
(2013) 03 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 505 of 2001

State of Himachal Pradesh

APPELLANT

Vs

Parkash Chand

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2013) 03 SHI CK 0019

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : M.L. Chauhan, Addl. A.G. with Mr. J.S. Rana, A.A.G, for the Appellant; Sanjeev Kuthiala, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The judgment, decree dated 27.11.2000 in Civil Appeal No. 128 of 1994 passed by learned District Judge, Una affirming judgment, decree dated 8.6.1994 passed by learned Sub Judge 1st Class, Court No. 1, Amb in Civil Suit No. 218 of 1987 has been assailed in the present appeal. The facts, in brief, are that the respondent had filed a suit for declaration regarding land comprised in Khasra No. 1218, measuring 10 Kanals 11 Marlas situated in Village Saluri, Tehsil Amb, District Una on the allegations that the respondent was landless person, in 1976 he was allotted suit land on payment of Rs. 27.85 paise under Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (for short "Act") and Himachal Pradesh Village Common Lands Vesting and Utilization Scheme, 1975 (for short "Scheme") and was put in possession of the suit land.

2. The appellant through its officials in June/July, 1986 threatened to interfere on the suit land on the ground of cancellation of allotment of respondent. On inquiry, the respondent came to know that his allotment had been cancelled by Collector, Una on 4.4.1979 without notice to the respondent. The cancellation of the allotment of the respondent is illegal, void and contrary to law. After notice to appellant suit was filed for declaration that respondent is owner in possession

of the suit land, the order of cancellation of allotment of suit land dated 4.4.1979 is wrong and illegal.

3. The appellant contested the suit by filing written statement. The preliminary objections of maintainability, limitation, non-compliance of Section 80 CPC, non-joinder of necessary parties and jurisdiction of the Civil Court to try the suit were taken. On merits, the allotment in favour of the respondent was admitted. But it was pleaded that the respondent was not eligible under the Scheme and, therefore, the allotment was cancelled. The order of cancellation was passed in presence of the respondent after giving him full opportunity. The respondent obtained the allotment by misrepresentation of facts.

4. The respondent filed replication and denied the defence of the appellant. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is owner in possession of the suit land and the defendant is interfering in the peaceful possession of the plaintiff as alleged? OPP

2. Whether the cancellation dated 4.4.1979 of the suit land allotment is wrong, incorrect, illegal and void as alleged? OPP

3. Whether the suit is not maintainable in the present form as alleged? OPD

4. Whether the suit of the plaintiff is barred by limitation as alleged? OPD

5. Whether the suit is bad for want of service of valid notice U/S. 80 CPC as alleged? OPD

6. Whether the suit of the plaintiff is bad for non-joinder of necessary parties as alleged? OPD

7. Whether the jurisdiction of this Court is barred as alleged? OPD

8. Relief.

The issue No. 1 was answered in affirmative. Issue No. 2 was also answered in affirmative but it was found that the cancellation order is dated 8.3.1979 and not 4.4.1979. The issues Nos. 3 to 7 were answered in negative and the suit was decreed by learned Sub Judge 1st Class, on 8.6.1994. In appeal, the learned District Judge on 27.11.2000 dismissed the appeal. Hence, second appeal which has been admitted on the following substantial questions of law:-

1. Whether the Civil Court below have jurisdiction to entertain and decide the suit of the plaintiff under the provisions of Section 10 of the H.P. Village Common Lands (Vesting and Utilization) Act, 1974.

2. Whether the judgments and decrees of the Courts below are liable to be set-aside on the ground that the judgments have been passed without jurisdiction and against the scheme as expressly provided in the H.P. Village Common Lands (Vesting and Utilization) Scheme, 1975.

5. Heard and perused the record. The learned Additional Advocate General has submitted that the respondent obtained allotment of the suit land by misrepresentation of facts and, therefore, the allotment was cancelled after notice to respondent. The Civil Court has no jurisdiction u/s 10 of the Act to give declaration sought. He has relied Dalip Singh and Others Vs. State of H.P. and Others, and Sunil Kumar Vs. State of Himachal Pradesh and Others, The learned counsel for the respondent has supported the impugned judgment, decree and has submitted that the allotment of the suit land was cancelled without notice to the respondent, the fundamental principles of judicial procedure were not followed. The cancellation order was passed by the Collector, who was not competent to cancel the allotment. He has submitted for dismissing the appeal.

6. The aforesaid substantial questions of law No. 1 and 2 are inter-connected, therefore, both the substantial questions of law are taken up together for determination. Ex. P-1 is the copy of jamabandi 1979-80 showing provincial Government owner and Parkash S/o. Jaggu tenant over Khasra No. 1218 min. In remarks column, there is red entry that vide mutation No. 677 the ownership has been changed as per order of the Deputy Commissioner in file No. 2305. Ex. PW1/A is the copy of certificate dated 7.4.1976 issued by the Collector, Una showing respondent as owner of land measuring 10 Kanals 11 Marlas in Village Saluri on payment of Rs. 27.85, the allotment has been made under the Scheme.

7. Ex. PW-4/A is the copy of order dated 8.3.1979 canceling the allotment of land measuring 10 Kanals 11 Marlas comprised in Khasra No. 1218 min which was allotted by the Collector, Una to respondent on the ground that allottee had been living with his father Jaggu. Ex. PW-4/B is the copy of order dated 8.3.1979 of Collector, Una endorsed to Tehsildar, Amb vide file number 58 dated 4.4.1979 showing that allotment was made in favour of Parkash on 22.2.1976 of land measuring 10 Kanals 11 Marlas comprised in Khasra No. 1218 min. The order further indicates that after obtaining permission for reviewing the order from the Commissioner received on 21.2.1979 the allotment was cancelled. The allottee was directed to take back the "Nazrana" deposited by him. Ex. D-1 is the copy of mutation No. 677 on the basis of order dated 22.2.1976 of Collector in file No. 2305. Ex. D-1 is also another copy of mutation No. 798 on the basis of order of the Deputy Commissioner in file No. 58 dated 4.4.1979.

8. It emerges from Ex. PW-4/A and Ex. PW-4/B that the allotment of respondent was cancelled on the ground that he had been living with his father who was also allotted 1 Kanal 3 Marlas land to make his holding one acre. It has been observed in the cancellation order that the respondent had been living with his father who was owning land, therefore, the respondent was not eligible for allotment of land under the Act.

9. The suit land was allotted to respondent on 22.2.1976 which is clear from Ex. PW-4/B. The combined reading of the then Act, Rules and Scheme indicate that till 22.2.1976 there was no prohibition for allotment of land under the then Scheme in favour of a son whose father was also alive. It appears this was a

lacuna in the Scheme. The Scheme was primarily meant for allotment of land in favour of needy landless persons. The purpose of allotment under the Scheme was to cover more and more landless persons but simultaneously not to have multiple allotments in the same family. It appears the lacuna was noticed and later on amendments were carried out in the Act, Rules and Scheme by adding proviso in Section 2(c) of landless person, Section 2 (dd) was also added defining "other eligible person". The amendments were carried out by the Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Act, 1987, which came into force with effect from the date of commencement of Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974.

10. In Dalip Singh (supra) the plaintiffs sought declaration that they were owners in cultivating possession of the suit property and the orders passed by the Revenue Officer showing land to have vested in Gram Panchayat in the year 1962 under the Punjab Village Common Lands (Regulations) Act, 1961, hence subsequent mutation attested by the Revenue Officer showing the land to have vested in the State of Himachal Pradesh under the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974, were illegal, void, inoperative and ineffective on their rights and the orders of allotment of part of such land in favour of some of the allottees conferred no right, title or interest on them, consequential relief of injunction was also prayed. On those facts, the learned Single Judge has held from the reading of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974, it is apparent that there is an adequate remedy provided for what the Civil Courts would normally do in suits, namely, whether particular land has or has not vested in the State Government. The Act also provides for the remedy to carry the matter in appeal against an order passed by the Collector. The Himachal Pradesh Village Common Lands Vesting and Utilization Act, gives a finality to the orders passed by the Collector or the State Government and jurisdiction of the Civil Court is ousted to entertain and decide a suit of the nature but Section 10 of the Himachal Pradesh Village Common Lands Vesting and Utilization Act does not exclude those cases where it is shown that provisions of a particular Act have not been complied with or that the Collector or the State Government has not acted in conformity with the fundamental principles of judicial procedure.

11. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, has been noticed and it has also been held that a statute which ousts the jurisdiction of civil court is required to be strictly construed and the burden is always on the party, who so contends, to prove the exclusion of jurisdiction of civil court and once such a contention is raised, it has to be determined in the light of the words used in the statute and scheme of its relevant provisions with their object and purpose. In the present case PW-1 Parkash Chand has stated that he did not receive any notice of Deputy Commissioner with respect to suit land nor he submitted any reply. He was not aware when Deputy Commissioner decided the case. He denied that Deputy Commissioner conducted any inquiry. He also denied that Deputy Commissioner decided the case in his presence. PW-4 Tilak

Raj, Patwari Land Reform Branch on the basis of record has stated that on the order dated 8.3.1979 of the Collector, there is no signature of Collector and its photocopy is Ex. PW-4/A. He however, stated that on another letter dated 8.3.1979 Ex. PW-4/B there is signature of Collector. The appellant through counsel tendered Ex. D-1 to Ex. D-14 in evidence and closed the evidence.

12. The respondent has stated on oath that no notice of Deputy Commissioner was received. He has also stated that he did not appear before the Deputy Commissioner in the proceedings nor submitted any reply. This evidence has not at all been rebutted by the appellant. In other words, before cancelling the allotment of respondent, no notice was given to him by the Deputy Commissioner. It has been proved that fundamental principles of judicial procedure were violated by the Deputy Commissioner before cancelling the allotment of respondent.

13. In *Chuhniya Devi Vs. Jindu Ram*, , Full Bench has held that where it is found that statutory authorities have not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with, the Civil Court has jurisdiction. In the present case additionally it has been proved that the Collector/Deputy Commissioner has not even signed the original order dated 8.3.1979 a copy of which is Ex. PW-4/A. The appellant cannot take the benefit of another order dated 8.3.1979, a copy of which is Ex. PW-4/B. This order is internal communication of Collector endorsed to Tehsildar. The allotment has been cancelled vide order dated 8.3.1979, a copy of which is Ex. PW-4/A but this order has not been signed by the Collector. In other words, there is no order of Collector/Deputy Commissioner cancelling the allotment. Therefore, the notification dated 6.1.1979 issued by Secretary (Revenue) appointing all the Deputy Commissioners in Himachal Pradesh as Commissioners for purpose of sub-section (iv) of para 13 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1975 and relied by learned Additional Advocate General in support of validity of cancellation by Deputy Commissioner instead of Commissioner is of no help to the appellant.

14. *Sunil Kumar (supra)* is not applicable in the facts and circumstances of the present case. In that case the allotment was made on 11.2.1980. The allotment was cancelled on 17.1.2001. In that case on facts it was found that the allotment was rightly cancelled. In the present case the facts are entirely different. The cancellation order has been passed without notice to respondent and cancellation order is not even signed by the Collector/Deputy Commissioner. In the light of above discussion, it can be safely held that the Civil Court has jurisdiction to try the suit, the suit is not barred u/s 10 of the Act. The above substantial questions of law No. 1 and 2 are decided against the appellant. In view of above, the appeal fails and is accordingly dismissed with no order as to costs.