

2026:PHHC:006485



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

**RSA-204-2012 (O&M)
Decided on:-19.01.2026**

M/s Orient Craft Infrastructure Ltd.

....Appellant..

VS.

State of Haryana thr. Collector, Gurgaon

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Ashwani Kumar Chopra, Senior Advocate with
Mr. Brahmjot Singh Nahar, Advocate for the appellant.

Ms. Komal Sharma, DAG, Haryana.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 09.08.2010 and 04.08.2011 passed by the learned trial Court and First Appellate Court, respectively, whereby, a suit for declaration as well as permanent injunction preferred at the instance of appellant-plaintiff, was dismissed.

2. Briefly stating, one Aflatoon happened to be the owner of some land situated in the revenue estate of village Bas Hariya, Tehsil and District Gurgaon. On 10.11.1959, the land owned by the original owner-Aflatoon, measuring 57 acres was declared as surplus by the authorities, in exercise of powers vested under the Punjab Security of Land Tenures Act, 1953 and the said order was assailed at the instance of transferees from Aflatoon by way of Civil Suit No.122 dated 22.02.1986, titled as "*Smt. Maha devi vs. State of*

Haryana thr. its Collector, Gurgaon". The said suit was dismissed vide judgment dated 05.10.1991. Aggrieved thereof, Civil Appeal No.77 of 1992 was filed titled as "*Smt. Maha Devi and another vs State of Haryana thr. its Collector, Gurgaon*", which was accepted vide judgment and decree dated 30.09.1992 (Ex.P-5) passed by the learned Additional District Judge, Gurgaon and the order passed by the authorities whereby land of Aflatoon was declared surplus was set aside being illegal, null and void. Relevant paragraphs No.10 to 12 thereof are extracted hereunder:-

"10. But the contention of learned Govt. Pleader is that the alleged transfer of land by Aflatoon to his brother Dalbir Singh, who further transferred the same to one Dharam Singh who in turn sold the same to the appellants is nothing but a meak transaction with the aim to save the suit land from declaring it as surplus area. It may be so, but the law does not make any exception to such a transfer. The law even does not forbid a transfer from a brother to brother. It bars only those transfers which are, by virtue of any judgment or decree or order of the court or any other authority. Therefore, the transferees were entitled to notice before the land was declared surplus in hands of transferor-land owner. Failure to give notice to the transferee makes the impugned order Ex.P.1 declaring the suit land as surplus illegal, null and void. Such an order is void and nonest and does not require to be set aside and the Limitation Act much less article 100 has no applicability to such a case. In this context, reference may be made to Dalip Kaur Vs State of Punjab and others, 1983 P.L.J.284, Chet Singh Vs State of Punjab and others, 1977 P.L.J.228 and State of Punjab Vs. Bhagwat Singh, 1972 P.L.J.297.

11. The next point raised is that this court has got no jurisdiction as the jurisdiction of civil court is expressly barred by statute. It is so true, but where the order passed by a tribunal is in violation of the provisions of statute or principles of natural justice, it is open to the civil court to entertain a suit to determine its legality or illegality. In this view, I find support from the case entitled State

of Haryana Vs. Vinod Kumar and others, 1986 P.L.J.161.

12. *The conclusion thus follows is that the appellants are the absolute owners in possession of the suit land and the impugned order Ex.P.1 whereby it has been declared surplus is illegal and null and void and is of no effect in the eyes of law. The findings recorded to the contrary by the learned trial court are accordingly reversed. It appears that the learned trial court has not taken note of the provisions of Section 10-A (3) of the Act and so fell in error in observing that the impugned transaction of transfer is a sham transaction which has no sanctity or validity in the eyes of law.”*

3. Based on subsequent transfers from Aflatoon and his successors, declaration was sought for qua their ownership by the transferees being *bonafide* purchasers and, also assailing the validity of the order dated 10.11.1959 (Ex.P-1) passed by the prescribed Authority at Gurugram being little aware of the fact that the said order already stands set aside. In addition, the plaintiffs also sought for grant of permanent injunction against respondent(s)-defendant(s) from restraining them from interfering in their peaceful possession over the suit property. The suit was contested by the respondent(s) while stating that the same was not maintainable for want of Civil Courts jurisdiction to try and decide the suit. The trial Court vide its judgment and decree dated 09.08.2010, dismissed the suit.

4. Aggrieved thereof, first appeal was filed at the instance of appellant-plaintiff, however, the same was also dismissed vide judgment and decree dated 04.08.2011 passed by the Court of learned Additional District Judge, Gurgaon.

5. I have heard learned counsel for the parties and gone through the paper book as well as records. I find substance in the submissions made on behalf of the appellant.

6. On 10.10.2022, this Court passed the following order:-

“During the course of arguments, learned senior counsel for the appellant has referred to Ex.P5, a judgment passed by the Court of Additional District Judge, Gurugram in Civil Appeal No.77 of 1992 titled as Maha Devi and another Vs. State of Haryana, decided on 30.09.1992, vide which the judgment and decree dated 05.10.1991 passed by the Sub Judge, Gurugram was set aside and under issue No.2, a finding was recorded that the order dated 10.11.1959, declaring the suit land as surplus, was held to be illegal, null and void and appellants i.e. Maha Devi and Santa Devi were declared owners in possession of the suit land. Learned senior counsel has further submitted that the suit land is part of the order dated 10.11.1959, vide which the land at the hands of erstwhile owner was surplus.

Learned State counsel, who has filed the short reply by way of affidavit of Sushil Kumar, Naib Tehsildar, Surplus Branch, Gurugram in the Court today, is directed to file a specific affidavit with regard to the following points: -

(a) Whether any appeal has been filed by the State challenging the judgment and decree dated 30.09.1992 passed by the Additional District Judge, Gurugram, declaring the order dated 10.11.1959, as null and void.

(b) Whether part of the suit land is also comprising of this land in the impugned order dated 10.11.1959.

List again on 18.10.2022.

To be shown in the urgent list.

Liberty is granted to learned State counsel to inspect the record.

The concerned official is directed to remain present before this Court on the next date of hearing.”

6.1 In pursuance thereof, an affidavit dated 04.11.2025 has been filed by Mr. Paramjeet Chahal, SDO (Civil)-cum-Competent Authority, Surplus Branch, Gurugram. Relevant paragraphs No.2 to 3 thereof are

extracted hereunder:-

“2. That the present reply is being filed in the present Regular Second Appeal in compliance of the order dated 10.10.2022 passed by this Hon’ble Court, the relevant excerpt of which is reproduced herein below:-

“Learned State counsel, who has filed the short reply by way of affidavit of Sushil Kumar, Naib Tehsildar, Surplus Branch, Gurugram in the Court today, is directed to file a specific affidavit with regard to the following points: -

(a) Whether any appeal has been filed by the State challenging the judgment and decree dated 30.09.1992 passed by the Additional District Judge, Gurugram, declaring the order dated 10.11.1959, as null and void.

(b) Whether part of the suit land is also comprising of this land in the impugned order dated 10.11.1959.

3. That in reference to point no.(a) mentioned above, it is submitted that as per record no appeal has been preferred by the State against the judgment and decree dated 30.09.1992 passed by the Additional District Judge, Gurugram in Civil Appeal No.77 of 1992 titled “Smt. Maha Devi and anr. vs. State of Haryana”

4. That in reference to point no.(b) mentioned above, it is submitted that the part of the suit land is also comprising of this land in the impugned order dated 10.11.1959.

6.2 In pursuance of the aforesaid, once the factum of no challenge been made to the judgment and decree dated 30.09.1992 passed by the Court of learned Additional District Judge in Civil Suit No.77 of 1992 titled as **“Smt. Maha Devi and another vs. State of Haryana thr. its Collector, Gurgaon”**, has been admitted; the said judgment and decree dated 30.09.1992 has thus become final, vide which, the order dated 10.11.1959 regarding declaration of surplus area pertaining to the land holdings of Aflatoon was declared to be illegal, null and void. It may be noticed here

that the judgment and decree dated 30.09.1992 was even proved on records of this case as Ex.P5 and Ex.P4 respectively. Once the order dated 10.11.1959 (Ex.P1) having been declared as illegal, null and void stood set aside, the declaration of surplus area pertaining to the land holdings of Aflatoon became redundant, as such, he or his vendees-successors were free to alienate such land holdings. In such circumstances, the rights of the appellant in the suit property which is admittedly purchaser from the transferees of Aflatoon shall not be affected as a consequence of the order dated 10.11.1959 (Ex.P1).

7. It is further noticed here that since the appellant is in possession of the suit property being purchaser is entitled for relief of permanent injunction as contested respondents cannot disturb the actual physical possession of appellant without there being any legal right vested in it. However, it is made clear that since the order dated 10.11.1959 was declared as illegal, null and void vide judgment and decree dated 30.09.1992, merely on the ground that no opportunity was ever afforded to the transferees of Aflatoon by the authorities before declaring the surplus area, the respondent authorities shall be free to proceed further in the matter for initiating fresh proceedings in exercise of powers vested under the provisions of the Haryana Ceiling on Land holding Act, 1971. It goes without saying that the authorities shall grant opportunity of hearing to all the transferees, including the appellant who shall be entitled to set-up their plea of *bonafide* purchasers. It goes without saying that any observation made herein shall have no bearing on the rights of the appellant or any other transferee from Aflatoon his successors and their claims shall be decided by the respondent-authorities, on merits.

8. Consequently, the present the appeal is allowed in the aforesaid terms and the findings recorded by the Courts below are hereby set aside,.
9. Pending applications, if any, also stand disposed of.

19.01.2026
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No