
(2010) 03 P&H CK 0153
In the Punjab And Haryana At Chandigarh

Jai Kishan Dass and Others

APPELLANT

Vs

The Haryana State and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 8(1)

Citation : (2010) 158 PLR 801 : (2010) 2 RCR(Civil) 848

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—The plaintiffs are in second appeal. They had filed a suit alleging that the orders dated 11.2.1982 and 21.6.1982 of the Prescribed Authority, Panipat and the Collector, Karnal treating the land in question as part of the compensation pool under the Haryana Ceiling on Land Holdings Act, 1972 (for short, "the 1972 Act") are illegal, void and without jurisdiction. It was pleaded that the land in dispute originally belonged to one Shiv Charan Dass son of Shri Chhaju Ram, who transferred the same before the consolidation proceedings were effected in the village to Har Chand son of Makhan and few others vide sale deed dated 8.5.1964 for a sum of Rs. 7000/-. The mutation was also sanctioned. The land in question was subsequently allotted to the vendees in view of the land purchased. Har Chand son of Makhan etc. sold away a part of this land in favour of Diwan Chand son of Gokal Chand vide sale deed dated 8.7.1964. Lakhi son of Har Chand and others also sold away the remaining land vide sale deed dated 9.7.1964 in favour of Diwan Chand son of Gokal Chand. The remaining vendees, i.e., Achhpal and others, sold their shares of land in favour of Bhagwan Dass vide sale deed dated 16.10.1963. Thus, Bhagwan Dass and Diwan Chand became sole owners of the land in question. Subsequently, Diwan Chand sold away the land purchased in favour of Ganga Dayal, Sahugan Chand and Om Parkash etc. for a consideration of Rs. 1000/- vide sale deed dated 14.7.1966. Similarly, Bhagwan Dass also sold his share of land to Ganga Dayal etc. for Rs. 1800/- vide sale deed dated 23.9.1966. Thereafter, Gangal Dayal, Om Pakash,

Shugan Chand etc. and heirs of Kishori Lal, sold the land in suit along with other land in favour of the plaintiffs and the persons, who were arrayed as defendant Nos. 2 and 3 for a consideration of Rs. 20,000/- vide sale deed dated 23.9.1973.

2. It was, thus, averred that the original owner - Shiv Charan Dass had sold the land in dispute on 28.5.1954 much before the appointed date for the purposes of the 1972 Act, i.e., 30.7.1958 and, therefore, the same could not be treated as surplus in his hands and consequently, was exempt from the provisions of the Punjab Security of Land Tenures Act, 1953 (for brevity, "the 1953 Act") and the 1972 Act. It was further averred that in view of the above, the sales including the one in favour of the plaintiffs was also exempt from the purview of the Act. The orders of the authorities under the Act were, therefore, sought to be declared as null & void.

3. The State of Haryana, i.e., respondent No. 1, disputed the averments of the plaintiffs. It was pleaded that the civil Court had no jurisdiction as the plaintiffs had option to go in appeal against the order of the Collector, Karnal before the Commissioner and thereafter, before the Financial Commissioner. It was further pleaded that the land in dispute already stood utilized and physical possession was given to the allottees on 28.5.1981. It was averred that on 15.4.1983, Shiv Charan Dass was a big land owner having 127 standard acres and I-Unit of land and the Special Collector, Punjab, Chandigarh had declared 97 standard acres and I-Unit of land as surplus after giving him benefit of 30 standard acres for his self cultivation. The suit land was stated to be this surplus land and the possession of the plaintiffs and defendant Nos. 2 and 3 thereon was denied. It was pleaded that the persons arrayed as defendant Nos. 4 & 5 were in possession of the same as the allotment had been made in their favour. It was next pleaded that after the land having been declared surplus, the same stood vested in the State Government and after the enforcement of the 1972 Act, the same stood utilized as per the scheme framed thereunder. Reliance was placed on Section 8(1) of the 1972 Act to say that the transactions which took place after 30.7.1958 or up to 15.4.1966 are not in accordance with law and are invalid transactions. It was averred that Section 8(1) of the 1972 Act only applies to the proceedings which are pending and does not apply to the proceedings which are already concluded. It was further averred that since the surplus proceedings in the instant case were concluded when these transactions took place, the exemption clause would not apply.

4. The trial Court framed the following issues on the pleadings of the parties:

1. Whether the order dt. 11.2.1982 passed by the prescribed authority and subsequent order dt. 21.6.1982 declaring the area in dispute measuring 32 kanals - 3 marlas as surplus and allotting the same to defendants No. 4 and 5 is illegal and void and without jurisdiction and not binding on the plaintiffs, if so to what effect? OPP

2. Whether the civil court has got no jurisdiction to try the suit as the same is

barred u/s 26 of Haryana ceiling on Land Holdings Act, 1972? OPD

3. Whether the suit is time barred? OPD

4. Relief.

5. After appraisal of the entire evidence on record, the trial Court dismissed the suit.

6. Feeling dis-satisfied, the plaintiffs filed an appeal which was also dismissed by the first appellate Court giving rise to the instant appeal.

7. It may be mentioned here that vide order dated 21.1.2008, an application filed by Shri Anand Jain through Shri Sandeep Verma, Advocate to be impleaded as appellant in the appeal was accepted and he was permitted to come on record as appellant No. 3 as he was stated to be the transferee of the interest of appellant No. 1. It may further be mentioned that originally, the appeal was filed through Shri Ajay Tewari, who has since been elevated to the Bench of this Court. Therefore, on 14.1.2010, notice was ordered to be issued to the appellants and it has been reported that appellant Nos. 1 and 2, who were the plaintiffs, have since died.

8. I have heard the learned Counsel for the parties and have gone through the whole record.

9. In my opinion, the civil Court totally lacked jurisdiction in dealing with this matter. The order of the Prescribed Authority, as also of the Collector were never challenged by Shiv Charan Dass or any of the vendees, who stepped into his shoes thereafter before the authorities which were competent to deal with the matter. It was not a case that Shiv Charan Dass was not given any opportunity by the Prescribed Authority, the original land owner, before determining the surplus area. There is neither any pleading nor any evidence on record to prove this fact.

10. A learned Single Judge of this Court in *Megh Raj and Ors. v. Manphool and Ors.* 2008 (3) R.C.R. (Civil) 241, while considering various provisions of 1953 Act and the 1972 Act, referred to many judgments including the Full Bench judgments in *Jawant Kaur v. State of Haryana* AIR 1977 (P & H) 221 and *State of Haryana v. Vinod Kumar* AIR 1986 (P & H) 407 which also pertained to the provisions of the aforesaid statutes and thereafter observed in paragraph 14 as under:

14. A plain reading of Section 26 leaves no manner of doubt that any matter, arising under the Haryana Act, required to be settled, decided or dealt with by laying challenge, before the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority can only be impugned before the aforesaid authorities. As a natural corollary, where the matter falls squarely within the ambit of the statutory powers of appeal, review and revision conferred upon the authorities enumerated under the Haryana Act, the jurisdiction of civil Courts to

entertain challenge in such matter would be explicitly barred.

11. In *Smt. Jaswant Kaur and Anr. v. The State of Haryana and Anr.* (supra), the Full Bench had considered the vires of the various provisions of the 1972 Act in the light of the provisions of the Constitution of India and upheld the same.

12. In *State of Haryana and Ors. v. Vinod Kumar and Ors.* (supra), another Full Bench dealt with the provisions of the 1953 Act and observed as under:

Broadly speaking there are two types of judgments/orders, namely, judgments in rem and judgments in personam. The former binds the whole world whereas the latter binds only the parties. The jurisdiction exercised by the authorities under the Act is not of such a nature that the orders passed under it would bind the public at large. Obviously they are the judgments/orders in personam. The fundamental principle as to their nature is that they only bind the parties to it or the persons named therein. So far as the person who is neither a party nor named in such an order is concerned, the order in the eye of law is ineffective and non est and as such he is under no obligation to take proceedings to get it set aside. Assuming that the impugned order is only voidable and will be binding on the unserved owners unless it is got declared void or set aside, it cannot be said that the only remedy open to them is to approach the authorities under the Punjab Act and the remedy of a regular suit would be barred by the provisions of Section 25 of the Punjab Act. It is well settled that if an order is passed by a tribunal of limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the Civil Court even if the statute expressly bars the jurisdiction of the Civil Court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal. It is also 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.

13. As mentioned above, it has not been pleaded and proved that the original land owner, Shiv Charan Dass, was not given any opportunity of being heard before passing the order dated 14.4.1966 whereby the suit land was declared as surplus in his hands. Moreover, that order was never challenged and attained finality.

14. Further, it has also come in evidence in this case that the suit land stood utilized in the year 1981 as per the provisions of the Scheme of 1976 framed under the 1972 Act. Prior thereto, the surplus area case in respect of Shiv Charan Dass was decided by the Special Collector, Chandigarh vide his order dated 14.4.1966 under the provisions of the 1953 Act. That order was never challenged by Shiv Charan Dass or any body else and the same became final. In such an eventuality, all the transactions of sale which took place afterwards were meaningless because as per the provisions of Section 12(3) of the 1972 Act, a piece of land would automatically vest in the State Government once the proceedings for declaration of the surplus area under the 1953 Act had attained

finality. The 1972 Act does not give any scope to re-determine the land for which proceedings stand finalised under the 1953 Act.

15. The plaintiffs did not place on record any material from where it could be inferred that the suit land was never utilized in 1984 and defendant Nos. 4 & 5 (now respondent Nos. 4 & 5) were never put in possession thereof. Rather, this fact was specifically pleaded by the State of Haryana and even though, a replication was filed suggesting mere denial, yet, no evidence was led to establish the same.

16. In *Ghasitu Singh and Ors. v. The State of Haryana and Ors.* 2008 (4) R.C.R. (Civil) 352 (P & H), a Division Bench of this Court referred to various judgments pertaining to the provisions of the 1953 Act and the 1972 Act including the Full Bench judgment in *Jaswant Kaur's case* (supra), laid down that the benefit of exemption u/s 8 of the 1972 Act cannot be claimed as the land already stood utilized.

17. Again, in *State of Haryana v. Smt. Ram Kali etc.* 2009 (4) R.C.R. (Civil) 804 (P & H), another Division Bench of this Court, after taking notice of various judgments including the Full Bench judgment in *Jaswant Kaur's case* (supra), that of Division Bench in *Ghasitu Singh's case* (supra) and the Single Bench judgment in *Megh Raj's case* (supra), held that the benefit of the provisions of Section 8(1) of the 1972 Act are only available if the land has still not be declared surplus in the hands of the land owner.

18. Looking at it from any angle, the proceedings initiated by the plaintiffs were totally misconceived as the civil Court had completely lacked jurisdiction.

19. Therefore, I do not find any merit in the instant appeal and the same is dismissed to hold that the civil Court had no jurisdiction to entertain the instant case in view of the clear bar u/s 26 of the 1972 Act and also in view of the law laid down by this Court in various judgments referred to hereinabove.