Before M. M. KUMAR, J

BHAG MAL & ANOTHER,—*Defendant/Appellants*

versus

RAM MURTI & OTHERS,—*Plaintiff/Respondents*

R.S.A. NO. 153 OF 1985

3rd August, 2004

Punjab Security of Land Tenures Act, 1953-S.2(3)-Haryana Ceiling on Land Holdings Act, 1972-S.14—Land of a big landowner declared surplus—Allotment of said land to appellant/defendant—Challenge by sons of the landowner—Trial Court dismissing the suit of the plaintiffs—Ist Appellate Court reversing the findings of trial Court while holding that before making allotment of surplus land provisions of S. 14 of the 1972 not followed—Provisions of S. 14 empower a competent officer to separate the surplus area of a landowner obtained by him after consolidation—Provisions of S. 14 require to afford an opportunity of hearing to a person interested—Neither any process under Section 14 to separate the surplus area was undertaken nor an opportunity of hearing afforded to the plaintiff/respondents—Violation of principles of natural justice—Appeal dismissed, order of 1st Appellate Court upheld.

Held, that a finding of fact has been recorded by the Appellate Court that the consolidation has taken place after the orders dated 31st August, 1961 and 11th February, 1963 declaring the land of Bihari as surplus. It has further been found that the procedure postulated by Section 14 of 1972 Act has not been followed as the land has not been utilized till 20th April, 1978. On 20th April, 1978 the Sub divisional Officer, Sirsa exercising the powers of prescribed/ Allotment authority, under the 1972 Act has allotted the land to the tenant/appellants. According to Section 14 of 1972 Act, a competent officer is empowered to separate the surplus area of a landowner obtained by him after consolidation.

(Para 13)

Further held, that a perusal of the provisions of Section 14 of the 1972 Act shows that a competent officer who is empowered to utilize the surplus area can separate the surplus area if a land

owner owns land jointly and his share of such land has been declared surplus. The aforementioned process has to be undertaken after a summary enquiry and due opportunity of being heard to the person interested. As per Sub section 2 of Section 14, if after declaration of surplus area and before its utilisation the land has been subjected to the process of consolidation then the competent officer is empowered to separate the surplus area of such persons out of the area of the land obtained by him after consolidation. The aforementioned provision has not excluded the principles of natural justice which would obviously mean that an opportunity of hearing has to be afforded to a person interested like the plaintiffs-respondents.

(Para 14)

L. N. Verma, Advocate for the appellant.

Dinesh Ghai, Advocate for respondents No. 1 to 3 and 6 to 8.

B. B. Gupta, Additional Advocate General, Haryana for respondents No. 4 and 5.

JUDGMENT

M. M. KUMAR, J.

(1) This is defendants appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity, the Code) challenging judgment and decree dated 11th October, 1984 passed by the Additional District Judge, Sirsa, whereby the appeal of the plaintiff-respondent was accepted and the judgment and decree dated 25th May, 1982 passed by the learned Sub Judge was reversed holding that the order dated 20th April, 1978 passed by the defendant-respondent No. 4 i.e. Sub Divisional Officer (Civil), Sirsa exercising the powers of Prescribed/Allotment Authority under the Haryana Ceiling on Land Holdings Act, 1972 (for brevity, 1972 Act) was null and void. As a consequence thereof, the suit of plaintiff-respondents No. 1 to 3 (now represented by their LRs) was decreed in their favour and defendant-respondent No. 4 was granted liberty to utilise the suit land afresh after completion of proceedings in accordance with the provisions of Section 14 of 1972 Act.

(2) Brief facts of the case are that Bihari Lal was father of plaintiff-respondents, namely, Ram Murti, Manjit and Dhanraj. He died on 8th February, 1978. He was declared a big land owner and accordingly,—*vide* order dated 31st August, 1961 (P-5), the Collector, Hisar declared 40.95 ordinary acres of his land as surplus. By another order dated 11th February, 1963 (P-4) another area of 23.99 ordinary acres was declared as surplus. The aforementioned declaration was made in pursuance to the provisions of Section 2(3) of the Punjab Security of Land Tenures Act, 1953 (for brevity, 1953 Act) which entitled the big land owner to retain a permissible area of 60 ordinary acres.

(3) The plaintiff-respondents who are sons of Bihari, after his death on 8th February, 1978, inherited the land owned by him in equal shares and mutation was sanctioned in their favour. It is therefore, claimed that they are owner in possession of the land through proforma respondents No. 6 to 8 who are the mortgagees. Defendant-respondent No. 4 i.e. the Sub Divisional Officer (Civil) exercising the powers of Prescribed and Allotment Authority under 1972 Act allotted the suit land to defendant-appellant under the provisions of Haryana Utilisation of Surplus and other Areas Scheme, 1976 (for brevity, the Scheme). The plaintiff-respondents filed a Civil Suit No. 203-C of 1979 on 22nd May, 1979 challenging the Order dated 20th April, 1979 on various grounds alleging that the defendant-appellant as well as defendant-respondent No. 4 was threatening to interfere with their possession and was also claiming ownership rights over the suit land. A declaration has been sought by the plaintiff-respondents claiming that they are the owner in possession of the suit land and the order dated 20th April, 1978 passed by defendant-respondent No. 4 was null and void.

(4) It is pertinent to mention that defendant-respondents No. 4 and 5 (the official respondents) did not file any written statement and their defence was struck off. Defendants No. 6 to 8 who are the mortgagees did not contest the suit.

(5) The suit was only contested by the defendants-appellants, who are the allottees of the surplus land. The stand taken by them in their written statement is that once the suit land was declared surplus, it had vested in the State Government with effect from 24th January, 1971 and the plaintiffs-respondents had no concern with the

suit land. The mere fact that their father Bihari died on 8th February, 1978 would not divest the State Government ownership rights of the suit land after it has vested in it on 24th January, 1971. They supported the order dated 20th April, 1978 allotting the land to them under the Scheme. On the aforementioned basis, it was contended that there was no question of determining the surplus area or the status of the plaintiff-respondents afresh. It was further asserted that in any case the Civil Court has no jurisdiction to entertain the suit.

(6) On the vital issue, as to whether the order dated 20th April, 1978 passed by the Sub Divisional Officer (Civil) was liable to be set aside, the Civil Judge held that the order did not suffer from any legal infirmity. It was further held by him that in view of the bar created by Section 26 of 1972 Act and the rules framed thereunder, the Civil Court did not have any jurisdiction to entertain the suit and decide any question. On the basis of his finding, the Civil Judge dismissed the suit of the plaintiff-respondents.

(7) In appeal, the Appellate Court rejected various grounds of challenge raised against order dated 20th April, 1978. However, it sustains one ground that the provisions of Section 14 of 1972 Act were not followed before making allotment of the surplus area under the Scheme to the defendant-appellants. According to learned Appellate Court, the suit land could not be utilised until and unless it is separated after consolidation as this land was in joint khewat. The share of the land owner was to be separated after summary enquiry and after affording due opportunity to the person interested in such land. The view of the Appellate Court can be gleaned from para 12 of the judgment which reads as under :—

> "On consideration I find force in this submission of learned counsel for the plaintiffs because, admittedly, when the land in the hands of Behari Lal was declared surplus it was in old khasra number and it was in joint khewat. The suit land which has been allotted now to defendants No. 3 and 4, is, admittedly, in square & killa nos. As such before it could be utilised the competent Authority was required to take proceedings under section 14 of the Act 1972 which are analogous to the provisions contained in section 24 of

the Punjab Security of Land Tenures Act, but in the present case statement of OW 1 Hari Chand Patwari shows that no such proceedings were ever taken by the competent authority although he has tried to show by an empty registered envelop and a torn notice available on the utilisation file that such proceedings were taken by the competent authority. His statement shows that there is no order of the competent authority on the file to take proceedings under section 14 of the Act, 1972. His statement also shows that there is no order on the said file that any such notice was actually given and it was returned refused. The Registered envelop does not show postal stamp of the village of defendants No. 3 and 4 except the postal stamp of Sirsa itself. The endorsement "refusal" on the envelops does not show bear signatures of any post of even any date thereof. The torn notice does not bear the despatch No. of the file of the competent authority. In short from the above it follows that before the suit land was utilised, the competent authority did not take any proceedings under section 14 of the Act, 1972 and as such the order of allotment dated 20th April, 1978 on that ground is null and void and liable to be set aside. It is correct that the plaintiffs are not to get any benefit by declaring the said order to be null and void and on this ground because the suit land would not revert back to them, it having already vested in the State Government with effect from 24th January, 1971 but that by itself is no ground to maintain the impugned order dated 20th April, 1978 passed by defendant No. 1. The provisions contained in section 14 of the Act, 1972 are mandatory and not mere directory and contravention thereof cannot be over-looked."

(8) Mr. L. N. Verma, learned counsel for the defendant—appellants has argued that the plaintiff—respondents No. 1 to 3 have no *locus standi* because after the specified date i.e. 23rd December, 1972 the land had vested in the State Government. According to the learned counsel, no inheritance could be claimed in respect of the suit land which have come to be vested in the State Government. For aforementioned proposition, the learned counsel

has placed reliance on a full Bench judgment of this Court in the case of **Jaswant Kaur** *versus* **State of Haryana, (1).** The learned counsel has placed reliance on the observation made by the Full Bench in para 8 of the judgment and argued that after the land had vested in the State Government on 23rd December, 1972, plaintiff-respondents No. 1 to 3 had lost right to inherit it. The learned counsel has also pointed out that Bihari died on 8th February, 1978 much after the specified date and there was no challenge by him to the orders dated 31st August, 1961 (P-5) and 11th February, 1963 (P-4) during his life time. Therefore, both the Orders have attained finality. The learned counsel has maintained that even in the present suit filed by the plaintiff—respondents, there is no challenge to Order dated 31st August, 1961 and 11th February, 1963.

(9) The learned counsel has then argued that once the surplus land has vested in the State Government on or after 23rd December, 1972 much before the death of big land owner, who died in the year 1978, there was nothing to be inherited by the plaintiff—respondents No. 1 to 3 after his death. Therefore, no benefits could be derived by plaintiff—respondents No. 1 to 3 who are the sons of big land owner in respect of the land which was declared surplus. For the aforementioned proposition, the learned counsel has placed reliance on Division Bench judgment of this Court in the case of **Bharat Bhushan** *versus* **State of Haryana, (2).** The learned counsel has stressed that after the vesting of land in the State, it is free to utilise it under the Scheme and thereafter, no notice is required to be served on the plaintiff—respondents No. 1 to 3. For the aforementioned proposition, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of **Surinder Nath Diwan** *versus* **State of Haryana, (3).** The learned counsel has urged that plaintiff—respondents No. 1 to 3 has no *locus standi* to assert that their father Bihari was entitled to 30 standard acres of land instead of 60 ordinary acres because during his life time Bihari did not challenge the orders dated 31st August, 1961 and 11th February, 1963, Ex. P-5 and Ex. P-4 respectively. The learned counsel has maintained that these orders have not even been challenged by the plaintiff—respondents.

(1) 1977 P.L.J. 230
(2) 1990 P.L.R. 563
(3) 1994 P.L.J. 252

(10) He has then submitted that the order dated 20th April, 1978 cannot now be challenged on the ground that the surplus area was required to be separated after consolidation in accordance with the provisions of Section 14 of 1972 Act. According to learned counsel, the suit will be clearly time barred as the order dated 20th April, 1978 could have been challenged within a period of one year as per Article 100 of the Schedule attached to the Limitation Act, 1963 which expired on 20th April, 1979 whereas the suit was filed on 20th May, 1979. He has also submitted that Section 26 of the 1972 Act creates a bar to the jurisdiction of the Civil Court and therefore, the suit itself was not maintainable. He has placed reliance on a Full Bench Judgment of this Court in the case of **State of Haryana** *versus* **Vinod Kumar (4).** He has also relied upon a judgment of the Supreme Court in the case of **Azad** *versus* **Dharampal (5),** and a judgment of this Court in the case of **Radha Bai** *versus* **State of Haryana and other (6).** The learned counsel has further pointed that plaintiff—respondents No. 1 to 3 have not suffered any prejudice because they were not co-sharer with Bihari on 31st August, 1961 and 11th February, 1963 when these orders declaring the land surplus were passed. Accordingly to the learned counsel, in any case, the failure to take proceeding under Section 14 of 1972 Act was a mere irregularity and on that ground the Appellate Authority should not have reversed the judgment and decree passed by the trial Court as provided by Section 99 of the Code. The learned counsel has also emphasised that the order dated 20th April, 1978 is an appealable order under para 13 of the Scheme as well as Section 18 of the Act.

(11) Mr. B.B. Gupta, learned Additional Advocate General, Haryana has supported the submission made by the learned counsel for defendant—appellants and argued that the jurisdiction of a Civil Court is barred. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of **Ram Swaroop** *versus* **S. N. Maira, (7), Dharampal** *versus* **State of Haryana, (8)** and **Kali Ram** *versus* **Asha Chaudhary, (9).**

(4) 1986 P.L.J. 161
(5) 1998 (2) P.L.J. 407
(6) 1997 (1) P.L.J. 481
(7) 1991 (1) P.L.J. 11
(8) 2002 (1) P.L.J. 175
(9) 2000 (2) P.L.J. 13

Therefore, he has submitted that the suit of plaintiff—respondents No. 1 to 3 is liable to be dismissed as has rightly been held by the learned Civil Judge and the judgment of the Appellate Court is liable to be reversed.

(12) Mr. Dinesh Ghai, learned counsel for plaintiff—respondents No. 1 to 3 has argued that once the land was declared surplus under 1953 Act, then, the separate share of the plaintiff—respondents has to be determined under Section 24-A of 1953 Act after consolidation has taken place. The learned counsel has maintained that Section 14 of 1972 Act would not come into play. For the aforementioned proposition, learned counsel has placed reliance on a Division Bench judgment of this Court in the case of **State of Punjab (now Haryana)** *versus* **Mauji (10)** and another judgment of this Court in the case of **Parma Nand** *versus* **State of Haryana, (11).** The learned counsel has also placed reliance on another judgment of this Court in **Munshi Singh** *versus* **S.D.M. Rewari, (12)** to argue that after the declaration of surplus area and before its utilisation, if the land has been subjected to the process of consolidation, then, the competent officer is to separate the surplus area of such person out of the area of land obtained by him after consolidation. Accordiing to the learned counsel as a result of consolidation operations after the date of the order declaring the land as surplus the land owners holding has suffered a demunition, then, the Collector is to re-determine the permissible area and the surplus area of the land holder. For the aforementioned proposition, learned counsel has placed reliance on another judgment of this Court in the case of **Cher Ram & others** *versus* **The Collector (13).**

(13) After hearing the learned counsel for the parties, I am of the considered view that this appeal is liable to be dismissed. A finding of fact has been recorded by the Appellate Court that the consolidation has taken place after the Orders dated 31st August, 1961 and 11th February, 1963 declaring the land of Bihari as surplus. It has further

(10) 1977 P.L.J. 16
(11) 1997 (2) P.L.J. 654
(12) 1963 P.L.J. 133
(13) 1969 P.L.J. 579

been found that the procedure postulated by Section 14 of 1972 Act has not been followed as the land has not been utilised till 20th April, 1978 (Ex. P-1). On 20th April, 1978, the Sub-Divisional Officer, Sirsa exercising the powers of Prescribed/Allotment Authority, under the 1972 Act has allotted the land to the tenant/appellants. According to Section 14 of 1972 Act, a competent officer is empowered to separate the surplus area of a land owner obtained by him after consolidation. Section 14 of the Act read as under :—

> "**POWER TO SEPARATE SHARES OF JURISDICTION.**—(1) Where as landowner owns land jointly with other landowners and his share of such land or part thereof has been, or is to be, declared as surplus area, the officer competent to declare such area, or where such area has been declared, the officer competent to utilize it, may on his own motion, after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other landowners.
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> (2) Where after the declaration of surplus area of any person and before the utilisation thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such persons out of the area of land obtained by him after consolidation."

(14) A perusal of the above produced provisions shows that a competent officer who is empowered to utilise the surplus area can separate the surplus area if a land owner owns land jointly and his share of such land has been declared surplus. The aforementioned process has to be undertaken after a summary enquiry and due opportunity of being heard to the person interested. As per Sub Section 2 of Section 14, if after declaration of surplus area and before its utilisation the land has been subjected to the process of consolidation then the competent officer is empowered to separate the surplus area of such persons out of the area of the land obtained by him after consolidation. The aformentioned provision has not excluded the

principles of natural justice which would obviously mean that an opportunity of hearing has to be afforded to a person interested like the plaintiffs-respondents. This principle has been laid down by the Supreme Court in the cases of **Mohinder Singh Gill** *versus* **The Chief Election Commissioner, (14)** and **Menaka Gandhi** *versus* **Union of India, (15).** Therefore, I am of the view that the judgment and decree passed by the learned Appellate Court does not suffer from any legal infirmity.

(15) It is also well settled that once the surplus area has been declared under the 1953 Act or any other Punjab law then, a land owner cannot seek determination of the same as the surplus area has come to be vested in the State on the specified date i.e. 23rd December, 1972. The controversy has been finally settled by the Supreme Court in **Bhagwanti Devi** *versus* **State of Haryana, (16), Amar Singh** *versus* **Ajmer Singh, (17)** and **Ram Swaroop** *versus* **S.N. Maira (18).** However, Section 14 provides for a situation, if after declaration of surplus area there is consolidation and the land is not utilised. Thus Surplus area has to be separated out of the land obtained by the owner after consolidation. Therefore, the aforementioned judgments of the Supreme Court would not be attracted.

(16) The argument that suit of the plaintiffs-respondents was not maintainable in view of the bar created by section 26 of the 1972 Act, would not require any detailed consideration because once it is found that the principles of natural justice have been violated, and no process under Section 14 to separate the surplus area was undertaken after affording an opportunity of hearing, then, the ratio of Full Bench judgment of this Court in **Vinod Kumar's case** *(supra)* would come into play and the suit would be maintainable despite the bar created by Section 26 of the 1972 Act. The Civil Court cannot be deemed to have waived the jurisdiction in cases where a plaintiff complains of violation of principles of natural justice and wanton disregard to the provisions of law. Therefore, the argument raised by the learned counsel that it is a mere irregularity as provided by Section 99 of the Code or the jurisdiction is barred by virtue of

(14) AIR 1978 S.C. 851
(15) AIR 1978 S.C. 597
(16) AIR 1994 S.C. 1869
(17) 1994 Supplementary6 (3) S.C.C. 213
(18) 1999 (1) S.C.C. 738

Section 26 of 1972 Act, would be completely misconceived. The Full Bench of five Judges placed reliance on two judgments of the Supreme Court in the cases of **Katikara Chintamani Dora** *versus* **Guatreddi Annamanaidu, (19)** and **M/s Kamala Mills Limited** *versus* **State of Bombay, (20).** In both the aforementioned judgments, it has been authoritatively held by the Supreme Court that exclusion of jurisdiction of the Civil Court is subject to two limitations :—(a) The Civil Court would still enjoy jurisdiction to examine the cases where the provisions of a statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, (b) The Civil Court is also entitled to examine exact extent to which the powers of statutory tribunals are exclusive.

(17) After examining the aforementioned Supreme Court judgments and other judgments, their Lordships of the Full Bench have observed as under :—

> "In the face of this authoritative pronouncement there is no room for any doubt that if an order is passed by a tribunal of limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the civil Court even if the statute expressly bars the jurisdiction of the civil Court to entertain a suit to challenge the validity or legality of the order passed by such a tribunal. This question was once again considered by a Constitution Bench of the Supreme Court in **Dhulabhai etc.** *versus* **State of Madhya Pradesh and another, A.I.R. 1969 S.C. 78,** and the seven principles contained in the judgment of the learned Chief Justice were enunciated. The scope of the observations made and the rule laid down in **M/s Kamla Mill's case** *(supra)* came under specific consideration of the Bench and it was observed that the Special Bench (In **M/s Kamla Mill's case)** refrained from either accepting the dictum of **Mask Co's case 67 Ind. App. 222 (= A.I.R., 1940 P.C. 105)** or rejecting it, to the effect that even if jurisdiction is excluded by a provision making the decision

(19) AIR 1974 S.C. 1069
(20) AIR 1965 S.C. 1942

of the authorities final, the civil Courts have jurisdiction to examine into cases where the provisions of the particular Act are not complied with. The jurisdiction of the civil Court to try the suits against the orders passed by the Tribunal of Special jurisdiction in violation of the provisions of the statute or principles of natural justice was thus upheld even though the jurisdiction of civil Court to question the legality of validity of the orders of the Tribunal was expressly barred by the statute."

(18) In view of the above the judgments relating to Section 26 on which reliance has been placed by the learned State Counsel would not be attracted to the facts of the present case. On principle and precedent, it stands established that even bar of jurisdiction of the Civil Court would not extends to entertain a civil suit in case where the principles of natural justice have been violated or there is wanton disregard to the statutory provisions.

(19) The other argument that the suit filed by the plaintiffs-respondents is barred by limitation is also devoid of merit because no such plea was raised before the Courts below. A perusal of the judgments of both the Courts below show that neither any such issue was raised nor it was examined. It is well settled that the question concerning the period of limitation is a mixed question of fact and law which has to be determined by adducing proper evidence by the parties. For the aforementioned proposition, reliance could be placed on a judgment of the Supreme Court in the case of **Banarsi Dass** *versus* **Kanshi Ram (21).** Therefore, the question with regard to the period of limitation cannot be permitted to be raised, for the first time before this Court.

(20) No other argument has been urged.

(21) For the reasons aforementioned, this appeal fails and the same is dismissed. However, in the peculiar facts and circumstances of the case, I refrain from making any order as to costs

R.N.R.

(21) AIR 1963 S.C. 1165