
(2014) 05 SHI CK 0179
In the High Court Of Himachal Pradesh
Case No : R.S.A. No. 408 of 2002

The State of Himachal Pradesh

APPELLANT

Vs

Gurdeep Singh and Others

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80, 9

Citation : (2014) 05 SHI CK 0179

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : R.S. Verma, Addl. Advocate General and J.S. Guleria, Assistant Advocate General, Advocates for the Appellant; Bhupender Gupta, Sr. Advocate and Neeraj Gupta, Advocates for the Respondent

Judgement

Sanjay Karol, J.—In this appeal, filed under Section 100 of the Code of Civil Procedure, defendant has assailed concurrent findings of fact returned by the Courts below.

2. Under the provisions of The Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974 (hereinafter referred to as the Act); The Himachal Pradesh Village Common Lands Vesting and Utilisation Rules, 1975 (hereinafter referred to as the Rules) and the scheme framed thereunder, on the plaintiff's (respondent herein) application, considering him to be a landless person and permanent resident of Mohal Rodi, on 13.06.1981, competent authority allotted 0-05-04 hectares of land in his favour. Such allotment stood cancelled on 26.05.1993 on account of alleged false representations made by him. As such, he filed a suit, seeking declaration to be owner in possession of the suit land and the order passed by the authority to be null and void.

3. Trial Court, based on respective pleadings of the parties, framed the following issues:--

"1. Whether the plaintiff is owner in possession of the suit land, as alleged? OPP.

2. Whether the order dated 26.5.1993 passed by the Addl. District Magistrate, Kangra is illegal, without any authority, and null and void, as alleged? OPP.
3. Whether the plaintiff is entitled for the relief of permanent injunction, as alleged? OPP.
4. Whether the plaintiff is estopped to file the suit by his act and conduct, as alleged? OPP.
5. Whether the plaintiff has no cause of action? OPD.
6. Whether the plaintiff has no locus standi to file the present suit? OPD.
7. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD.
8. Whether the suit is not maintainable in the present form? OPD.
9. Whether the suit is liable to be dismissed for want of serving statutory notice as required under Section 80, CPC? OPD.
10. Whether the civil court has no jurisdiction to try this suit? OPD.
11. Whether the suit is bad for non-joinder of necessary parties? OPD.
12. Relief."

4. Trial Court vide judgment dated 27.06.2000 in Civil Suit No. 427 of 1993, titled as Banta Singh and others v. The State of Himachal Pradesh, while holding suit to be maintainable, decreed it in the following terms:--

"25. Judged in the light of my findings on the issues above, particularly issues No. 1 to 3, the suit succeeds and a decree of declaration that the plaintiff was owner in possession of the suit land i.e. the allotted land measuring 0-05-04 hectares, and the order dated May 26, 1993 passed by the Additional District Magistrate, Kangra at Dharamshala, in the case bearing No. 21/93 titled as State v. Banta Singh is illegal, without authority, null and void and liable to be set aside, is hereby granted in favour of the plaintiff. As a consequential relief, a decree of permanent injunction restraining the defendant-State from interfering with the allotted land is also granted in his favour. The defendant shall be saddled with costs of the suit."

5. In an appeal filed by the defendant, findings of fact judgment and decree passed by trial Court stands affirmed by the lower Appellate Court vide judgment dated 29.05.2002 in Civil Appeal No. 144-P/2000, titled as State of H.P. through Collector v. Gurdeep Singh & others.

6. Appeal stands admitted on following substantial questions of law:--

"1. Whether the judgment and decree passed by both the courts below are liable to be set aside on the ground that both the courts have no jurisdiction in view of the provisions of Section 10 of H.P. Village Common Land Vesting and Utilisation

Act, 1974? What is its effect?

2. Whether both the courts below have decreed the suit of plaintiff by misreading the oral as well as documentary evidence and the provisions of the law, hence the judgment and decree are liable to be set aside on this account. What is its effect?

3. That the judgment and decree passed by both the courts below are liable to be set aside for the non-compliance of notice under Section 80 C.P.C. What is its effect?"

7. The Courts below, concurrently have held the plaintiff to be continuously residing in Mohal Rodi for more than 40 years. Voters' list (Ex. PW1/A) reflecting him to be voter of the area since 1965 and record of Panchayat, (Ex. PW5/A), proving him to be a landless person is on record. Trial Court, rightly held the State not to have established the factum of misrepresentations, if any, allegedly made by the plaintiff, disentitling him from the grant/allotment under the scheme formulated by the competent authority, under the Act and the Rules. Thus, findings of fact, concurrent in nature, cannot be said to be perverse, baseless, unreasonable or not borne out from the record.

8. The judgments and decrees are thus not liable to be set aside on account of any misreading or mis-appreciation of oral/documentary evidence or provisions of law.

9. Trial Court rightly held that the Court had allowed the plaintiff to institute the suit, without issuing any prior notice under Section 80 of the Civil Procedure Code. Hence the judgments, in question, cannot be faulted on this ground.

10. Undisputedly, the competent authority under the Act, resorted to cancellation of allotment after unexplained delay of more than 11 years. The Scheme, Rules and the Act do not prescribe any period of limitation for initiating action in cancelling the allotment. But then, such period has to be reasonable.

11. The Courts below relying upon the decision of this Court in *Parcy Chouhan v. State of Himachal Pradesh* (SLJ HP 1979 (9) 101), rightly held that action, if any, against the plaintiff, could have been initiated only within a reasonable period of time. In the given facts, more so in view of factual background, period of 11 years cannot be said to be a reasonable period of time. It stands established that after receiving possession of the land, plaintiff developed it and thereafter constructed his house, wherein he has been continuously residing since then. There is evidence to show that his daughter is studying in the school within the Mohal. That competent authority has jurisdiction and power to review its decision cannot be disputed. But then, it has to be within reasonable time.

12. Full Bench of this Court in *Mangheru etc. Vs. The State of Himachal Pradesh and Others etc.*, , while construing the provisions of Himachal Pradesh Nautor Land Rules, 1968, held that suo motu power of the competent authority to review the order of grant of land has to be exercised within a reasonable period,

which can reasonably be three years, from the date of knowledge of fraud.

13. Further Co-ordinate Bench of this Court in Dalip Singh and others v. State of H.P. and others, 1992 (1) Sim. L.C. 320, has further held that:

"13. Section 9 of the Code of Civil Procedure gives jurisdiction to a civil court to try all suits of a civil nature excepting those which are expressly or impliedly barred by any other law. It is a settled proposition of law that an exclusion of jurisdiction of civil court is not to be readily inferred and every presumption should be made in favour of existence of jurisdiction rather than its exclusion. 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. On a review of its earlier decisions, the Supreme Court in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , has laid down propositions as regards law relating to the exclusion of jurisdiction of civil courts, as under:--

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from the constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

14. Again a Division Bench of this Court in *Amar Nath and Another etc.etc Vs. State of H.P. and Others etc.etc.*, , had the occasion to deal with an identical issue, more specifically in relation to the statute in question and while construing the provisions of Section 54 of the Act and Rule 28 framed thereunder, held that power of review could be exercised within a reasonable time, which cannot be placed in a straight-jacket formula, being flexible and elastic, but has to be decided in the light of facts and circumstances of each individual case.

15. The Division Bench of this Court in *Ramesh Chand and Another Vs. Director of Consolidation and Others*, , while examining the statute in question, had the occasion to deal with a case where such power was exercised after a period of 17 years, which the Court frowned upon.

16. Actions of the competent authority thus being illegal and not in consonance with the settled principles of law, would not exclude the jurisdiction of the Civil Court to adjudicate the lis, inter se the parties, under the Act. Any action which is illegal can be assailed in a Civil Court by any aggrieved party. *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, .

17. Consequently, I do not find any reason or ground sufficient enough to interfere with the concurrent findings of fact recorded by the Courts below. It cannot be said that the learned Courts below, erred in correctly and completely appreciating the testimonies of the witnesses or that findings returned are illegal, erroneous or perverse in any manner which has resulted into miscarriage of justice.

18. Substantial questions of law are answered accordingly.

19. The present appeal is accordingly dismissed. Pending applications, if any, also stand disposed of accordingly.