
(2016) 12 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : R.S.A. No. 274 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Rattan Lal

RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 — Section 10

Citation : (2017) 2 HimLR 810 : (2017) LatestHLJ(HP) 222

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. V.S. Chauhan, Addl. Advocate General, for the Appellant; Mr. Ramakant Sharma, Senior Advocate with Mr. Basant Pal Thakur, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J.—By way of this appeal, the State-appellant/defendant has challenged the judgment and decree passed by the Court of learned Additional District Judge, Solan in Civil Appeal No. 10-NL/13 of 2003 dated 19.2.2005, vide which learned Appellate Court while accepting the appeal filed by respondent/plaintiff set aside the judgment and decree passed by the Court of learned Sub Judge, Nalagarh, whereby learned trial court had dismissed the suit filed by plaintiff for declaration with consequential relief of permanent injunction.

2. Brief facts necessary for adjudication of the present case are that respondent/plaintiff (hereinafter referred to as "the plaintiff") filed a suit for declaration with consequential relief of permanent injunction on the ground that suit land comprised in khewat khatauni No. 54/54 bearing khasra No 903/500 and 904/500 total measuring 5 bighas 7 biswas situated in village Kalyanpur, Hadbast No. 201, Pargna Dharampur, Tehsil Nalagarh, Distt. Solan was allotted to the

plaintiff and he was owner in possession of the same as was evident from jamabandi for the year 1983-84. According to the plaintiff, his father had died before the allotment of the said land in his favour and as he (plaintiff) was holding less than one acre of land, accordingly he applied under the Scheme of the Government to make his holding one acre and after a thorough enquiry in this regard, he was allotted the suit land under the provisions of H.P. Village Common Lands (Vesting & Utilization) Act, 1974 and the Rules framed thereunder in the year 1975 by issuance of necessary certificate in this regard dated 9.9.1975 by Sub Divisional Officer (C), Nalagarh who was exercising the powers of the Collector. As per plaintiff, he was handed over possession of the said land and Mutation also stood sanctioned in his favour and since then he was in peaceful physical possession of the same. It was further the case of the plaintiff that he had spent huge amount of money for making the said land worthy for agriculture. It was further the case of the plaintiff that order dated 4.4.1984 passed by Commissioner (ADM), Solan vide which allotment order of plaintiff qua suit land stood cancelled was without jurisdiction and was thus void, illegal and not sustainable in law, as plaintiff was residing separately from his brothers. On these bases, he filed the suit praying for decree for declaration to the effect that he was owner of the suit land and order dated 4.4.1984 passed in case No. 88/83 by Commissioner (ADM), Solan in Revision Petition instituted on 6.9.1983 titled State v. Jagdish Chand and others was illegal, null and void and non est. Plaintiff also prayed that defendant be restrained from taking possession of the suit land by way of passing of a decree for permanent injunction against the defendant. He also prayed for a decree of possession of the suit land in case defendant during the pendency of the suit illegally and forcibly dispossesses the plaintiff.

3. The suit was contested by defendant on the ground that though the suit land was allotted by the Government, however, plaintiff was not eligible for the allotment of the said land as he and his brothers were living in a joint family and all of them got allotments made in their respective favour by misrepresenting the facts by fraudulent means. It was further the case of the defendant that plaintiff was no more owner or in possession of the suit land and the allotment stood cancelled by Commissioner (ADM), Solan vide his order dated 4.4.1984 and thereafter land stood mutated in favour of State of Himachal Pradesh and the State was absolute owner in possession of the suit land. It was further stated in the written statement that Commissioner (ADM), Solan had rightly cancelled the allotment and the same was cancelled after affording opportunity of being heard to the plaintiff. It was also mentioned in the written statement that Commissioner was competent to cancel any wrong allotment whenever it was reported to said authority. On these bases the claim of the plaintiff was contested by defendant-State.

4. On the basis of pleadings of the parties and material placed on record, learned Trial Court framed the following issues:-

"1. Whether Order dated 4.4.1984 passed in Case No. 88/83 is wrong, illegal, null and void? OPP.

2. Whether the suit is not maintainable in the present form? OPD

3. Whether this suit is bad for want of notice under Section 80 of CPC? OPD.

4. Whether the jurisdiction is barred by the provisions of Section 10 of H.P. Village Common Land (Vesting & Utilization) Act, 1974 and Section 171 of the Land Revenue Act? OPD.

5. Whether the original allotment was obtained by misrepresentation and by fraudulent means, if so its effect? OPD.

6. Whether this suit is within limitation? OPP.

7. Relief."

5. Learned trial court after taking into consideration oral as well as documentary evidence led in support of their respective stand by the parties, returned the following findings to the issues so framed.

"Issue No. 1

:

Yes.

Issue No. 2

:

No.

Issue No. 3

:

No.

Issue No. 4

:

No.

Issue No. 5

:

No.

Issue No. 6

:

No.

Relief

:

As per operative portion of the judgment the suit of the plaintiff is dismissed"

6. Learned trial court held that a perusal of the order under challenge passed by Commissioner, dated 4.4.1984 demonstrated that allotment was cancelled by the Commissioner on the ground that land was allotted to several members of family which was against the provisions of law and the purpose of the Scheme. It was held by learned trial court that the issue whether allotment could be cancelled on the basis of family owning some land or not, stood decided by this Court in RSA No. 21 of 1990 titled State of H.P. v. Hakim decided on 17.11.1994, wherein it was held that there was no provision in H.P. Village Common Land (Vesting & Utilization) Act under which there was restriction for allotment to a person having land more than specified limit. Learned trial court held that this restriction was imposed for the first time by way of Amendment Act No. 10 of 1987 and therefore order passed in the year 1984 by Commissioner could not be saved by law as the subsequent amendment could not validate the order which was passed by Commissioner without jurisdiction. It was further held by learned trial court that cancellation of allotment on the grounds which were taken by Commissioner could not be justified in law, as there was no provision for restricting allotment of land on the grounds on which the said allotment was cancelled by Commissioner in the year 1984. On these bases it was held by learned trial court that order dated 4.4.1984 passed in case No. 88/83 by Commissioner was wrong, illegal, null and void. Learned trial court also held the issue whether original allotment was obtained by plaintiff by way of misrepresentation or by fraudulent means also in favour of the plaintiff and against the defendant-State. However, learned trial court non-suited the plaintiff on the issue of limitation by holding that even if the order passed by Commissioner was invalid and without jurisdiction, yet suit should have been filed for establishing its invalidity and for seeking relief of declaration within a period of limitation which was 03 years and as suit was not filed within a period of limitation, the same was barred by limitation.

7. The judgment and decree so passed by learned trial court was challenged by way of appeal by the plaintiff.

8. It is pertinent to mention that the findings returned by learned trial court to the effect that order passed by Commissioner was an invalid order and was without jurisdiction and further that there was no misrepresentation and fraud played by plaintiff at the time of original allotment were not challenged by the State and these findings attained finality as against the State.

9. In appeal learned appellate court while setting aside the findings so returned by learned trial court on the issue of limitation held that period of limitation prescribed to institute a suit to set aside an order was 01 year from the date of order as was provided under Article 100 of the Schedule to the Limitation Act,

however, if the order was illegal, plaintiff would not be bound to file suit to have the said order to set aside but could wait till the illegal order was enforced against him and the attempt to enforce against him would give him a good cause of action and limitation would run from the date of such attempt. It was further held by learned appellate court that it stood established from the records that threat to dispossess the plaintiff from suit land was extended by the concerned Patwari in the year 1999 and testimony of the plaintiff on this score remained unchallenged and uncorroborated and Daulat Ram, Patwari could not dispute this fact. On these bases it was held by learned appellate court that cause of action accrued to the plaintiff who was owner in possession of the suit land in January, 1999 and notice was thereafter served by him which was followed by filing of the suit and the same was thus within the period of limitation. On these bases learned appellate court reversed the judgment and decree passed by learned trial court to the effect that the suit of plaintiff was barred by limitation and it decreed the suit of the plaintiff for declaration that plaintiff was owner in possession of the suit land and also passed a decree for permanent injunction restraining the defendant from causing interference in the possession of the plaintiff over the suit land. While arriving at said conclusion, learned appellate court also held that evidence led by plaintiff even otherwise made it evident that he was owner in possession of the suit land and entries in jamabandi also corroborated the case of the plaintiff.

10. Feeling aggrieved by the judgment and decree so passed by learned appellate court, State has filed this appeal which was admitted on 28.6.2005 on the following substantial questions of law:-

"Whether the Civil Courts had no jurisdiction to entertain the suit of the plaintiff in view of the provisions of Section 10 of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act and Section 171 of Himachal Pradesh Land Revenue Act? Whether the learned first appellate Court erred in holding that the suit was within the limitation period?"

11. I have heard learned counsel for the parties and have also gone through the records of the case as well as judgments and decrees passed by both the learned courts below.

12. Learned trial court had framed issue No.4, as to whether jurisdiction of the Civil Court was barred by provisions of Section 10 of H.P. Village Common Land (Vesting & Utilization) Act, 1974 and Section 171 of the Land Revenue Act. While deciding this issue, it was held by learned trial court that as per law declared by Hon'ble Supreme Court in State of H.P. v. Hakim, 1996 Supreme Court 906 where order was passed without jurisdiction Civil Court had jurisdiction and the same would not be barred under the provisions of H.P. Village Common Land (Vesting & Utilization) Act, 1974. It was further held by learned trial court that as in the case in hand order passed by Commissioner was found to be without jurisdiction, hence Civil Court was having jurisdiction to adjudicate upon the civil suit and its jurisdiction was not barred. The findings returned on this issue by

learned trial court were not assailed by the State. Even otherwise, in my considered view the bar which is envisaged in Section 10 of H.P. Village Common Land (Vesting & Utilization) Act, 1974 shall be operative in case the order which is passed by Commissioner or the State Government or any Officer authorised by it is otherwise a valid order and the Commissioner or the Officer who passes such order otherwise is authorised to pass the same. In other words, in case there is an order passed by Commissioner or an authorised Officer and a party intends to challenge the same on the basis of adjudication made by Commissioner or authorised Officer purely on merit, then the bar envisaged under Section 10 of the H.P. Village Common Land (Vesting & Utilization) Act, 1974 comes into play. However, if the order so passed was assailed for want of authority and jurisdiction then the bar envisaged under Section 10 of the H.P. Village Common Land (Vesting & Utilization) Act, 1974 does not oust the jurisdiction of the Civil Court. Therefore, in my considered view, as the impugned order passed by Commissioner was challenged for want of jurisdiction and authority, Civil Court was having jurisdiction to entertain the suit as has been rightly held by both the learned courts below.

13. Besides this, in my considered view learned first appellate court did not err in holding that the suit was within the limitation period. Even learned trial court which dismissed the suit of the plaintiff on the issue of limitation held that the impugned order passed by Commissioner dated 4.4.1984 to be illegal, null and void. However, learned trial court held that limitation to challenge the said order was 03 years from the date when the same was passed. Learned appellate court while disagreeing with the findings so returned by learned trial court held that because the order in issue was illegal, invalid and without jurisdiction, therefore, the limitation to challenge the said order did not commence from the date when the said order was passed but limitation accrued from the date when this order was in fact used to infringe the rights of the affected parties/plaintiff. On these bases it was held by learned appellate court that as Patwari threatened to dispossess the plaintiff on the strength of invalid order in the month of January, 1999, the cause of action accrued in favour of the plaintiff in January, 1999 and thereafter construed from the accrual of the cause of action the suit to be within limitation. In my considered view, the findings so returned by learned Appellate court are correct findings.

14. It is settled law that limitation to challenge an illegal order does not commence when the date when said order was passed but it starts from the date when the said illegal/invalid order is intended to be enforced against the person concerned.

15. It has been held by this Court in State of H.P. v. Jeet Singh, Latest HLJ 2000 (HP) 252 that the prescribed period of limitation to institute a suit to set aside an order is 01 year from the date of order as provided under Article 100 of the Schedule to the Limitation Act. However, when the order is illegal then the plaintiff would not be bound to file the suit to set it aside but could wait until it

was enforced against him and the attempt to enforce it against him would give him a good cause of action and the limitation would run from the date of such attempt/enforcement.

16. In *State of Punjab and others v. Gurdev Singh and Ashok Kumar*, AIR 1992 Supreme Court 111, the Hon''ble Supreme Court has held that if an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically and it need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. Hon''ble Supreme Court held that a declaration merely declares the existing state of affairs and does not quash so as to produce a new state of affairs, however, nonetheless the impugned order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. Hon''ble Supreme Court also held that the words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings and generally the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The Hon''ble Supreme Court further held that suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is filed.

17. It has been held in *Laxmanrao Madhavrao Jahagirdar v. Shrinivas Lingo Nadgir and others*, AIR 1927 Privy Council, 217 that there can be no limitation for setting aside an illegal order and it can be set aside as and when an attempt is made to enforce it.

Therefore, in view of above discussion in my considered view it cannot be said that learned appellate court erred in holding that the suit filed by plaintiff was within limitation. Substantial questions of law are answered accordingly. As there is no merit in the appeal accordingly the same is dismissed being devoid of merit. Miscellaneous application(s), if any, also stands disposed of. No order as to costs.