

(1991) 03 P&H CK 0072
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3178 of 1980

Jai Narain Singh

APPELLANT

Vs

V.P.Johar, Financial Commissioner, Haryana

RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Citation : (1991) PLJ 318 : (1991) 2 RRR 316

Hon'ble Judges : G.R.Majithia, J

Advocate : Rameshwar Malik, Advocate., Advocates for appearing Parties

Judgement

G.R. Majithia, J.

1. This judgment disposes of Civil Writ Petition Nos. 3178 of 1980.
2. Reference to the facts has been made from Civil Writ Petition No. 3178 of 1980.
3. The petitioners have impugned the order of respondent No. 1 whereby he set aside the order of the Assistant Collector, Palwal, dated August 28, 1975, affirmed on appeal by the District Collector vide order dated March 31, 1976 and in revision by the Commissioner Ambala vide order dated December 5, 1978, passed under Section 14A(i) of the Punjab Security of Land Tenures Act (Act No. 10 of 1953) (for short "the Act")
4. FACTS first : Shri Baljit Singh, predecessor in interest of the writ petitioners, initiated proceedings under Section 14A(i) read with Section 9(1)(ii) of the Act against respondent No. 2. The eviction was ordered by the Assistant Collector, Palwal, vide order dated August 28, 1975. Respondent No. 2 unsuccessfully challenged the same before the District Collector Gurgaon. The appeal was dismissed by order dated March 31, 1976. Respondent No. 2 aggrieved against the order of the District Collector challenged the same in Executive Revision before the Commissioner Ambala. The same was dismissed vide order dated December 5, 1978. Respondent No. 2 being aggrieved against the order of the

Commissioner Ambala assailed the same in second revision before respondent No. 1. Respondent No. 1 set aside the order of the Assistant Collector, District Collector and the Commissioner, principally on the ground that the land from which the eviction was being sought was declared surplus under the Act and it has vested in the State Government and the application for eviction was not maintainable. He refused to rely upon the judgment of the civil Court in Civil Appeal No. 21 of 1972 decided on February 7, 1974, whereby the order of the Collector (Surplus) dated March 20, 1962, declaring surplus area with the landowner was set aside principally on the ground that the landowner has not placed on record the copy of the decree sheets prepared by the trial Court and the appellate Court which had affirmed the order of the trial Court and the appellate Court which had affirmed the order of the trial Court on appeal. He also took note of the fact that Court had affirmed the order of the Collector declaring surplus area with the landowner.

5. The conclusion drawn by the respondent No. 1 is not only illegal but perverse too. The landowner challenged the order of the Collector dated March 20, 1962 under which some area was declared surplus with him in the civil Court. The State of Haryana and the vendees from the landowner were made parties/defendants to the suit. Apart from other issues, the relevant issue with which we are concerned reads thus :

"Whether the order dated March 20, 1962 of the Surplus Collector is without jurisdiction, illegal and void ?"

The trial Judge by judgment and decree dated February 18, 1972 decided this issue in favour of the landowner and decreed the suit. The judgment and decree of the trial Judge, dated February 18, 1972 was challenged by the State of Haryana in Civil Appeal No. 21 of 1972 before the District Judge, Gurgaon. The appeal was dismissed and the judgment of the trial Court was affirmed. The appellate Court after taking due note of the order passed by this Court in writ jurisdiction held that the order dated March 20, 1962 was never under discussion in the writ proceedings. Despite this specific finding of the appellate Court, respondent No. 1 ignored all these judgments and hastened to hold that the order of the Collector dated March 20, 1962 is valid and the land declared surplus has vested in the State. Since the land from which the eviction is sought to surplus area of landowner, the application under Section 14A read with Section 9(1)(ii) of the Act was not maintainable. Respondent No. 1 did not appreciate that the civil Court had finally settled that the order of the Collector declaring surplus area was illegal. The dispute whether the landowner has surplus area or not is primarily between the State and the landowner. Of course, the affected party has got a right to be heard. That eventuality has not arisen in the instant case. Respondent No. 1 could not sit in judgment over the order passed by the civil Court declaring the order of the Collector dated March 20, 1962 as invalid. Respondent No. 1 travelled beyond his jurisdiction in criticising the judgment of the District Judge. The undisputed fact which emerged from the judgment of the

civil Court is that the order of the Collector declaring surplus area of the landowner was set aside in the civil suit and the judgment rendered by the civil Court was binding on the Tribunals created under the special statutes. The judgment of the civil Court could only be set aside in the manner prescribed in the Code of Civil Procedure and not otherwise. If the judgment was without jurisdiction, it could only be set aside by a Court of competent jurisdiction but the Tribunal created under the special statute exercising jurisdiction under that statute could not bypass the judgment. The same was binding on him and he was bound to decide the case as per the decision rendered by the civil Court. In Civil Writ Petition No. 1482 of 1965, the only dispute was that the area sold by the landowner be included in his reserve area. This Court refused to interfere with the discretion exercised by the collector only on the ground that after the passing of the order by the Collector this Court had taken the view that the area sold by the landowner could not be included in his reserve area. The judgment rendered in Civil Writ Petition No. 1482 of 1965 was taken note of by the civil Court and it opined that the judgment has no relevancy for determining the point. In the light of the findings of the civil Court, respondent No. 1 was patently in error in holding that the order of the Collector declaring surplus area was declared valid by this Court. Respondent No. 1 had set aside the order of the Assistant Collector, Palwal, dated August 28, 1975, District Collector dated March 31, 1976 and of the Commissioner Ambala dated December 5, 1978 respectively on grounds which are patently illegal and which could not have been pressed into service to disturb the orders passed by these officers. There is a patent illegality in the order of respondent No. 1 which cannot be sustained.

6. For the reasons recorded above, the writ petition succeeds; the order of respondent No. 1 is set aside and those of the Assistant Collector, District Collector and Commissioner, dated August 28, 1975, March 31, 1976 and December 5, 1978 respectively are upheld. The parties are left to bear their own costs.