(19) For the reasons discussed above, both the appeals shall stand dismissed, but with no order as to costs.

(20) In view of the majority judgment, these two appeals (F.A.O. No. 160 of 1976 and F.A.O. No. 389 of 1979) are allowed and the judgment of the Tribunal reversed and the Dharamshala is declared to be the owner of the properties in dispute.

D. S. Tewatia, J.
Subject to my dissenting judgment.
Surinder Singh, J.
S. P. Goyal, J.

N.K.S.

FULL BENCH

Before : P. C. Jain, CJ, S. P. Goyal, S. S. Kang, G. C. Mital and I. S. Tiwana, JJ.

STATE OF HARYANA AND OTHERS,—*Appellants*

versus

VINOD KUMAR AND OTHERS,—*Respondents*

Regular Second Appeal No. 2930 *of* 1980

October 14, 1985.

Punjab Security of Land Tenures Act (X *of* 1953)—*Sections* 2(3), 5-*B and* 25—*Punjab Security of Land Tenures Rules*, 1956—*Rule* 6—*Haryana Ceilings on Land Holdings Act* (XXVI *of* 1972)—*Section* 26—*Collector declaring surplus area without hearing the concerned land owners—Such an order—Whether a nullity—Effective parties who have not been heard by a Tribunal—Whether bound by its order—Remedies open to them—Suit challenging the validity of such an order—Whether maintainable in view of Section* 25 *of the Punjab Act.*

Held, that there are two types of judgments/orders, namely, judgments *in rem* and judgments *in personum*. The former binds the whole world whereas the later binds only the parties. The judgments/orders in rem are the one passed by the authorities or the Courts exercising jurisdiction such as insolvency, admiral and

matrimonial. The jurisdiction exercised by the authorities under the Punjab Security of Land Tenures Act, 1953 is not of such a nature that the orders passed under it would bind the public at large. Obviously, they are the judgments/orders *in personum*. The fundamental principle as to their nature is that they only bind the parties to it or the persons named therein. So far as the person who is neither a party nor named in such an order is concerned, the order in the eye of law is ineffective and *non est* and as such he is under no obligation to take proceedings to get it set aside. Strictly speaking the terms 'void' or 'voidable' when used qua a judgment or an order would be relevant when a person is a party or named in the judgment or the order because it is only such a person who can take proceedings to get it declared void or set aside as the case may be. On the other hand, a person who is not a party would have no right to get the order set aside or declared it void as the order would be binding on the persons who are parties or named therein and his remedy would be only to get a declaration that the order was ineffective and *non-est* so far as he was concerned.

(Para 5).

Held, that if an order is passed by the Tribunal of limited jurisdiction without issuing notice to the concerned party, the order would be a nullity and open to challenge in the civil court even if the said statute expressly bars the jurisdiction of the civil Court to entertain a suit to challenge the validiy or legality of the order passed by such a Tribunal. A person has no right to file either any appeal or a petition for review or revision against the order of the Collector to which he was not a party, but even if it may be assumed for the sake of arugments that he could file an appeal with the permission of the Appellate Tribunal or move for review, even then it cannot be said that the concurrent or alternate remedy of filing a suit for getting the declaration with the said order was *non est* so far as he was concerned, would be barred by the provisions of Section 25 of the Punjab Act. It is well established that in the case of alternate or concurrent remedies it is open to the party to choose anyone of them. The existence of the remedy, if any, therefore, would not debar the remedy of the suit if it otherwise was available to him. Thus, it is held that an order of the Collector declaring land as surplus without affording the concerned land owner an opportunity of being heard as envisaged by Rule 6 of the Punjab Security of Land Tenures Rules, 1956 is a nullity and a suit to challenge the validity of such an order is not barred by the provisions of Section 25 of the Act.

(Paras 6 and 7).

Dhaunkal Sheo Ram *vs.* Man Kauri Ram Jas and another.
AI.R. 1970, Punjab and Haryana 431.

OVER RULED

(*The case was ordered to be listed before a Division Bench,*—vide *orders of Hon'ble Chief Justice Mr. S. S. Sandhawalia dated 30th July,* 1982. *The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. S. Kang referred the case to a Full Bench for decision of important question of law involved in this case on 24th September,* 1982. *The Full Bench consisting of Hon'ble the Chief Justice S. S. Sandhawalia, Hon'ble Mr. Justice S. S. Kang and Hon'ble Mr. Justice G. C. Mital still referred the case to a Larger Bench on 4th August,* 1983. *The Larger Bench consisting of Hon'ble the Chief Justice Mr. Prem Chand Jain, Hon'ble Mr. Justice S. P. Goyal, Hon'ble Mr. Justice S. S. Kang Hon'ble Mr. Justice G. C. Mital and Hon'ble Mr. Justice I. S. Tiwana decided the question involved in this case in affirmative on 14th October,* 1985. *The Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice D. V. Sehgal finally decided the case on 3rd December,* 1985).

Regular Second Appeal from the decree of the court of Shri V. K. Jain, Additional District Judge, Sirsa, dated the 1st September, 1980 *reversing that of Shri D. D. Yadav, Sub Judge Ist Class, Sirsa, dated the 24th August,* 1979 *decreeing the suit of the plaintiffs with costs throughout for declaration to the effect that the decision dated 31st January,* 1962 *of Collector Surplus Area, Sirsa is void and inoperative and that the defendants have no right to utilise the suit land declared surplus or tenants permissible area by the impugned order dated 31st January,* 1962 *and for permanent injunction restraining the defendants from so utilising the suit land.*

Gopi Chand, Advocate, for AG (Haryana), *for the Appellant.*

Anand Swaroop, Sr. Advocate with Manoj Sarup, Advocate, *for the Respondents.*

JUDGMENT

S. P. Goyal, J.

(1) The respondents filed this suit for a declaration that the order of the Collector dated January 31, 1962 declaring 87.14 acres as surplus area and 138.31 acres as tenant's permissible area in the hands of Gobind Parshad, their father, was void and inoperative and for a permanent injunction restraining the appellants from utilising the said land under the provisions of the Haryana Ceilings on Land Holdings Act, 1972 (for short, the Haryana Act). The material allegations made in the plaint were that the respondents and their father Gobind Parshad constituted a joint Hindu family and owned 500 acres of agricultural land situate at village Fatehpuria, district

Sirsa prior to April 15, 1953, the date on which the Punjab Security of Land Tenures Act (hereinafter called the Punjab Act) was enforced. In the year 1953 itself Gobind Parshad by way of family settlement transferred 170 acres of land in the name of his wife. Thereafter, family partition took place some time in the year 1954 whereby 3/5th of the remaining land fell to the share of Vinod Kumar, Rattan Lal and Om Parkash, respondents, whereas 2/5th was kept by Gobind Parshad and his 4th son Anil Kumar, Gobind Parshad died on April 14, 1976 and the land held by him was mutated in the name of his son Anil Kumar and his widow.

(2) The said order of the Collector was sought to be challenged mainly on two grounds that in spite of the fact that the plaintiffs were recorded owners of the land to the extent stated above, no notice was served upon them by the Collector before declaration of the surplus area and the tenant's permissible area and that the land measuring 432 *bighas*, 14 *biswas* out of the total holdings was *banjar qadim*, *Banjar jadid* and *ghair* mumkin and as such being not "land", as defined in the Punjab Act could not be counted towards the total holdings of the landowners.

(3) The suit was contested by the appellants and one of the defences raised with which we are only concerned in this reference was that the jurisdiction of the civil court to entertain the suit was barred by virtue of the provisions of section 26 of the Haryana Act. However, in the question framed reference has been made to the provisions of section 25 of the Punjab Act which admittedly is the relevant provision governing the present suit. The trial Court upheld the pleas of the State and dismissed the suit. On appeal, the learned Additional District Judge reversed the decree of the trial Court which led to the filing of this regular second appeal by the State.

(4) Initially the appeal was heard by a Division Bench but in view of the fact that correctness of the Full Bench decision in *Dhaunkal Sheo Ram* v. *Man Kauri Ram Jas and another*, (1) was challenged by the learned counsel for the respondents, the case was referred to the Full Bench of three Judges. The Full Bench being of the opinion that *Dhaunkal Sheo Ram's case* (supra) required reconsideration in view of several decisions of the Supreme Court

(1) A.I.R. 1970 Punjab and Haryana 431.

noticed in the reference order, referred the following question to the Larger Bench :

> "Whether an order of a Collector declaring land as surplus without affording the concerned landowner an opportunity of being heard, as envisaged by rule 6 of the Punjab Security of Land Tenures Rules, 1956, is a nullity and whether a suit to challenge the validity of such an order is maintainable in view of the clear language of section 25 of the Act excluding the jurisdiction of the civil court?"

A Bench of Five-Judges in *Harnek Singh and another* v. *The State of Punjab and others* (2), authoritatively pronounced that a transfer of land by a big landowner is valid for all intents and purposes between the transferor and the transferee and the only effect of the provisions of section 10-A (b) of the Punjab Act is that if the land, the subject-matter of transfer forms part of the surplus area at the commencement of the Act, the transfer shall not affect the right of the State to utilise it for the resettlement of the tenants. It was further held that such a transferee was an interested party and had a right to be heard by the Collector before passing an order declaring any land to be surplus. Consequently, when the Collector passed the impugned order on January 31, 1962, out of the total land, 170 acres was owned by the wife of Gobind Parshad and in the remaining land measuring 330 acres the plaintiffs were the owners to the extent of 4/5th share and Gobind Parshad 1/5th share. Admittedly, no notice was issued nor any opportunity of being heard afforded to the plaintiffs by the Collector before passing the impugned order. The vexatious question which has arisen on these facts is as to what is the real nature of the impugned order so far as the effective parties who have not been heard are concerned and whether they are legally bound by the order unless set aside and if not what would be the remedies open to them.

(5) Broadly speaking there are two types of judgments/orders, namely, judgments *in rem* and judgments in *personum*. The former binds the whole world whereas the later binds only the parties. The judgment/orders *in rem* are the one passed by the authorities or the Courts exercising the jurisdiction such as insolvency, admiral and matrimonial. The jurisdiction exercised by the authorities under the Punjab Act is not of such a nature that the orders passed under it

(2) 1971 P.L.J. 727.

would bind the public at large. Obviously they are the judgments/ order in personum. The fundamental principle as to their nature is that they only bind the parties to it or the persons named therein. So far as the person who is neither a party nor named in such an order is concerned, the order in the eye of law is ineffective and *non est* and as such he is under no obligation to take proceedings to get it set aside. Strictly speaking the terms 'void' or 'voidable' when used *qua* a judgment or an order would be relevant when a person is a party or named in the judgment or the order because it is only such a person who can take proceedings to get it declared void or set aside as the case may be. On the other hand a person who is not a party would have no right to get the order set aside or declared it void as the order would be binding on the persons who are party or named therein and his remedy would be only to get a declaration that the order was ineffective and *nonest* so far as he is concerned. In *Dhaunkal Sheo Ram's case* (supra) this basic principle was not taken notice of and instead, if we may say so with due respect to the learned Judges, the reasoning proceeded on an erroneous basis that as the Collector had the jurisdiction to determine the surplus area of the landowner, the non-issuance of nottce to the tenant would not render its order void and the order was binding on the latter. If the landowner includes in his reserved area any land which is on lease, the tenant would have a right to be heard because the order of reservation neressarily clothes the landowner with a right to eject him from such area. If the landowner does not include any area on lease with the tenants, the latter would have no right of being heard and the order of determination of the surplus area of the landlord would be perfectly valid even when passed at their back. The order of the Collector including the area under lease in the reserved area of the landowner though would be within jurisdiction but would not bind any tenant whose area has been included in the reserved area unless he is issued a notice or is named in the order of the Collector. Somewhat similar question arose in *State of Punjab and others* v. *Amar Singh and another* (3), and the rule laid down in *Daunkal Sheo Ram's case* (supra), stands imliedly over ruled by the decision in that case. What happened there was that Smt. Lachhman was a big landowner on the prescribed date, i.e., April 15, 1953. Her son-in-law, Amar Singh, and his brother Indraj claiming themselves to be tenants of the area other than the reserved area of the landowner filed an application under section 18 of the Punjab

(3) 1974 P.L.J. 74.

Act for its purchase and the same was allowed by the Assistant Collector, the competent authortty. On the basis of the sale certificate the said tenants claimed themselves to be the owners of the area purchased by them before the Collector during the proceedings concerning the determination of the surplus area of the landowner. One of the pleas raised on behalf of the State was that it being not a party to the proceedings under section 18 of the Punjab Act, was not bound by the order of the prescribed authority allowing the purchase to the tenants of the area which but for that purchase formed part of the surplus area of the landowner. It may be noticed here that under the provisions of section 18(2) of the Punjab Act, when an application is made in writing to the Assistant Collector, by a tenant for purchasing the area of a big landowner, he is required to issue notice to the landowner and to all other persons interested in the said land. If the area sought to be purchased by the tenant did not form part of his permissible area or he has been settled thereon after the appointed date, i.e., April 15, 1953, such area would form part of the surplus area and the State would be obviously an interested party entitled to notice under the said section before the purchase applicatiin is allowed. According to rule laid down in *Daunkal Sheo Ram's case* (supra), the order of purchase passed in favour of the tenant without notice to the State would be binding on the State and only voidable at its instance because the prescribed authority had the jurisdiction to try such an application and allow it under section 18 of the Punjab Act. But the Supreme Court in *Amar Singh's case* (supra), held that the State, which was seriously prejudiced by the order but was not a party to it, would not be bound by that order. It was furthtr held that the State which was not a party to the proceedings did not have a right of appeal because ordinarily the rule is that only a party to the suit adversely affected by the decree if any of his representative-in-interest can file an appeal or petition for review as would be evident from paragraph 32 reproduced below that:

> "An order like Annexure 'A' ordinarily binds the parties only and here the State which is the appellant is seriously prejudiced by the order but is not a party to it. Therefore, it cannot bind the State *proprio vigore*. It was argued by Shri Dhingra that the State could have moved by way of appeal of review and got the order set aside if there was ground and that not having done so it was bound by the order. As a matter of fact, the State, which is not a party to the proceedings, does not have a right of appeal. The

ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellate Court' if he would be prejudicially affected by the judgment and if it would be binding on him as *resjudicata under* Explanation 6 to section 11' (see Mulla Civil Procedure Code, 13- Edn, Vol. I, p. 421) Section 82 of the Punjab Tenancy Act, 1887, which may perhaps be invoked by a party even under the Act, also speaks of applications by any party interested. Thus no right of review or of appeal under section 18 can be availed of by the State as of right."

(6) Even if for the sake of arguments it may be accepted that the impugned order is only voidable and will be binding on the respondents unless it is got declared void or set aside can it be said that the only remedy open to them is to approach the authorities under the Punjab Act and the remedy of a regular suit would be barred by the provisions of section 25 of the Punjab Act. The law has been well-established in this regard and was enunciated by the Privy Council in *Secretary of State* v. *Mask* & Co., (4) thus:

* * * *

"* * * * It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. * * *"

The said rule was reiterated by the Supreme Court in *Katikasa Chintaman Dora and others* v. *Guatreddi Annamanaidu* (5), the following words:

"There is an express bar to the jurisdiction of the Civil Court to adjudicate upon the question whether 'any inam village'

(4) A.I.R. 1940 P.C. 105.
(5) A.I.R. 1974 S.C. 1069.

is an 'inam estate' or not, and to the extent of the question stated in section 9(1), Madras Act 26 of 1948, the jurisdiction of the Settlement Officer and of the Tribunal are exclusive. But this exclusion of the jurisdiction of the Civil Court would be subject to two limitations. First, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. The second is as regards the exact extent to which the powers of statutory tribunals are exclusive."

The most authoritative pronouncement by the Supreme Court in this regard was made in *M/s. Kamala Mills Ltd.* v. *State of Bombay* (6), by a 7-Judges Bench as under:—

"* * * x Whenever it is urged 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. In cases where the exclusion of the civil courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liabiliy 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 becomes pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

The matter was again considered at a great length by 5-Judges Bench of the Supreme Court in *Ram Swarup and others* v. *Shikar Chand another* (7). In this case the provisions of section 3(4) and 16

(6) A.I.R. 1965 S.C. 1942.
(7) A.I.R. 1966 S.C. 893.

of the U.P. (Temporary) Control of Rent and Eviction Act 1947 were under consideration. Although the provisions of the said section expressly barred the jurisdiction of the civil courts still it was held that if the order was passed in violation of the statutory provisions or the principles of natural justice the order would be open to challenge in civil court. Paragraphs 12 and 13 which contain the ratio and the precise rule laid down read as under:—

> "One of the points which is often treated as relevant in dealing with the question about the exclusion of civil courts' jurisdiction is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is: does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provision: Applying these two tests it does appear that the words used in S. 3(4) and S. 16 are clear. Section 16 in terms provides that the order made under this Act to which the said section applies shall not be called in question in any Court. This is an express provision excluding the civil courts, jurisdiction. Section 3(4) does not expressly exclude the jurisdiction of the civil courts but in the context, the inference that the civil courts jurisdiction is intended to be excluded, appears to be inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the civil courts is excluded in relation to matters covered by the orders included within the provisions of S. 3(4) and S. 16."

This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government can never be raised in a civil Court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the 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 nullity. Take for instance, the case of an order purported to have been passed by a District Magistrate who is not a District Magistrate in law. If it is shown by a party impeaching

the validity of the order in a civil court that the order was passed by a person who was not a District Magistrate, the order in law would be a nullity and such a plea cannot be ruled out on the ground of the exclusion of the jurisdiction of the civil court. Similarly, if an order granting permission to a landlord is passed by a District Magistrate of one District when the property in question is situated in another district outside his jurisdiction, a party would be entitled to urge before a civil court that the permission purported to have been granted by the District Magistrate is wholly invalid and a nullity in law. Let us take another case to illustrate the position. *If S. 3 had provided that before a District Magistrate grants permission to the landlord to sue his tenant, he shall issue notice to the tenant and give him an opportunity to represent his case before the application of the landlord is dealt with on the merits and in the face of such a statutory provision, the District Magistrate grants permission ex parte without issuing notice to the tenant in such case, the failure of the District Magistrate to comply with the mandatory provision prescribed in that behalf would render the order passed by him completely invalid and a plea that an order has been passed by the District Magistrate without complying with the mandatory provision of the Act, would be open for examination before a civil court.* Likewise, in the absence of such a statutory provision, if it is held that the proceedings before the appropriate authorities contemplated by section 3 are in the nature of *quasi* judicial proceedings and they must be tried in accordance with the principles of natural justice and it is shown that in a given case an order has been passed without notice to the party affected by such order, it would be open to the said party to contend that an order passed in violation of the principles of natural justice is a nullity and its existence should be ignored by the civil court. Such a plea cannot, in our opinion be excluded by reason of the provisions contained in section 3(4) and S. 16 of the Act."

It was further observed in paragraph 18 that the earlier decision of the Supreme Court in *M/s Kamala Mills's case* (supra) fully supports the view taken by them. 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.* v. *State of Madhya Pradesh and another*, (8) 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 Kamala Mill's case* (supra) came under specific consideration of the Bench and it was observed that the Special Bench (in *M/s Kamala Mills case*) *refrained from either accepting the dictum of Mask Co's case* (8) or rejecting it, to the effect that even if jurisdiction is excluded by a provision making the decision 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 or validity of the orders of the Tribunal was expressly barred by the statute.

(7) Though according to the rule laid down in *Amar Singh's case* (supra) respondents had no right to file either an appeal or a petition for review or revision against the impugned order of the Collector to which they were not parties, but even if it may be accepted for the sake of argument that they could file an appeal with the permission of the Appellate Authority or move for review even then it cannot be said that the concurrent or alternate remedy of filing a suit for getting the declaration that the impugned order was *non est* so far as they were concerned would be barred by the provisions of the said section 25 of the Punjab Act. It is well-established that in the case of alternate or concurrent remedies it is open to the party to choose any one of them. The existence of the remedy under the Act, if any, therefore, would not bar the remedy of the suit if it otherwise was available to the respondents. Not a single case could be cited by the learned counsel for the State at

(8) A.I.R. 1969 S.C. 78.
(9) 67 In App 222.

the bar wherein it may have been held that the remedy of suit by a person who is not a party to the order nor has been served with any notice, for declaration that such an order was *non est* so far as he was concerned was held to be barred even though the valdity and legality of the orders passed were expressly stated to be not open to challenge under the statute. All the decisions relied upon by the learned counsel for the State were such in which the suit was filed by the person who was a party before the Tribunal of exclusive jurisdiction. The observations made in all those decisions, therefore; have to be under stood in the context of the situation available there and in none of these decisions, as observed in *Dhaunkal Sheo Ram's case* (supra) the rule laid down in Mask Co's case (supra) was adversely commented upon. We would, therefore, hold that the present suit was not barred by the provisions of section 25 of the Punjab Act and answer the quesion referred to Full Bench in the affirmative.

Prem Chand Jain, C.J.—I agree.
Sukhdev Singh Kang, J.—I agree.
G. C. Mital, J.—I agree.
I. S. Tiwana, J.—I agree.

N.K.S.

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