that on the date when the custodian moved the competent officer, the mortgagee rights had ceased to exist. The plaintiffs had come to the Court with the allegation that the order of the competent officer is without jurisdiction and *ultra vires*. Normally speaking, as already indicated, nothing done by a competent officer under the Act is subject to challenge in a civil Court and the only ground of challenge can be if the action of the competent officer is without jurisdiction. The burden was, therefore, on the plaintiffs to establish that on the date on which the competent officer took cognizance of the matter, the mortgagee rights had ceased to exist and, consequently, the property was not a composite property and the competent officer had no jurisdiction. Admittedly there is nothing on the record to show that the custodian had moved the competent officer after 14th of June, 1952. In either view of the case, therefore, I feel that the plaintiffs have failed to show that the mortgagee rights had ceased to exist and, consequently, it cannot be held that the order of the competent officer dated 12th of June, 1953, is without jurisdiction or *ultra vires*.

In view of the above, the order of the lower appellate Court, dismissing the suit has to be upheld though on slightly different grounds. This appeal is, consequently, dismissed. There will be no order as to costs

B.R.T.

APPELLATE CIVIL

Before Harbans Singh, J.

HARBANS SINGH AND OTHERS,—*Appellants*

versus

SMADH BAWA DARBAR PURI THROUGH MAHANT SURJAN PURI AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1252 of 1960.

1961

Sept., 28th

East Punjab Utlilization of Lands Act (XXXVIII of 1949)—Sections 3 and 14—Defect in the notice—Whether

cured by proviso to Section 3(2)—Civil Court—Whether has jurisdiction to try the suit challenging the act of the Collector in taking possession of the land which has not remained uncultivated for six harvests.

Held, that the proviso to section 3(2) of the East Punjab Utilization of Lands Act, 1949 does not cure all sorts of defects in the notice. It relates to defects, vagueness or insufficiency in the details of the notice and does not relate to the question whether the Collector could, under sub-section (1) of section 3, take possession of any land which is actually under cultivation and has not been left uncultivated for the last six or more harvests.

Held, that according to the provisions of sub-section (1) of section 3 of the Act, the prerequisite of the jurisdiction of the Collector is that the land is left uncultivated for more than six harvests and if that prerequisite is missing he has no jurisdiction to take over the possession of the land. The question whether a particular act of the Collector which purports to be under sub-section (1) of section 3 is or is not within his jurisdiction as laid down in the Act is certainly for a civil Court to decide and section 14 is no bar to such a suit.

Second Appeal from the decree of the Court of Shri Brijinder Singh Sodhi, Additional District Judge, Karnal, dated the 25th day of July, 1960, affirming with costs that of Shri Brij Lal Mago, Sub-Judge, Ist Class, Karnal, dated the 12th August, 1959, granting the plaintiff a decree for possession of the land.

Y. P. GANDHI AND G. C. MITTAL, ADVOCATES, for the Appellants.

S. L. PURI, MUNISHWAR PURI, AND S. L. AHLUWALIA, ADVOCATES, for the Respondents.

JUDGMENT.

Harbans Singh, J.

HARBANS SINGH, J.—Under section 3 of the East Punjab Utilization of Lands, Act, 1949, the Collector of Karnal, issued a notice, copy Exhibit P.10, calling upon Samadh Bawa Darbarpuri (through Surjan Puri, the Mahant) the owner of the land described in the

notice, declaring that the aforesaid land had not been cultivated for more than six previous harvests and that it was proposed to take over and give the same on lease for a minimum period of eight years and that if the same was desired to be brought under cultivation, an application should be put in before the 14th of February, 1955, the notice having been issued on 14th of January. This notice was served on one Amir Chand, described as a *karinda* of the Mahant, on 28th of January, 1955. According to the Mahant, no such notice was received by him or brought to his notice and that Amir Chand was not his *karinda* at any time. In pursuance of this notice, the land, which is the subject-matter of the suit, out of which the present appeal has arisen, was taken over and given on lease to various persons who have been impleaded as defendants 2 to 18, the Collector being impleaded as defendant No. 1. The present suit was brought by the Mahant on the allegation that no notice was served on him, that the notice was not valid and that, in any case, the act of the Collector in issuing the notice and taking further stpes was without jurisdiction inasmuch as the land in dispute was actually under cultivation at the time the notice was issued. The suit was resisted and a number of issues were settled which it is not necessary to detail for the purposes of this appeal. Sufficient to indicate that the trial Court came to the conclusion that the notice was properly served and that out of the land certain specific *khasra* numbers were actually under cultivation and no notice in respect of that land could be given, while with regard to the remaining *khasra* numbers the notice was proper and the land covered by these *khasra* numbers not being under cultivation was properly dealt with by the Collector. The learned trial Court, consequently, granted a decree for possession of the land comprised in the *khasra* numbers which were under cultivation. The Collector did not go in appeal against this order but the defendants to whom the land had been leased filed an appeal impleading the Collector as a respondent. A preliminary objection that no appeal lay at the instance of defendants other than the Collector was upheld by the learned Additional District Judge, but very rightly, he proceeded to decide the appeal on merits

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as well. On merits, he confirmed the findings of the trial Court that the *khasra* numbers in respect of which a decree had been granted were under cultivation at the time of the notice and, consequently, affirmed the decree. Cross-objections filed by the plaintiff, mainly based on the ground that the notice was invalid and was not served on the proper person, were also rejected. The lessees from the Collector have filed this second appeal.

The main point urged by the learned counsel is that the proviso to sub-section (2) of section 3 of the East Punjab Utilization of Lands Act, (hereinafter referred to as the Act), makes all defects in the notice served by the Collector free from any challenge. Sub-sections (1) and (2) of section 3 of the Act are to the following effect—

> "3(1) Notwithstanding any law to the contary the Collector may at any time take possession of any land which has not been cultivated for the last six or more harvests after serving on the owner a notice that, if he does not cultivate the land within such reasonable period as may be specified in the notice, the Collector may take possession of such land for the purposes of this Act.
>
> (2) The notice required by sub-section (1) shall be deemed to be duly served if delivered at, or sent by post to, the usual or last known place of residence of the owner:
>
> Provided that no notice shall be deemed to be invalid on the ground of any defect, vagueness or insufficiency."

It was urged that according to the proviso, all sorts of defects in the notice are cured and cannot form the basis of any adjudication by a civil Court. Obviously the proviso relates to defects, vagueness or insufficiency in the details of the notice and does not

relate to the question whether the Collector could, under sub-section (1) of section 3, take possession of any land which is actually under cultivation and has not been left uncultivated for the last six or more harvests. The learned counsel further relied on section 14, which makes the decision by the Collector of any matter, which he is empowered by this Act to decide, to be final and conclusive, and urged that it is for the Collector to decide whether he would issue a notice under sub-section (1) of section 3 in respect of any land and that even if he chooses to issue a notice in respect of land which is under cultivation, such an order cannot be challenged. I am afraid, I cannot agree to this contention. According to the provisions of sub-section (1) of section 3, the prerequisite of the jurisdiction of the Collector is that the land is left uncultivated for more than six harvests and if that prerequisite is missing he has no jurisdiction to take over the possession of the land. The question whether a particular act of the Collector which purports to be under sub-section (1) of section 3, is or is not within his jurisdiction as laid down in the Act is certainly for a civil Court to decide and section 14, is no bar.

As regards the merits there is a concurrent finding of fact by both the Courts below that the *khasra* numbers detailed in the decree were under cultivation at the relevant period and this is also supported from the documents referred to by the two Courts below, including the *jamabandi* according to which the relevant *khasra* numbers were actually under cultivation. This finding of fact, which is based on evidence, is unassailable in second appeal and apart from this, it appears to be well-based in view of the evidence on the record.

In view of the above, it is not necessary to go into the question whether an appeal lay at the instance of the defendants other than the Collector particularly when the Collector was impleaded as a respondent.

For the reasons given above therefore, I find no merit in this appeal and the same is hereby dismissed with costs.

B.R.T.