
(1980) 02 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1338 of 1968

The State of Punjab

APPELLANT

Vs

Massa Singh

RESPONDENT

Date of Decision : 01-02-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

East Punjab Utilization of Lands Act, 1949 — Section 12, 14, 14(2), 3

Citation : (1981) 3 ILR (P&H) 200

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : I.S. Krewal, for A.G, for the Appellant; K.S. Cheema, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—This is a regular second appeal by the State of Punjab, claiming that the Civil Court had no jurisdiction to decree the suit of the Plaintiff-Respondent.

2. The facts of the case are that Massa Singh filed a suit for permanent injunction against the State of Punjab, on the premises that he was the owner in possession of a parcel of land situated near the bed of river Beas, which remained submerged and waterlogged for more than six harvests, rendering the land unlocated and uncultivable. The State of Punjab through its Collector threatened to take possession of the same under the garb of employing the provisions of East Punjab Utilization of Lands Act, 1949 and intended to allot it to someone else, to the detriment of the Plaintiff. After service of the notice u/s 80 of the Code of Civil Procedure, the suit was filed. The State of Punjab admitted the ownership and possession of the Plaintiff but denied that the land remained submerged in water or that its boundaries could not even be located. It was countered that the land was banjar kadim and had been legally acquired by the Tehsildar, Batala, exercising powers of Collector u/s 12 of the said Act. It was

pleaded that the Civil Court had no jurisdiction in the matter under the substituted Section 14 of the Act. On the pleadings of the parties the following issues were framed:

- (1) Whether the land in suit was waterlogged and could not be cultivated for six harvests?
- (2) Whether the boundaries of the land in suit could not be located, its effect?
- (3) Whether Shri J.S. Bal, Tehsildar, Batala, was competent to acquire the land in suit if so, is not the acquisition valid?
- (4) Whether this Court has no jurisdiction?
- (5) Whether a valid notice u/s 80 CPC was served on the Defendant?
- (6) Relief.

3. The trial Court decided issues 1 and 2 in favour of the Plaintiff-Respondent. The land was found to be waterlogged, incapable of cultivation for six harvests and its boundaries incapable of being located. It was found under issue No. 3 that the Tehsildar, Batala, was competent to acquire the land. Under issue No. 4 it was held that the Civil Court had no jurisdiction. It was held under issue No. 5 that notice u/s 80 of the CPC was validly served.

4. The Plaintiff Respondent successful appealed to the Additional District Judge, Gurdaspur, who held that the Civil Court had jurisdiction in the matter. In the presence of the findings recorded under issues Nos. 1 and 2, that the land was incapable of cultivation and location, its condition was self-evident for the non-employment of the provision of the Act and the exercise of the power of the Collector thereunder. Thus it also held that the Collector had gone beyond his jurisdiction in touching upon a property which could not be termed as land capable of cultivation and deserving utilization for agricultural purposes. It is this view of the learned lower appellate Court which has been challenged by the Appellant State.

5. It was contended by the learned Counsel for the Appellant that Section 14(2) of the Act was a complete bar to the entertainment of the civil suit as was held by the trial Court. The said Section 14(2) requires that except as provided in the Act, no order made or action taken in exercise of any power conferred by the Act, shall be called into question in Court or before any Officer or Authority provision has been made in the Act for a revision before the Commissioner of the Division against the action taken by the Collector. From this it is spelled that the jurisdiction of the Civil Court is explicitly barred. Findings on other issues have not been challenged by the Appellant. On the other hand the learned Counsel for the Respondent submits that neither is the jurisdiction of the Civil Court specifically barred by the Act nor can it be impliedly so treated since the jurisdictional facts established clinch for the exercise of jurisdiction. It is contended that the provisions of the Act would only apply to cultivable land

regarding which there was failure of cultivation by the landowner for a minimum period of six or more harvests. It was added that whether a particular parcel of land was cultivable or not was an issue within the jurisdiction of the Civil Court and if found to be cultivable, might oust the jurisdiction of the Civil Court. The learned Counsel, however does not concede the proposition but has only made these submissions to minimise the argument. It was contended that on the findings that the land was not cultivable, was waterlogged and not capable of being located within its boundaries, were facts which were self-explanatory to oust the applicability of the provisions of the Act. Additionally, it was pointed out that no notice u/s 3 of the Act was either issued or served on the Plaintiff. The learned Counsel for the Appellant joins issue on this aspect of the case. It would, however, not be necessary to determine the question of notice. In the view taken that the land in dispute was uncultivable altogether being waterlogged at the time when the impugned action was under taken and not a parcel of land which had not been cultivated by the negligence or volition of the landowner, no fault could be found in the view taken by the learned Additional District Judge, Gurdaspur, in keeping the land in dispute outside the pale of the provisions of the Act.

6. At the same time, it is contended by the learned Counsel for the Respondent that in the meanwhile the land had become cultivable and the Plaintiff had been sowing crops thereafter over the land. It is pleaded that the purpose of the Act stood achieved. The Collector had in any case after taking the land from the Plaintiff, to give it on lease for a period varying from seven to twenty years to any lessee for cultivation. After the expiry of the lease the land had to revert back to the landowner. That is the mandate of the Act. The learned Counsel for the state with all fairness to him did not seriously contest the equities involved in the case. His attack to the judgment and decree appealed against stood considerably enfeebled on this stand.

7. No other point was urged.

8. In the result this appeal fails and is hereby dismissed. There would be no order as to costs.