailed in the head note of the plaint were dedicated and belonged to religious and charitable institution of public nature, namely, Dam Dama Sahib of Una, a Sikh Shrine, under Ahatman, i.e., management and supervision of Baba Madhusudan Singh. It was further pleaded that this Shrine was worshipped by the plaintiffs and countless Sikhs. It was averred that Shri Kala Dhari, founder of Una, a decendent of Baba Nanak was a very popular and spiritual saint, who had countless disciples and worshippers all over the country; that he had established a very sacred religious, charitable shrine and also Dam Dama Sahib at Una in the form of a Gaddi & Gurudwara; that Shri Sahib Singh, successor of Shri Kala Dhari, then established a religious charitable shrine at Quilla Jawahar Singh in Gujranwala (now in Pakistan) where a number of followers and worshippers gifted landed property to him for religious & charitable purposes; that income from this landed property was used for religious and charitable purposes and also for maintenance of the shrine Dam Dama Sahib; that not only the followers at Quilla Jawahar Singh had gifted the landed property, but also followers at Chak 143/9L, Chak Suleman, District Mintgumri, Wazirabad, Ram Nagar and Lyallpur had done so and in this manner, total 302 and 9-1/2 standard acres of land stood dedicated to the shrine and in the ownership column of the revenue record, the name of Dam Dama Baba Sahib Singh was recorded; that on account of partition of the country, 1440 kanals and 8 marlas of land was allotted to Bedi families of Una on account of their land in Pakistan at village Khiala Balanda, Tehsil & District Hoshiarpur without making any distinction between the land held by Bedi

Family and the Shrine in Pakistan; that the total land in Quilla Jawahar Singh was 133 Standard Acres and 1/2 unit and the land allotted in lieu of that land at village Khiala Balanda to Tikka Devinder Singh, the decendent of Baba Sahib Singh comes to 735 kanals and 7 marlas; that although the property at Quilla Jawahar Singh was described as owned by Dam Dama Sahib Baba Sahib Singh of Una; that the Court of Wards had wrongly made this allotment as he was not familiar with the sanctity of the religious & charitable character of the property; that the property was being managed by the Bedi family as manager and Muntzim of the Shrine; that after the allotment of the disputed property in the East Punjab, it was being controlled and managed by Baba Madhusudan Singh on behalf of the Una sacred shrine; that Baba Madhusudan Singh continued to manage this property which was not his personal property and the income therefrom was being used for making arrangements of the boarding and lodging of the worshippers who used to come to the Shrine and also for holding two annual fairs; that despite the fact that Baba Davinder Singh or Baba Madhusudan Singh had no right to transfer the land, they had done so and in this way, transferred 156 kanals and 8 marlas in favour of Agriculture Department of Punjab Government, whereas land measuring 4 kanals 5 marlas was transferred in favour of the Government of Punjab and land measuring 330 kanals 14 marlas as detailed in part (c) of head note of the plaint was transferred in the name of Sangeet Kaur, daughter of Baba Madhusudan Singh; that all these transfers were illegal and not binding on the plaintiffs, the worshippers of the shrine; and that on account of mis-

description of the property, the Government of Punjab started proceedings for declaring the land surplus and the Collector, Agrarian, Hoshiapur, vide his order dated 28.6.1976, declared 20.0943 standard acres out of the above property situated in village Khiala Balanda, as surplus, which was stated to be illegal and null & void.

Defendant nos. 1 to 3, i.e., present appellant nos. 1 to 3, resisted the suit and took preliminary objection that the civil Court had no jurisdiction to try it in view of Section 21 of the Punjab Land Reforms Act, 1972 (for short, 'the 1972 Act'). It was pleaded that Tikka Davinder Singh and thereafter Baba Madhusudan Singh Bedi were allotted lands in their personal name in lieu of the lands left by them in Pakistan and not as Manager or Mohtmim of any religious institution and that proceedings for declaring the land in their hands as surplus were rightly taken under the provisions of the 1972 Act; that Tikka Davinder Singh and Baba Madhusudan Singh had made certain transfers of their personal property and not of the property belonging to any shrine.

Defendant no.4, i.e., the Director, Agriculture Department, Punjab, also raised the same objection regarding the jurisdiction of the civil Court to try the instant suit and further denied the other averments made by the plaintiffs. It was averred that the land in favour of Agriculture Department was validly transferred vide a registered sale deed.

Smt.Sangreet Kaur daughter of Baba Madusudhan Singh, who was impleaded as defendant no.5, also filed her written statement resisting the suit. It was stated that she was a bona fide purchaser of the land

mentioned in part (c) of the headnote of the plaint.

The following issues were framed by the trial Court on the basis of the pleadings of the parties:-

1. Whether Civil Court has not jurisdiction to try the suit?OPD
2. Whether the suit land belongs to religious and charitable trust and is exempt from the provisions of Land Reform Act,1972?OPP
3. Whether the deft. No.5 is bona fide purchaser for value and without notice?OPD-5
4. Relief.

The parties led evidence in support of their respective case and after perusal thereof, the trial Court dismissed the suit of the plaintiffs.

In appeal, the first appellate Court concluded that 133/290 share of the land in suit as detailed in parts- (a), (b) and (c) of the head note of the plaint was charitable and belonged to Dam Dama Baba Sahib Singh of Una and the same could not have been touched by the Collector for declaring it as surplus as it necessarily had to be excluded. A decree in these terms was accordingly passed. The defendants were also permanently restrained from making further transfers of 133/290 share of the lands in suit.

While assailing the judgment of the first appellate Court, learned counsel for the appellants has contended that the civil Court had no jurisdiction to entertain a challenge to an order made by the competent and prescribed authority under the 1972 Act and the Punjab Security of Land

Tenures Act,1953 and that since the land had been declared as surplus in the hands of Baba Madhusudan Singh, the only option available to the respondents was to challenge that order before the authorities under the 1972 Act and no civil suit could have been entertained in view of the specific bar under Section 21 thereof.

On the other hand, learned counsel for the respondents has referred to the revenue entries to show that Dera Dam Dama Sahib Shrine of Una was recorded as owner of the suit property. He contended that once the land in question stood in the name of Dam Dama Sahib, a charitable institution, it was precluded from the purview of the provisions of the 1972 Act and especially in terms of Section 14 thereof, which provided an exemption to such land. It was next contended with specific reference to Exhibits P8 and P10 that 132 standard acres of land was recorded in the name of Dera Dam Dama Sahib and the same ought to have been excluded from the purview of the proceedings taken for declaring the land as surplus.

In reply to the contention of the learned counsel for the appellants that the civil Court had no jurisdiction to entertain the suit, learned counsel for the respondents submitted that no such plea was raised before the Courts below and, therefore, the appellants are precluded from raising such an arguments at this stage. Learned counsel for the appellants placed reliance on a Full Bench judgment of this Court in State of Haryana and others Versus Vinod Kumar and others, 1986 P.L.J. 161, whereas learned counsel for the respondents relied upon a Single Bench judgment of this Court in Thakardwara Bhagwan Narain Ji, Pandori Mahantan, Tehsil

and District Gurdaspur Versus Financial Commissioner, Appeals-I,Punjab, Chandigarh and others, 2009(3) P.L.R. 563.

After hearing the learned counsel for the parties and perusing the impugned judgments, as also the record, I am of the considered opinion that the appeal deserves to be allowed.

The question of law which arises for consideration is as to whether in view of the provisions of Section 21 of the 1972 Act, the jurisdiction of the civil Court to entertain the instant suit was barred or not?

To decide the aforesaid question, first of all the objection of the learned counsel for the respondents has to be met with. He has contended that the issue of jurisdiction was never pressed before the Courts below and, therefore, the appellants were estopped from raising it before this Court in Regular Second Appeal.

I am afraid, such a contention has to be repelled. The question of jurisdiction is, of course, a mixed question of law and fact, but if the objection in the instant case is to be seen, then it is purely a question of law and does not rest upon any factual aspect of the controversy. According to Section 21 of the 1972 Act, which is extracted below, the jurisdiction of the civil Court has been expressly barred to entertain any suit relating to the orders of the concerned authorities in respect of the surplus land:-

“21. Bar of jurisdiction.- (1) Save as provided by or under this Act, the validity of any proceedings or order taken or made under this Act shall not be called in question in any court or before any other authority.

(2) No civil court shall have jurisdiction to entertain any suit, or proceed with any suit instituted after the appointed day, for specific performance of a contract for transfer of land which affects the rights of the State Government to the surplus area under this Act.”

Concededly, the land was declared surplus by the Collector, Agrarian, Hoshiarpur under the provisions of the 1972 Act vide order dated 28.6.1976. There was no challenge to this order before the Commissioner, Financial Commissioner or the writ Court, which could have evaluated the legitimacy thereof or could have gone through the question as to whether the prescribed authority has rightly concluded regarding declaration of the land being surplus in the hands of Baba Madhusudan Singh. In view of the clear and specific bar as contained in Section 21 of the 1972 Act, this Court does not wish to transcend into the revenue record to determine as to whether the land actually could have been declared surplus or not. It was for the respondents or the affected persons to have challenged the aforesaid order before the competent authorities and which has not been done by any one.

The judgment relied upon by the learned counsel for the respondents is of no use to the respondents for the simple reason that those were the proceedings where a challenge had been made to such like orders before the competent authorities and the learned Single Judge of this Court was answering the controversy while exercising the writ jurisdiction. But, as observed above, since the respondents failed to challenge the aforesaid

order before the competent authorities, the jurisdiction of the civil Court was clearly barred in view of the provisions of Section 21 of the 1972 Act and the observations of the Full Bench in State of Haryana and others Versus Vinod Kumar and others (supra).

The question of law referred to above, therefore, stands answered to observe that the jurisdiction of the civil Court was clearly barred and the suit was not competent in view of the provisions of Section 21 of the 1972 Act.

The appeal is, accordingly, accepted and the impugned judgment & decree are set aside.

March 9,2010
“SCM”

(Mahesh Grover)
Judge