

Devinder Singh & Ors vs State Of Haryana & Anr on 4 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2850, 2006 (5) SCC 720, 2006 AIR SCW 3899, (2007) 1 ALL WC 181, (2007) 4 ICC 676, (2006) 2 CURLJ(CCR) 478, (2006) 44 ALLINDCAS 732 (SC), 2006 (2) HRR 420, 2006 (8) SRJ 117, 2006 (6) SCALE 507, (2006) 6 SCALE 507, (2006) 3 LANDLR 10, (2006) 5 SCJ 570, (2006) 5 SUPREME 256, (2006) 3 RECCIVR 491, (2006) 4 CAL HN 140, MANU/SC/2897/2006

Author: Arijit Pasayat

Bench: Arijit Pasayat, Tarun Chatterjee

CASE NO.:

Appeal (civil) 4552 of 2000

PETITIONER:

Devinder Singh & Ors.

RESPONDENT:

State of Haryana & Anr.

DATE OF JUDGMENT: 04/07/2006

BENCH:

ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the second appeal filed by the appellants.

Backgrounds facts in a nutshell are as follows:

Appellants filed suit for declaration on 7.9.1991 to the effect that they are the owners in possession of = share of the land measuring 155 kanals 4 marlas as per jamabandi for the year 1983-84 situated in village Kairanwali, Tehsil and District Sirsa and the order of allotment and declaration of surplus area so far as the said land is concerned are ineffective, inoperative and against the principles of natural justice, null and void and as such not binding on the rights of the plaintiffs. The suit was decreed by learned Senior Sub Judge, Sirsa in Civil Suit No.1054 of 1989. Respondents filed an appeal before the District Judge. The appeal was assigned to learned Additional District Judge who by his judgment and decree dated 14.10.1997 set aside the

judgment and decree of the Trial Court and dismissed the suit. A second appeal was carried before the High Court which by the impugned judgment dismissed the appeal holding that since Section 26 of the Haryana Ceiling on Land Holding Act, 1972 (in short 'the Act') provides that no Civil Court shall have the jurisdiction to entertain or proceed with a suit for specific performance of the contract for transfer of land which affects the right of the State Government to the surplus area under the Act, or settle any matter which under the Act is required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority; the suit was not maintainable.

Learned counsel for the appellants submitted that the first Appellate Court and the High Court were not justified in their conclusion.

Case of the appellants-plaintiffs and the respondents- defendants in the suit is as follows:

According to the plaintiffs Jagmal, son of Nanhu was a big land owner under the provisions of the Punjab Security of Land Tenures Act, (in short 'Tenures Act') and his surplus area case was decided on 30.12.1961 in old khasra numbers. After the consideration, no proceedings under Section 25 A(ii) under Tenures Act or under Section 14(1) of the Act were initiated against the plaintiffs or said Jagmal. By Civil Court decree of 1970, the plaintiffs got the suit land from Jagmal, the grandfather of the plaintiffs and mutation No.413 dated 20.2.1970 was sanctioned in their favour and since then they are recorded as owners in possession of the suit land and have never been summoned, heard and they have not received any notice from the revenue officers for any proceedings. Land in dispute was never declared surplus and they are transferees from Jagmal. Mutation No.610 dated 26.7.1982 has been attested in favour of the State of Haryana on the basis of the order dated 26.9.1980, which is illegal, null and void and liable to be set aside as the plaintiffs were not parties to that order nor they were summoned or heard. Similarly, the order dated 8.3.1981 allotting the land is also null and void because they were also not party to that order and hence, the same is liable to be set aside.

In the written statement filed refuting the statement made in the plaint defendants stated that the Court has got no jurisdiction to entertain and try the suit; that the suit is bad for want of notice under Section 80 of Code of Civil Procedure, 1973, that the suit is bad for non-joinder of allottees as the disputed land has been allotted vide order dated 8.3.1981; that the plaintiffs have not come to the Court with clean hands; that the suit is not maintainable in the present form; that the plaintiffs have not availed of the remedies provided under the Act and that the plaintiffs have no cause of action to file this suit.

On merits, it was pleaded that Jagmal son of Nanu Ram, a big land owner transferred the suit land in favour of the plaintiffs as evidenced by Civil Court decree in the year 1970, and under the provisions of the Act of 1972, the father of plaintiffs Uday Paul son of Jagmal filed the declaration

form wherein he has included the plaintiffs as members of his family and he has also included the land obtained by the plaintiffs from Jagmal. The declaration form of Udey Paul was decided on 26.9.1980 by the Prescribed Authority, Sirsa and as per this order, the suit land was declared surplus and vested in the State. The order dated 26.9.1980 is final as no appeal has been preferred against it. It is also pleaded that the surplus area has been allotted by the Allotment Authority, Sirsa on 8.3.1981 and possession has been delivered to the allottees on the spot, as per rules. It is further pleaded that Jagmal who was a big land owner under the Tenures Act transferred the land in favour of plaintiffs as evidenced by Civil Court decree of 1970 which is based on collusion. It was further pleaded that since the declaration form was filed by the head of the family, there was no need to hear or give notice to the plaintiffs. Lastly, it was prayed that the suit be dismissed with special costs. Following issues were framed:

1. Whether the orders for declaration of the suit property as surplus, vesting in the State of Haryana and its allotment are illegal, invalid, not binding upon the right of the plaintiff and liable to be set aside as alleged? OPP
2. Whether this Court has no jurisdiction to try the suit? OPD
3. Whether the suit is bad for want of notice u/s 80 of CPC? OPD
4. Whether the suit is time barred? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Whether the suit is premature? OPD
7. Whether the suit is malafide? OPD
8. Whether the plaintiffs have no locus standi to file the suit? OPD
9. Whether the plaintiffs have no cause of action? OPD
10. Whether the suit is not maintainable in the present form? OPD
11. Whether the defendants are entitled for special costs u/s 35-A or CPC? OPD
12. Relief.

The Trial Court held that the suit was maintainable, as the matter was decided without notice to the plaintiffs. It was also held that there was no period of limitation for getting the orders set aside.

The respondents filed appeals before the District Judge, Sirsa who allowed the appeal and set aside Trial's Court judgment and decree.

The Second appeal as noted above, was dismissed upholding view of the First Appellate Court.

With reference to the aforesaid background, learned counsel for the appellants submitted that the suit was clearly entertainable and the Civil Court had jurisdiction. The procedures prescribed in the Act in the matter of filing of return, determination of ceiling and the selection of permissible area have not been followed. It has been pointed out that in the return filed by the father of the plaintiffs, the age of the plaintiffs were clearly mentioned. By the time of adjudication they had attained majority and, therefore, had interest in the property. Though they did not claim any land beyond the permissible they had a right so far as choice of land is concerned and, therefore, the Trial Court had rightly decreed the suit. Unfortunately, the first Appellate Court and the High Court lost sight of the relevant provisions and held that the Civil Court had no jurisdiction.

In response, learned counsel for the respondents submitted that the suit was filed after 9 years of the order passed by the concerned authority. Father of the appellants had filed details of the area to be retained. The remedies available under the Act clearly ruled out any resort to Civil Court. Reference has been made to Section 26(1)(b) of the Act in this regard. It was, therefore, submitted that the First Appellate Court and High Court have rightly held that the suit was not maintainable.

Section 26 deals with bar of jurisdiction. The same reads 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 Commissioner, the Collector or the prescribed authority.

(c) 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 ".

At this juncture it is relevant to take note of Section 18 also which reads as follows:

"18. Appeal, Review and Revision. (1) Any person aggrieved by any decision or order of the prescribed authority, not being the Collector, may, within [fifteen days] from the date of the decision or order, prefer an appeal to the Collector in such form and manner as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of [fifteen days] if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by a decision or order of the Collector (whether acting as prescribed authority or not) being a decision or order made in an appeal under sub-section (1), may, within [fifteen days] from the date of the decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of [fifteen days] if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

[(3) Omitted] (4) Any person aggrieved by an order of the Collector under sub-section (1), may, within [thirty days] from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit. The order of the Commissioner shall be final.

[(5) Omitted] (6) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu 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 or order, and may pass such order in relation thereto as he may deem fit.

(7) No appeal under sub-section (1) or sub-section (2) shall be entertained unless the appellant or the petitioner, as the case may be, has deposited a sum equal to thirty times the land holdings tax payable in respect of the disputed surplus area or has furnished a bank guarantee of the equal amount as security with the appellate or revisional authority;

(8) Notwithstanding contained in Section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area.

(9) If the appeal or revision succeeds, the amount deposited or the bank guarantee furnished under sub-section (7) shall be refunded or released, as the case may be. If the appeal or revision fails, the amount deposited in cash or the amount of the bank guarantee furnished, shall be adjusted against the licence fee recoverable under sub-section (8)."

The law relating to jurisdiction has been the subject-matter of various decisions. In *State of Tamil Nadu v. Ramalinga Samigal Madam* (1985 (4) SCC 10) it was, inter alia, held as follows:

"8. The principles bearing on the question as to when exclusion of the Civil Court's jurisdiction can be inferred have been indicated in several judicial pronouncements but we need refer to only two decisions. In *Secretary of State v. Mask and Company* (AIR 1940 PC 105 the Privy Council at page 236 of the Report has observed thus :

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

In Dhulabhai v. State of M. P. (1968 (3) SCR

662) Hidayatullah, C.J., speaking for the Court, on an analysis of the various decisions cited before the Court expressing diverse views, culled out as many as 7 propositions;

out of them the first two which are material for our purposes are these :

(1) Where the statute gives a finality to the orders of the special tribunal 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.

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14. Thirdly, having regard to the principles stated by this Court while enunciating the first proposition in Dhulabhai case it is clear that even where the statute has given finality to the orders of the special tribunal the Civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. Now take the case of an applicant who has applied for a ryotwari patta under Section 11

staking his claim thereto on the basis of his long and uninterrupted possession of the ryoti land but the Settlement Officer on materials before him is not satisfied that the land in question is ryoti land; in that case he will refuse the patta to the applicant. But can he, even after the refusal of the patta, protect the applicant's long and uninterrupted possession against the Government interference? Obviously, he cannot, for it lies within his power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But such a person even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely before granting such relief the Civil Court may have to adjudicate upon the real nature or character of the land if the same is put in issue. In other words since the Settlement Officer has no power to do what Civil Court would normally do in a suit it is difficult to imply ouster of Civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under Section 64-C of the Act."

In *Richpal Singh and Ors. v. Dalip* (1987 (4) SCC 410), it was held as under:

"12. It is well settled that ouster of jurisdiction of civil courts should not be inferred easily. It must be clearly provided for and established."

Strong reliance was placed by learned counsel for the appellant on (1979 (2) All ER 1016). Para 15 of *State of Tamil Nadu's* case (*supra*) deal with question relating to jurisdiction. These cases dealt with cases where there was no exclusion of any other remedy.

The principles culled out from various decisions of this Court are that even when the statute has given finality to the orders of the special tribunal, the Civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Section 26(1)(d) on the other hand specifically excludes jurisdiction of the Civil Court so far as matters which are required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, Collector or prescribed Authority. The entitlement, choice of land and the allotment are matters which are to be dealt with specifically by the authorities under the Act. Additionally, Section 18 provides a forum to ventilate the grievances under the Act in respect of several matters. This is a case of exclusion of the remedy in certain contingencies. It is not a case where the controversy cannot be resolved by the forum provided under the Act. Further in case of any grievance, the validity of the order could have been questioned before the forum provided. That has not been done and on the other hand, the suit was filed after about nine years.

Above being the position, the appeal is without merit and is dismissed. No costs.