

(2011) 11 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3339 of 2010 (O and M)

Surinder Singh and another

APPELLANT

Vs

The Prescribed Authority (S.D.O. Civil) Mahendergarh and
others

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 18(6), 26, 26(1)
Punjab Municipal Act, 1911 — Section 86

Citation : (2012) 1 RCR(Civil) 542

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—The present regular second appeal has been filed against judgment and decree dated 18.1.2010 passed by learned Additional District Judge, Narnaul, dismissing appeal filed by present Appellants-Plaintiffs against judgment and decree dated 15.9.2005 passed by learned Civil Judge (Junior Division), Mahendergarh, dismissing suit filed by present Appellants-Plaintiffs.

2. I have heard learned Counsel for the Appellants and have gone through the whole record carefully including both the judgments passed by learned Courts below.

3. Briefly stated, Appellants-Plaintiffs filed this suit for a decree for declaration to the effect that they are owners in possession of the land in dispute in equal shares and that Respondents-Defendants have no concern with the same. They have also challenged order passed by Prescribed Authority Mahendergarh, dated 10.4.1995, order of Collector Mahendergarh at Narnaul, dated 21.9.1995, and order dated 27.9.1995 passed by Commissioner, Gurgaon Division, Gurgaon, under Haryana Ceiling on Lands Holdings Act, 1972 (for short 'the Act') being illegal, void and not binding upon their rights.

4. On notice being issued, joint written statement was filed by Respondents-Defendants contesting the same, inter alia, on the ground that orders were legally passed by the competent authorities, i.e., Prescribed Authority, Collector and Commissioner under the Act and that the present suit is not maintainable as jurisdiction of Civil Court is barred to entertain and decide the present suit.

5. Learned trial Court dismissed the suit filed by Appellants-Plaintiffs, inter alia, on the ground that jurisdiction of Civil Court is clearly barred u/s 26 of the Act. Appeal filed by present Appellants-Plaintiffs against the said judgment and decree was also dismissed by learned Additional District Judge, Narnaul, holding, inter alia, that the Civil Court has no jurisdiction to entertain and decide the controversy in dispute.

6. It has been contended by learned Counsel for the Appellants that the impugned orders passed by Prescribed Authority, Collector and the Commissioner are not in accordance with the Act and the Rules and hence, they are null and void and hence, it is contended that Civil Court is having jurisdiction to entertain and decide the controversy in dispute. On the point he has also placed reliance upon *Roshan Lal v. Municipal Committee, Nabha* 1996 PLJ 124.

7. However, there is no force in the argument of learned Counsel for the Appellants. So far as *Roshan Lal's* case (supra) is concerned, the same was regarding an order passed by the competent authority under Punjab Municipal Act, 1911 and interpretation of Section 86 of the said Act, which ousts jurisdiction of Civil Court to determine and decide the question regarding valuation or assessment or liability of a person to be assessed or taxed. While dealing with the said matter, this Court observed as under:

4. It is true that despite the exclusion of jurisdiction the Civil Court would be entitled to entertain a suit and decide the lis if it is urged that the power under the special statute has been exercised in contravention with the provisions of law or by a person not authorised under the law to decide the same or that the question to be determined was beyond the scope of the enactment. The Civil Court may also be justified to entertain the suit if it is proved that the authority exercising the power have exceeded the powers conferred upon it under a special statute.

8. However, in the present case orders were passed by the competent authorities under the Act and in accordance with Rules. Hence, it cannot be said that the power has been exercised in contravention with the provisions of law or by any person not authorised under the law to decide the same or that the question to be determined was beyond the scope of the enactment. It is also not such a case that the authorities exercising the powers have exceeded the powers conferred upon them under the statute.

9. A similar question arises before Hon''ble Apex Court in *Azad and Others Vs. Dharampal and Others*, Scale 196, in which Hon''ble Apex Court while interpreting the provision of Section 26 of the Act held that in view of clear bar

prescribed u/s 26 of the Act, the suit filed on behalf of Respondents was not maintainable. The relevant paragraphs of the same read as under:

4. It was urged on behalf of the Appellants that civil Court had no jurisdiction to entertain the suit in question filed on behalf of the Respondents, in view of Section 26(1)(b) of the Haryana Ceiling on Land Holdings Act, 1972, which is as follows:

` 26. Bar of jurisdiction.-(1) No civil Court shall have jurisdiction to-

(a) entertain or proceed with a suit for specific performance of a contract for transfer of land, which affects the right of the State Government to the surplus area under this Act; or

(b) settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed Authority made under or in pursuance of this Act shall be called in question in any Court." The bar of the jurisdiction of the Civil Court has been considered by the court from time to time and recently it has been examined in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, by a Bench of three Judges.

5. According to us in view of clear bar prescribed by Section 26(1)(b) of the Haryana Ceiling on Land Holdings Act, 1972, the suit filed on behalf of the Respondents was not maintainable. Accordingly, we allow this appeal and dismiss the suit filed on behalf of the Respondents. There shall be no order as to costs.

10. This Court in Smt. Radha Bai v. The State of Haryana, 1997 (3) PLR 638, while dealing with similar matter regarding bar of jurisdiction of Civil Court u/s 26 of the Act observed as under:

4. In response to the notice of motion, Respondents 1, 2 and 3 have put in appearance. After hearing learned Counsel for the parties and having regard to the facts and circumstances of this case, I am of the opinion that learned Additional District Judge was right in coming to the conclusion that the Civil Court has no jurisdiction to try the suit. Order declaring the land as surplus was passed in the presence of the Appellants and not only that they filed an appeal challenging that order, which was dismissed. Surplus order thus attained finality. The Plaintiffs, could, if so desired challenge that order either by filing a further revision or by filing a writ petition and not by filing a suit as the jurisdiction of the Civil Court is barred in view of the provisions of Section 26 of the Haryana Ceiling on Land Holdings Act, 1972.

11. In a subsequent judgment rendered in Khushal v. Nathu Ram 2000 (1) RCR (Civil) 165, while placing reliance upon Smt. Radha Bai's case (supra), this Court observed as under:

16. It has been held in Smt. Radha Bai Vs. The State of Haryana and Others, (P&H), that the Civil Court has no jurisdiction to try the suit and that the jurisdiction of the Civil Court is barred in view of the provisions of Section 26 of the Haryana Ceiling on Land Holdings Act, 1972.

12. Hence, there is clear exclusion of jurisdiction of this Court u/s 26 of the Act to entertain and decide legality of any order passed by prescribed authority or by the Collector or by the Commissioner or by Financial Commissioner under the Act.

13. In the present case there is no violation of any provision of Act. There is also no violation of principle of natural justice. Rather the present Appellants had been contesting the same before various forums under the Act.

14. It has further been contended by learned Counsel for the Appellants that the Financial Commissioner was having no power to directly entertain revision petition against the order passed by the Prescribed Authority. However, there is no force in this contention of learned Counsel for the Appellants. Section 18 of the Act deals with powers of appeal, review or revision under the Act. Relevant Sub-section 6 of Section 18 of the Act reads as under:

(6) Notwithstanding anything contained in the foregoing Sub-section the Financial Commissioner may suo moto at any time call for the record or any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

15. Hence, under the said provision Financial Commissioner is having power to suo moto at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings/ order.

16. Accordingly, by exercising such powers he remitted the case for fresh decision to the prescribed authority. Prescribed Authority passed the order afresh after hearing Appellants. They filed appeal against the said order before Collector, Mahendergarh, who passed the order after hearing them and the appeal was dismissed. Appellants further approached Commissioner, Gurgaon Division, Gurgaon, by filing a revision petition, which was also dismissed after hearing them and hence, in view of these facts Civil Court is having no jurisdiction to entertain and decide the matter in dispute.

17. It has further been contended by learned Counsel for the Appellants that if it is taken that Civil Court has no jurisdiction, learned Courts below should not have commented upon the merits of the case and however, they have also commented upon the merits of the case. On this point he has placed reliance upon Sushil Kumar Mehta v. Gobind Ram Bohra, 1990 HRR 1 and Amar Nath v. The Financial Commissioner, Taxation, Punjab Etc., 1979 CLJ (Civil) 1.

18. However, in the aforementioned authorities it was only held that law is well settled that a decree passed by a Court of competent jurisdiction, after

adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit and, however, a decree passed by a Court without jurisdiction over the subject matter which goes to the root of its exercise of jurisdiction is nullity and no nest. However, present is not the case in which Respondents are trying to take benefit of findings recorded by the Courts below despite the fact that the Civil Court is having no jurisdiction. The dispute is as to whether the suit is itself maintainable in view of specific bar of jurisdiction of civil Court created u/s 26 of the Act and it has been held by both the Courts below that Civil Court is having no jurisdiction in the matter and hence, the suit is not maintainable.

19. Hence, in view of these facts, it cannot be said that any illegality has been committed by learned Courts below in passing the impugned judgments and decrees. Finding recorded by learned courts below is fully justified by the evidence on record and is supported by cogent reasons. The said finding is not shown to be perverse or illegal nor it is based on misreading or misappreciation of the evidence. Hence, the said finding does not warrant interference in this second appeal. No question of law, much less substantial question of law, arises for determination in this second appeal. Accordingly the appeal is dismissed in limine.