of their plea, be it by way of claiming relief itself or defending a cause, would be somewhat responsible, the Courts in this country at all levels, would not be over-flowing and, thus, over-burdened, as they are, with the work which has attained alarming proportions.

(7) Before we may part with this order, we would like to mention that the learned Single Judge also noted the contention of learned counsel for the petitioners based upon Sections 6(a) and 10 of the Evacuee Interest (Separation) Act, 1951 as also 7(a) of the Administration of Evacuee Property Act, 1950 but expressed no opinion on the same and, in our view, rightly so. Once writ petition was likely to be allowed on the specific point taken by the authorities below and by reversing the same, there was no necessity at all to go into any other point, even though, it appears to us and so it appears to be the view of learned Single Judge from the narration of facts and contentions of learned counsel for the petitioners, as noted by him, that there was *prima facie* merit in that also.

(8) Finding no merit in this appeal, we dismiss the same with costs, quantified at Rs. 2000.

R.N.R.

Before Bakhshish Kaur, J

BADRI PARSHAD—*Petitioner*

versus

BIRBAL AND ANOTHER—*Respondents*

Revision Petition No. 4393 of 1999

29th November, 2001

Punjab Security of Land Tenures Act, 1953—S. 25—Land of Petitioner declared surplus—Ejectment of the tenant from the permissible area—Tenant unsuccessfully availing all the remedies before the Revenue Court and the Civil Court—Tenant filing another civil suit without making reference to the previous litigation—Trial Court deciding the preliminary issue of jurisdiction against the petitioner—Challenge thereto—S. 25 of the 1953 Act bars the jurisdiction of Civil Court to try and entertain such a suit against

the orders of the revenue authority—Petition allowed with costs while dismissing the suit of the tenant.

Held, that the plaintiff has availed all the remedies availale to him before the revenue courts unsuccessfully. The respondent after availing all the remedies availale to him by filing appeals and revision before the revenue authorities and all resulted into dismissal of his cases cannot invoke jurisdiction of the Civil Court by filing a suit for declaration after 35 years of the passing of the order. The tenant had concealed material facts by not disclosing the factum of previous litigation which had been going on between the parties before the revenue authorities as well as before the Civil Court. It is well settled that when a competent authority passed an order in exercise of jurisdiction vested in it and the same is not void, then the Civil Court will have no jurisdiction to entertain the suit.

(Para 28)

Sanjay Bansal, Advocate *for the Petitioner.*

Abha Rathore, Advocate *for the respondent.*

JUDGMENT

BAKHSHISH KAUR, J

(1) Badri Parshad, has filed this revision petition under Article 227 of the Constitution of India for issuance of an order, or, direction setting aside/quashing the order dated 2nd August, 1999 (Annexure P-14) passed by the Additional District Judge, Sirsa and the order dated 19th July, 1997 (Annexure P-12) passed by the Additional Civil Judge (Senior Division), Dabwali.

(2) Facts giving rising to this petition, briefly stated, are as under :

(3) The petitioner was a big land owner. Surplus area case of the petitioner was decided by the Collector, Surplus Area, Sirsa 28th September, 1961, thereby reserving 60 ordinary acres as permitted by the Act as land owners permissible area.

(4) On 12th December, 1968, Birbal—respondent No. 1, filed an application for purchase of land measuring 125 Kanals 17 marlas which was under his possession. This land was owned by the petitioner and formed part of 60 ordinary acres left as permissible area.

(5) The Assistant Collector Ist Grade, Sirsa, had dismissed the aforesaid application under Section 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Act'). Copy of the order is Annexure P-1. This order attained finality because respondent No. 1. had not filed any appeal. The petitioner then filed an application for ejectment of respondent No. 1, which was allowed by the Assistant Collector Ist Grade,—*vide* his order dated 3rd September, 1974. He was ordered to be ejected from the land measuring 125 Kanals 12 marlas. Since respondent No. 1. did not pay the rent in respect of the remaining land, for which his ejectment had been ordered, the petitioner then filed an application for ejectment on the ground of non-payment of rent, which was allowed by the Assistant Collector 2nd Grade on 21st January, 1983.

(6) Respondent No. 1, aggrieved by the order dated 3rd September, 1974 preferred an appeal before the Collector, Dabwali, which was dismissed on 11th November, 1975. Thereafter, no further appeal under the Act was filed by him. He had filed another similar appeal before the Collector, Dabwali against the order dated 21st January, 1983 passed by the Assistant Collector 2nd Grade. That too, was dismissed on 4th January, 1985. Thus, both the orders dated 11th November, 1975 and 4th January, 1985 had attained finality.

(7) The respondents even after passing of the order of ejectment as above, had not vacated the land. With a view to remain in unauthorised possession of the land which has been declared surplus to be the served area of the land owner, he had filed civil suit No. 123 of 1989 seeking declaration that he was in cultivating possession of the suit land on payment of 1/4th 'batai" bearing No. 125 kanals 12 marlas and the orders passed by the revenue courts/officers ordering the ejectment were illegal, and liable to be set aside,. The suit was dismissed on 26th October, 1989 on the ground that it was not only barred by time but the Civil Court had got no jurisdiction to entertain the suit. (Annexure P-6). No appeal was filed against the judgment of the Civil Court.

(8) Respondent No. 1, after a lapse of 30 years challenged the order dated 28th September, 1961 passed by the Collector—respondent No. 2, before the Commissioner, Hisar Division, Hisar. This appeal was dismissed on 22nd April, 1994.

(9) Aggrieved by that order, he preferred a revision before the Financial Commissioner, which too was dismissed on 18th April, 1996.

(10) After having exhausted all the remedies available to him under the Act, he again filed a Civil suit No. 298 of 1996 dated 22nd February, 1996 without making reference to the previous orders passed by the revenue authorities. The petitioner, who is defendant before the trial Court in the suit had filed a written statement and raised preliminary objections regarding maintainability, limitation of filing of suit etc. It was pleaded, *inter alia* that he has no *locus standi* or cause of action to file the suit. It is bad for non-joinder of necessary parties. He has not come to the court with clean hands. He has suppressed material facts from the Court. The suit is also barred by the principle of *resjudicata.*

(11) Issues arising from the pleadings of the parties were framed by the trial court. One of the issues relating to jurisdiction of the Court was treated as preliminary. It was numbered as No. 5 and decided against the petitioner on 19th July, 1997. Copy of the order annexed is Annexure P-6.

(12) Aggrieved by the order the petitioner had preferred an appeal which was dismissed on 2nd August, 1999 by the learned Additional District Judge, Sirsa on the ground that it is not maintainable (Annexure P-14).

(13) The petitioner has thus prayed for setting aside or quashing the order under Article 227 of the Constitution of India.

(14) I have heard Shri Sanjay Bansal, Advocate, for the petitioner and Mrs. Abha Rathore, Advocate, for the respondents and have gone through the record carefully.

(15) Shri Bansal contended that the petitioner was eroneously advised to file an appeal against the order dated 19th July, 1997 passed by the trial Court. In fact, revision petition was required to be filed under Section 115 of the Code or a petition under Article 227 of the Constitution.

(16) Concededly, the appeal prefered by the petitioner against the order impugned was dismissed as not maintainable, as the order deciding preliminary issue is not appealable either under Section 104

or under Order 43 of the Code of Civil Procedure. The learned Additional District. Judge was also of the view that the decision on issue No. 5 that the civil court has no jurisdiction to try the suit does not finally decide the issue which is still pending and as such, the impugned order does not amount to a decree of final order against which an appeal lie under Section 96 of the Code.

(17) It is , therefore, urged that if the first Appellate Court was of the view that the appeal was not mainainable under Section 96 or under Section 104 or order 43 of the Code, then the Court should have returned the appeal to be presented before a Court of competent jurisdiction instead of dismissing the appeal, being not maintainable.

(18) Now adverting to the revisional jursidiction of this Court, whether the objection raised regarding the maintainability of the suit can be looked into on the basis of the orders passed by the Courts below. In this context, reference can be easily made to ***"Industrial Credit and Investment Corporation of India, Ltd.* versus *Grapco Industries Ltd. and others (1).*** It has been observed that there was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. It is further held, that, "there is no doubt that the High Court can even interfere with interim orders of the Courts and Tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too tecnical approach is to be avoided."

(19) In somewhat similar circumstances, same situation had arisen in ***"Baby* versus *Travencore Devaswom Board and others. (2).*** It was a case where order passed by the learned Tribunal under Karala Land Reforms Act, was affirmed by the Appellate Court but the High Court had set aside the judgment of the Appellate Authority on the ground that several material docments including judicial proceedings were not adverted to by the Tribunal. The High Court also held that the legal effect of these documents was not considered by the Tribunal. On these grounds, it was argued that the High Court was not entitled to interfere under Section 103 of the Kerala Land

(1) AIR 1975 SC 1975
(2) AIR 1999 SC 519

Reforms Act. Dismissing the appeal filed by the appellant in the case, the Apex Court observed as under :—

> "But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of facts had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision under Section 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the Tribunals. We do not, therefore, interfere under Article 136 of the Constitution of India. The appeals fail and are dismissed".

(20) In the case in hand also the first Appellate Court dismissed the appeal, being not maintainable but the trial Court while deciding issue No. 5 which was treated as preliminary, had not taken into consideration the relevant and material docments and the facts already brought on record.

(21) To quote a few instances, Birbal had filed a Civil suit No. 123 of 89 for declaration that he is in cultivating possession of suit land on 1/4 batai as a tenant at will. He had also challenged the order passed by the revenue Court and the competent authority under the Punjab Security of Land Tenures Act. The suit was dismissed as per Annexure P-6, that the Civil Court had no jurisdiction, and that it is barred by time. No appeal was preferred against this judgment dated 26th October, 1989.

(22) Birbal—respondent No. 1 had filed a suit for declaration that he has been in cultivating possession as tenant "gair-maurussi" before 15th April, 1953 under Badri Parshad defendent No. 2 and his predecessor. He had illegally become land occupancy tenant over the suit land, therefore, entitled to allotment of this land but the defendent Badri Parshad in collusion with defendant No. 1. i.e. the Collector Surplus Area, Sirsa got passed the order dated 28th September, 1961 illegally, against the law and facts and without notice and even without hearing the petitioner. Therefore, this order is liable to be set

aside. He had also prayed that defendant No. 2. i.e. Badri Parshad be restrained from ejecting him and recovering batai for the suit land.

(23) It is apparent that the plaintiff respondent (hereinafter referred to as the respondent) is challenging the order dated 28th September, 1961 passed by the revenue authority, as according to him, it has been passed by practising fraud and incollusion with the petitioner Badri Parshad. Whether the order passed by the revenue authority on this ground can be challenged in a civil suit because section 25 of the Punjab Security of Land Tenures Act, bars jurisdiction of the civil court to try and entertain the suit. Section 25 of the Act reads thus :—

> "Section 25—Section bars the jurisdiction of Civil Courts to try and adjudicate any proceeding or action taken under the Act".

(24) In the case in hand, plaintiff has availed all the remedies available to him before the revenue courts unsuccessfully. It is also pertinent to note that the order dated 28th September, 1961 passed by the Collector, Surplus Area, Sirsa, which is being challenged in the civil suit, was also challenged by the respondent by way of filing an appeal, which was dismissed by the Commissioner, Hisar Division, Sirsa on 22nd April, 1994, Copy of the order is Annexure P-7.

(25) The order passed by the Commissioner was further challenged before the Financial Commissioner, Haryana and it was dismissed on 18th April, 1996, as per order Annexure P-8. Thus, where the revenue Courts have already recorded finding, the Civil Court has also decided the suit against respondent *vide* Annexure P-6 whether the plaintiff—respondent can challenge the validity of the order dated 28th September, 1961 passed by the Collector, Surplus Area by way of filing a civil suit for declaration in the years 1996 nearly after 35 years ? Certainly not. The jurisdiction of the civil court is, therefore, barred to entertain the suit, where the plaintiff claims himself to be a tenant on batai and that the order passed by the revenue authority is illegal having been passed in collusion with the petitioner.

(26) ***Jiwan*** **vs** ***Ram Sarup (dead) through His L. Rs.*** **(3),** was a case under the Punjab Tenancy Act and the plaintiff in the suit

(3) 1998 (1) PLJ 38

had sought declaration to be owner in possession claiming that he is in possession of the suit land as occupancy tenant and so also is predecessor-in-interest on payment of nominal rent and on coming into force of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, with effect from 15th June, 1952, had automatically become owner of the suit land. It was, therefore, observed that the question whether he is a occupancy tenant, or, a tenant at will, has to be decided by the revenue court only and not by the civil court. The suit is not triable by the civil court. It was also observed that Section 10 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) 1952, provides that every award or order made by the Collector, Commissioner or Financial Commissioner, shall be final, and no proceedings or order taken or made under this Act, shall be called in question by any Court or before any officer or authority. Thus, Section 10 bars the jurisdiction of any Court or before any officer or authority to go into the validity of every award or order made by the Collector, Commissioner or Financial Commissioner, to which finality is attained.

(27) The jurisdiction of the civil court is also barred to entertain the suit wherein validity of an order passed on 28th September, 1961 has been challenged. The facts of the case are akin to the facts reported as ***Sarupa and others*** **versus** ***The Panchayati Akhara, Kala Bara Udasian, Thanesar and others (4).*** The plaintiff in that case had filed a suit for declaration to the effect that the order of the Collector dated 15th March, 1961 declaring the land surplus and also subsequent orders are illegal, void and without jurisdiction. While dealing the matter with the point of limitation, the Hon'ble Mr. Justice V. K. Jhanji in para 5 of the judgment observed as under :—

> "A suit for declaration that the order of the Collector declaring the land surplus is illegal, void and ab-initio, is not covered by any specific article of the Limitation Act, and therefore, it must fall within the residuary article. Residuary Article 113 provides a period of three years for institution of a suit for which no period of limitation has been provided elsewhere in the Schedule of Limitation Act. This period has to be reckoned from the date the right to sue accrues. Right to sue means a right to obtain relief by means of legal process".

(4) 1998 (2) PLJ 635

(28) The respondent after availing all the remedies available to him by filing appeals and revision before the revenue authorities and all resulted in to dismissal of his cases, cannot invoke juridiction of the civil court by filing a suit for declaration after 35 years of the passing of the order. It has also been pointed out during the course of arguments that the plaintiff had concealed material facts by not disclosing the factum of previous litigation which had been going on between the parties before the revenue authorities as well as before the civil court. It is well settled that when a competent authority passes an order in exercise of jurisdiction vested in it and the same is not void, then the civil court will have no jurisdiction to entertain the suit.

(29) For the aforesaid reasons, this petition is allowed with costs assessed as Rs. 5000. The impugned order deciding issue No. 5 against the petitioner is set aside. As a consequence thereof, the suit for declaration filed by the plaintiff-respondent is bound to be dismissed as the civil court had got no jurisdiction to entertain the suit.

R.N.R.

Before Amar Bir Singh Gill & Swatanter Kumar, JJ

MS. PRERNA DEAN—*Petitioner*

versus

CHRISTIAN MEDICAL COLLEGE, LUDHIANA & OTHERS—*Respondents*

C.W.P. No. 9546 OF 2001

8th November, 2001

Constitution of India, 1950—Art. 226—Sponsorship Policy Document, 2000—Cl. 6.2.4—Admission to MBBS on the basis of entrance test—Petitioner applying for under reserved category relating to sponsored for Mission Hospitals—Cl. 6.2.4. of the 2000 policy provides that Sponsoring Agency can sponsor as many candidates as it wishes but not less than three candidates—Sponsoring Authority sponsoring only two candidates—Denial of admission to the petitioner under reserved category—Respondents failing to publish such a condition as stipulated in the Cl. 6.2.4.—Whether denial of admission violates the instructions of the College and contrary to the terms and