

Before J. V. Gupta, J.

KALU—Appellant

versus

TARLOKI NATH AND OTHERS,—Respondents

Second Appeal from Order No. 17 of 1982.

March 30, 1984.

Punjab Security of Land Tenures Act (X of 1953)—Section 25—Haryana Ceiling on Land Holdings Act (XXVI of 1972)—Sections 12(3) and 18—Order made by a competent authority having jurisdiction declaring surplus area—Such area vesting in State Government under section 12(3)—Order appealable but no appeal filed—Challenge to such order in Civil Court—Whether barred.

Held, that the order passed declaring the area surplus was appealable under section 18 of the Haryana Ceiling on Land Holdings Act, 1972 and all the pleas raised in the suit challenging the order passed by the authorities under the said Act from time to time could be impugned before the authorities concerned by way of appeal or revision who had the jurisdiction to pass the appropriate orders. Unless the order was without jurisdiction it could not be challenged by way of a civil suit as after the land was declared surplus it vested in the State Government in view of the provisions of section 12(3) of the Act and the jurisdiction of the Civil Court was barred by virtue of the provisions of section 25 of the Punjab Security of Land Tenures Act, 1953.

(Paras 3 and 5).

Second Appeal Order from the order of the Court of Shri V. M. Jain, Addl. District Judge (III) Kurukshetra, dated 3rd March, 1982 reversing that of Shri Shiva Sharma, S.J. III. C. Kurukshetra, dated 12th August, 1981 accepting the appeal with no order as to costs, and setting aside the judgment and decree dated 12th August, 1981 passed by the learned trial court and remanding this case back to it, to redecide the case in accordance with law, after framing issues on merits and directing the parties to appear through their counsel before the learned trial court on 17th March, 1982.

M. S. Jain with Shri Rajinder Krishan Aggarwal, Advocate and Sushil Goyal, Advocate, for the Appellant.

C. B. Goel, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This order will dispose of S.A.O. No. 17 and Civil Revision Petition No. 1949 of 1982 as they arise out of the same judgment of the lower appellate Court, dated March 3, 1982, whereby the order of the trial Court dismissing the plaintiffs' suit on the preliminary issue of jurisdiction was set aside and the case was remanded for fresh decision on merits.

(2) The plaintiffs-respondents filed the suit for declaration and possession on the allegations that the plaintiffs and one Vinod Kumar were the sons of Prem Nath. The said Prem Nath was a big land-owner. After leaving 30 standard acres as the reserve area, the remaining land was declared surplus. On appeal, the case was remanded and ultimately,—*vide* order, dated May 3, 1978, Exhibit D. 1, the Special Collector allowed 20 standard acres, as the permissible area in the hands of Prem Nath and declared the remaining land as surplus. During all the period the land was declared surplus, the same was not utilised and remained in possession of his heirs. By way of a family settlement, the plaintiffs got the land described in paragraph 6 of the plaint and the decree of the Civil Court dated June 13, 1958, was passed to that effect. Since then, they were the owners thereof. The said family settlement was not given effect to while declaring the surplus area in the hands of Prem Nath who died on June 3, 1976. The land declared as surplus could not be utilised by the State; especially the land which they had got by virtue of the civil Court decree, dated, June 13, 1958. Hence the present suit for the grant of the declaration to the effect that the order of allotment dated, July, 31, 1978, Exhibit P. 13 and the certificate of allotment dated August 8, 1978 Exhibit P-15 were illegal, *ultra vires* and without jurisdiction, and for possession of the suit land. The suit was contested by the defendants *inter alia* on the grounds that the jurisdiction of the civil court was barred to entertain the suit. The land having been declared surplus, it had vested in the State Government and that the plaintiffs had nothing to do with the same. Consequently, the trial Court framed the preliminary issue to the effect as to whether the civil Court had the jurisdiction to hear this suit? It came to the conclusion that in view of the provisions of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter called the Act), all the rights of all persons in the land declared surplus had vested in the State and, therefore, it was apparent that the jurisdiction

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of the civil Court to try the suit was barred under section 25 of the Punjab Security of Land Tenures Act, 1953. As a result, the plaintiffs' suit was dismissed. In appeal, the learned Additional District Judge took the view that all the transfers of land made prior to July 30, 1958, were legal and valid and had to be given effect to and that the suit land would not vest in the State Government under the Act. Thus, according to the lower appellate Court, the Collector had no right to utilise the land under the scheme for the utilisation of the surplus land by allotting the same to defendant No. 3, i.e., Kalu, defendant-appellant. Consequently, the findings of the trial Court were reversed under the said preliminary issue and the case was remanded for fresh decision on merits. Dissatisfied with the same, Kalu, defendant-appellant has filed this appeal whereas the State of Haryana has filed Civil Revision Petition No. 1949 of 1982.

(3) The learned counsel for the appellant contended that the land was originally declared surplus in the hands of Prem Nath on June 2, 1960. Out of the same, 11 acres 7 Kanals of land was allotted to Kalu, appellant,—*vide* order, dated, September 18, 1963, Exhibit P. 3. Since then, he is in possession thereof. On the basis of the said possession,—*vide* order, dated, July 31, 1978, Exhibit P. 13, proprietary rights have been conferred on him and necessary certificate of allotment dated August, 8, 1978, Exhibit P. 15, has also been issued in his favour. Thus, argued the learned counsel, the said orders were appealable under section 18 of the Act, and that the plaintiffs could not file the present suit in the civil Court. In the present case, the jurisdiction vested only in the authorities under the Act. According to the learned counsel, even if the orders passed were illegal, the same could not be said to be without jurisdiction and as such, the civil Court had no jurisdiction to try the suit. On the other hand, the learned counsel for the plaintiffs-respondents contended that the order passed by the Special Collector, dated May 3, 1978, Exhibit D. 1, was without jurisdiction and similarly, the order passed subsequently on July 31, 1978, Exhibit P. 13, conferring proprietary rights on Kalu, appellant, was also illegal and without jurisdiction. According to the learned counsel, once the case was remanded to the Special Collector by the Commissioner, the whole matter was re-opened and the plaintiffs who are the heirs of Prem Nath landowner who had died on June 3, 1976, were entitled to agitate that they had become small landowners after the death of their father, Prem Nath and since the land declared surplus was never utilised till his death, Kalu, defendant-appellant, was not entitled to any order of allotment or the proprietary rights in regard to the suit land. According to the

learned counsel, since the order passed by the Collector was not under the Act, the civil Court had the jurisdiction to entertain the suit. In support of the contention, the learned counsel relied upon *Kul Bhushan v. Faqira* (1) and *Santa Singh v. State of Punjab* (2).

(4) I have heard the learned counsel for the parties and have also gone through the relevant orders passed by the authorities under the Act.

(5) It is not disputed that the order, dated July 31, 1978, Exhibit P. 13, which has been challenged in the suit, was an appealable one under section 18 of the Act. All the pleas which have been raised in the plaint challenging the orders passed by the authorities under the Act from time to time could be impugned before the authorities concerned by way of appeal or revision who had the jurisdiction to pass appropriate orders. Simply because in the impugned order, dated July 31, 1978, Exhibit P. 13, and in the earlier order, dated May 3, 1978, Exhibit D. 1, certain pleas taken on behalf of the plaintiffs-respondents were not accepted, does not render the orders without jurisdiction. In the present case, it could not be successfully argued that unless the order was without jurisdiction, it could not be challenged by way of a civil suit. After the land was declared surplus in the hands of Prem Nath, it had vested in the State Government in view of the provisions of section 12(3) of the Act. Once it is so found, then the jurisdiction of the Civil Court was barred. The approach of the lower appellate Court in this behalf was wrong when it observed that all the transfers of land made prior to July 30, 1958, were legal and valid and had to be given effect to and that the same would not vest in the State Government under the Act. The approach of the trial Court in this behalf was correct.

(6) Consequently, this appeal as well as the civil revision petition succeed and are allowed. The order of remand passed by the lower appellate Court is set aside, and that of the trial Court dismissing the plaintiffs' suit is restored with no order as to costs.

N.K.S.

(1) 1976 Punjab Law Journal 480.

(2) 1972 Punjab Law Journal 240.