

CASE NO.:
Appeal (civil) 4565 of 2002

PETITIONER:
DHRUV GREEN FIELD LTD.

RESPONDENT:
HUKAM SINGH AND ORS.

DATE OF JUDGMENT: 05/08/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. VARIAVA

JUDGMENT:
JUDGMENT

2002 Supp(1) SCR 449

The Judgment of the Court was delivered

SYED SHAH MOHAMMED QUADRI J. Heard the learned counsel for the parties.

Leave is granted.

The judgment and order of a learned Single Judge of the High Court of

* This Act was made applicable to the State of Haryana by the Haryana Adaptation of Laws (State and Concurrent Subjects), Order, 1968. Punjab and Haryana at Chandigarh in S.A.O. No.28 of 2000, made on August 16, 2001, is assailed in this appeal filed by the first defendant in the suit.

The short question that arises for our consideration is: whether provisions of Section 13 read with Section 10-A of the Act bar jurisdiction of a civil court to entertain the suit filed by the respondents.

The factual matrix giving rise to the question may be noticed here. The appeal arises out of the suit filed by respondents (plaintiffs), in representative capacity, challenging the validity of the lease of land measuring 280 kanals situated within the revenue estate of village Madnaka, Tehsil Hathin, District Faridabad (for short, the suit land), granted by the Gram Panchayat Madnaka for a period of 10 years for Rs.10 lacs in favour of the appellant on October 1, 1997. It is alleged that the lease is in violation of the provisions of Punjab Village Common Lands (Regulation) Act, 1961 (referred to in this judgment as 'the Act') and the Rules made thereunder. The plea of the appellant (defendant), inter alia, is that the civil court has no jurisdiction to entertain the suit in view of the provisions of Sections 10-A and 13 of the Act.

On July 26, 2000, the learned trial judge dismissed the suit holding that the civil court has no jurisdiction to entertain and try the suit. However, on appeal the First Appellate Court took the view that the civil court did have jurisdiction and accordingly allowed the appeal decreeing the suit of the respondents by its judgment and decree dated September 5, 2000, which was assailed in Second Appeal, SAO No. 28 of 2000, in the High Court of Punjab & Haryana at Chandigarh by the appellant herein. The second appeal was dismissed on August 16, 2001. That judgment and decree of the High Court are under challenge in this appeal.

The main contention urged by Mr. Manoj Swarup, the learned counsel for the appellant, is that as the validity of the lease is required to be decided by the Assistant Collector of the First Grade under Section 10-A(2)(iii) of the Act, the jurisdiction of the civil court is barred by Section 13 thereof. Mr. Avijit Bhattacharjee. The learned counsel for the respondents, invited our attention to the provisions of sub-rule (2) and sub-rule (10) of

Rule 6 of the Punjab Village Common Lands (Regulations) Rules, 1964 (for short, 'the Rules') and contended that inasmuch as a lease of land could be granted only for a period not exceeding five years under the Rules but the impugned lease was granted for ten years and that though the auction notice was required to be issued fifteen days prior to the date of the auction, all the three notices for auction for lease of suit land, were not in conformity with sub-rule (10), being for a shorter period, as such the lease granted by the Gram Panchayat would be wholly illegal, void and without any legal consequence and, therefore, the civil court would have jurisdiction to entertain the suit and adjudicate the disputes raised therein.

The jurisdiction of the courts to try all suits of civil nature is very expansive as is evident from the plain language of Section 9 of the Code of Civil Procedure.* This is because of the principle 'ubi' jus ibi remedium.** It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the civil court would be ousted to entertain such a suit. The general principle is that a statute excluding the jurisdiction of civil courts should be construed strictly.

The question when and in what circumstances, can a suit of civil nature be said to be barred by a special statute, is no longer *res Integra*. *Mis. Kamala Mills Ltd v. State of Bombay*, AIR (1965) SC 1942, a seven-judge Bench of this Court laid down the principle thus:

"The question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered, in every case, in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose.

Whenever a plea is raised before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. Where the exclusion of the civil court's jurisdiction is expressly provided for, the consideration

9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation-I . A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation- II. For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation. I or whether or not such office is reached to a particular place.

Where there is a right there is a remedy. as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, it cannot however, be decisive. But when exclusion is pleaded as a matter of necessary implication. Such considerations would be very important, and in conceivable circumstances, might even become decisive. If a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it is pertinent to enquire whether remedies, normally associated with actions in civil courts are prescribed by the said statute or not"

That judgment was followed in Lala Ram Swarup and Ors. v. Shikar Chand and Anr., [1966] 2 SCR 553. There Gajendragadkar, CJ. speaking for a Constitution Bench of this Court formulated the following tests:

"The two tests, which are often considered relevant in dealing with the question about the exclusion of civil courts' jurisdiction are (a) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating that intention, and (b) does that statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. Applying these tests the inference is inescapable that the jurisdiction of the civil courts is intended to be excluded.

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The bar excluding the jurisdiction of civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity."

In the light of the above discussion, the following principles may be re-stated:

(1) If there is express provision in any Special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein lead to a conclusion in regard to exclusion of jurisdiction of a civil court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred, If however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.

In the light of the above discussion we shall proceed to examine the relevant provisions of the Act in this case.

It would be apt to refer to Section 13 of the Act which bars the suit. The said provision reads as under:

"13. Bar of Jurisdiction- No civil court shall have jurisdiction:-

(a) To entertain or adjudicate upon any question whether-

(i) any land or other immovable property is or is not shamlat deh.

(ii) Any land or other immovable property or any right, title or interest in such land or other immovable property vests orders not vest in a Panchayat under this Act.

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue court officer or authority empowered to do so under this Act."

A perusal of the section, quoted above, would show that the jurisdiction of a civil court stands ousted: (a) to entertain or adjudicate upon any of the following questions: (i) any land or other immovable property is or is not shamlat deh. (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under the Act; (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine, or (c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under the Act. Clauses (b) and (c), noted above, are relevant for our purpose. In respect of any matter which any revenue court, officer or authority is empowered by or under the Act to determine the issue, the jurisdiction of the civil court in respect of that matter is barred. So also, where the Act empowers any revenue court, officer or authority to decide the legality of any action taken or matter decided by such court or authority such a question cannot be entertained or adjudicated upon by a civil court.

In regard to a claim falling under Section 13 (a)(i), this Court in *Babu Ram and Ors. v. Gram Sabha Bahavi and Anr.*, [1988] Suppl. SCC 485 held that the jurisdiction of the civil courts was barred.

It is well-settled that the averments and relief claimed in the plaint determine the jurisdiction of the court. We have perused the plaint and the relief claimed there. The respondents-plaintiffs prayed for the following relief in the suit:

"that a decree for declaration to the effect that the auction dated September 1, 1997 in respect of the suit land mentioned in para No.1 of the plaint is illegal, unlawful, ineffective, inoperative, sham, bogus, null and void, liable to be cancelled and is not binding on the plaintiffs and other inhabitants of village Madnaka being done by way of fraud, may kindly be passed in favour of the plaintiffs and against the defendants with costs of suit. As a consequential relief of said declaration, a decree for permanent injunction restraining the defendants from cutting away the green trees and lifting away the lying green trees from the suit land and also from digging any pond in the suit land, may kindly be passed in favour of the plaintiffs and against the defendants or any other relief which the Hon'ble Court deems proper be also awarded to the plaintiffs."

It may be recalled that the legality of auction and grant of lease of the suit and by the Panchayat are challenged as being in violation of sub-rules (2) and (10) of Rule 6 of the Rules. Now that takes us to the question whether such disputes are required to be decided by any revenue court, officer or authority under the Act.

We may notice Section 10-A of the Act which deals with the power of the Assistant Collector of the First grade in Haryana to cancel or vary sale or lease etc. of land vested in Panchayats which is as under:

"Section 10-A (As in Haryana) Power of Assistant Collector of the First grade in Haryana. To cancel or vary sale or lease etc. of land vested in Panchayats-

(1) Notwithstanding anything contained in this Act or the Shamilat Law or in any other law for the time being in force, the Assistant Collector of the First Grade in Haryana may call for, from any Panchayat in the area of his jurisdiction the record of any (sale in Haryana lease, contract of agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it, whether such (sale in Haryana) lease, contract or agreement is entered into before or after the commencement of the Punjab Village Common Lands Regulation) Amendment Act, 1964 and examine such record for the purpose of satisfying himself as to the legality or propriety of such sale, lease, contract or agreement.

(2) Where, on examination of the record under sub- section (1) and after

making such inquiry, if any, as he may deem fit, the Assistant Collector of the First Grade in Haryana is satisfied that such sale, lease, contract or agreement-

(i) has been entered into, in contravention of any of the provisions of this Act or the rules made thereunder; or

(ii) has been entered into as a result of fraud or concealment of facts: or

(iii) is detrimental to the interests of the Panchayat as prescribed:

the Assistant Collector of the First Grade may, notwithstanding anything as aforesaid, cancel the sale, lease, contract or agreement or vary the terms thereof, unconditionally or subject to such conditions as he may think fit:

Provided that no order under this sub-section shall be passed by the Assistant Collector of the First Grade without affording an opportunity of being heard to the parties to the sale, lease, contract or agreement"

A plain reading of Section 10-A, extracted above, shows that the Assistant Collector of the First Grade is empowered to call for record of any sale, lease, contract or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested in it (whether such sale, lease, contract or agreement is entered into before or after the commencement of the Act) and examine such record for the purpose of satisfying himself as to the legality or propriety of such sale, lease, contract or agreement which has been entered into in contravention of any of the provisions of the Act or the rules made thereunder or has been entered into as a result of fraud or concealment of facts or is detrimental to the interests of the Panchayat as prescribed. Notwithstanding anything as aforesaid, the Assistant Collector of the First Grade may cancel the sale, lease, contract or agreement or vary the terms thereof unconditionally or subject to such conditions as he may think fit. The proviso appended to sub-section (2) obliges the Assistant Collector of the First Grade to afford an opportunity of being heard to the parties to the sale, lease, contract or agreement before making an order under sub-section (2). From a combined reading of sub-section (1) and (2) of Section 10-A, it is clear that any matter which raises the issue of violation of the provisions of the Act or the Rules made thereunder including the question of lease being entered into as a result of fraud or concealment of facts or even otherwise detrimental to the interests of the Panchayat as prescribed, is required to be decided by the Assistant Collector of the First Grade. In view of the provisions of Section 13 of the Act, referred to above, the jurisdiction of the civil court to entertain adjudicating such questions is clearly barred. We may add that on the facts and in the circumstances of the case grant of impugned lease might be termed as illegal but it cannot be said to be nullity.

It follows that the High Court erred in upholding the order of the First Appellate Court that the Civil Court has jurisdiction to entertain and adjudicate the said questions in the suit. The impugned judgment and decree of the High Court confirming the judgment and decree of the First Appellate Court are, therefore, set aside and the judgment and decree of the Trial Court are restored. We, however, hasten to add that this judgment does not preclude the respondents-plaintiffs from seeking redressal from appropriate authority under the said Act. The appeal is accordingly allowed. On the facts and in the circumstances of the case. We make no order as to costs.