

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No. 27 of 2024
Decided on: 07.04.2025

Chander Shekhar Banta	Versus	 petitioner
Padam Dass and others		respondents

Coram:
Hon'ble Mr. Justice Bipin Chander Negi, Judge
Whether approved for reporting? ¹

For the petitioner	:	Mr. Sumit Sood, Advocate.
For the respondents	:	Mr. G.D. Verma, Advocate, with Mr. Sumit Sharma, Advocate

Bipin Chander Negi, Judge (oral)

The instant petition has been preferred against the order dated 30.10.2023 passed by learned Civil Judge Junior Division, Court No.8, Shimla in Civil Suit No. 105 of 2019, whereby an application filed under Order 7 Rule 11 by the present petitioner has been dismissed.

2. Respondents No.1 and 2 in the case at hand were the plaintiffs before the Trial Court. They had filed a suit seeking declaration to the effect that the partition proceedings as carried out in Case No.38 IX/XII passed by the Assistant Collector, First Grade, Rural Shimla dated 17.10.2014 decided on 28.10.2017 titled as Virender Singh vs. Madan Singh and others and the instruments of partition dated 27.09.2017 drawn in pursuance to

¹ *Whether the reporters of the local papers may be allowed to see the judgment?*

the aforesaid partition proceedings are illegal, wrong, void ab initio and do not affect the joint status of the parties. A further declaration was sought with respect to the mutation attested in pursuance to the aforesaid partition orders. A decree for permanent prohibitory injunction was sought by respondents No. 1 and 2 against the present petitioner and proforma respondents restraining them from dispossessing respondents No.1 and 2, alienating the suit land or encumbering the same by creating third party rights.

3. The present petitioner who was defendant No.2 before the trial Court filed an application under Order 7 Rule 11 CPC. His contention was that in terms of Sub Section XVII and XVIII of Section 171 of the H.P. Land Revenue Act, 1954, the Civil Court had no jurisdiction to deal with a matter which pertained to partition proceedings. As per the petitioner, partition proceedings filed in the suit lay within the exclusive domain of the revenue courts in terms of the aforesaid provisions.

4. Per contra, the sole contention urged on behalf of the respondents No. 1 and 3 i.e. plaintiffs before the trial Court is that the statutory tribunal has not acted in conformity with fundamental principles of judicial proceedings. In this respect it is contended that the partition proceedings have not been conducted by the Assistant Collector, 1st Grade in accordance with the law/guidelines as prescribed under the H.P. Land Records

Manual and the H.P. Land Revenue Act. It is further alleged that the proceedings have been conducted against dead persons without bringing on record their legal heirs. Other than the aforesaid, it is contended that some of the respondents had not been served in accordance with law during the partition proceedings. Last but not the least it is alleged that though served parties to the proceedings had not been given a right to file objections.

5. Heard counsel for the parties. Perused the pleadings.

6. It is well settled that the jurisdiction of the Civil Court to determine questions arising out of partition proceedings is barred. A civil Court is not competent to entertain any suit in connection to partition proceedings or any questions arising out of partition proceedings (See judgment dated 21.06.2024 passed in CMPMO No. 62 of 2022 titled Sachin Dogar vs. Rattan Dass and others). Even otherwise, in terms of law laid down in (1991) 1 SLC 223 titled as Chunnia Devi vs. Jindu Ram an order made by the competent authority under the H.P. Land Revenue Act, 1954 is open to challenge before a Civil Court to the extent that it relates to matters falling within the ambit of Section 37(3) and Section 46 of the H.P Land Revenue Act. The same is not the case at hand.

7. 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. (Refer *Dhulabhai v. State of M.P.*, (1968) 3 SCR 662 : AIR1969 SC 78).

8. Non-compliance with the provisions of the statute to which reference is made has been held to be non-compliance with fundamental provisions of the statute. The same has been explained in *Union of India v. Tarachand Gupta and Bros.*, (1971) 1 SCC 486. *Tarachand Gupta and Bros* held an import licence under Section II of Part V of Schedule I of the Import Trade Control Policy for the period July-December, 1956(hereinafter referred to as the policy) permitting them to import parts and accessories of motor-cycles and scooters. Under the said licence, the respondents imported certain goods which arrived in two consignments, each containing 17 cases, by two different ships. According to the *Tarachand Gupta and Bros*, the goods so imported by them were motor-cycle parts which their license authorized them to import. The Customs authorities, on the contrary, held, on examination of the goods, that the imported goods in the case constituted 51 sets of Rixe Mopeds complete in a knocked down condition. Further the goods imported under the

license granted did not conform to the description given in the license under which they were claimed to have been imported.

9. Entries 294 and 295 of the Policy were in this connection the relevant entries. Entry 294 deals with import of motorcycles and scooters. Remark (ii) in its column 6 laid down that "Licenses granted under this item will not be valid for the import of motor-cycles/scooters in a completely knocked down condition". Remark (iii), however, provided that applications from approved manufacturers for import of motorcycles/scooters in C.K.D. condition would be considered ad hoc by the Chief Controller, Imports in consultation with Development Wing. Entry 295 dealt with "Articles (other than rubber tyres and tubes) adapted for use as parts and accessories of motor-cycles and motor-scooters, except such articles as are adapted for use as parts and accessories of motor-cars". Entry 41 in Part V dealt with import of rubber tyres and tubes and other manufactures of rubber not otherwise specified.

10. There are no remarks against Entry 295, as there are against Entry 294. Apart from that, the goods in question did not admittedly contain tyres, tubes and saddles. The first two could not be imported and were in fact not imported because that could not be done under the license in respect of goods covered by Entry 295 which expressly prohibited their import and a separate license under Entry 41 of Part V would be necessary. The third,

namely, saddles were not amongst the goods imported. In the aforesaid context qua jurisdiction of the collector the apex court observed as under;

15. The result is that when the Collector examines goods imported under a license in respect of goods covered by Entry 295 what he has to ascertain is whether the goods are parts and accessories, and not whether the goods, though parts and accessories, are so comprehensive that if put together would constitute motor-cycles and scooters in C.K.D. condition. Were he to adopt such an approach, he would be acting contrary to and beyond Entry 295 under which he had to find out whether the goods imported were of the description in that entry. Such an approach would, in other words, be in non-compliance of Entry 295.

11. Similarly, the case of *Panthulu v. Andhra Pradesh* AIR 1971 SC 71 illustrates, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. In *Panthulu's* case Section 3(2) of the Madras Estates Land (Reduction of Rent) Act, 31 of 1947, authorized the State Government to fix the rates of rent in respect of each class of Ryoti land in each village in the State after considering the recommendations of the special officer and the remarks of the Board of Revenue.

12. Section 8(1) provided that no order passed under Section 3(2) could be challenged in a civil court. The suit filed by the Panthulu disputed the legality of the notification reducing the rates of land in respect of the dry Delta Ryoti lands in a village on the ground that the class of land had been determined to be Delta

13. It was contended that determination of rates of Ryoti lands on the basis only of the settlement register which did not contain any entry with respect to the village in question could not be treated as conclusive and that proper factual enquiry was necessary. The High Court held that the suit was not maintainable by reason of Section 8(1).

14. The apex court, held that under Section 2 the special officer had to determine the average rate of cash rent per acre for each class of Ryoti land such as wet, dry or garden. This could only be done on relevant material. The special officer, however, had based his determination on a report of his assistant, who had considered the entry in the settlement register of another village. That meant the special officer had made his determination on irrelevant evidence i.e. on the register which did not contain any data with respect to the land in the village in question. On these facts it was held that the determination by the special officer was based on no evidence with the result that it was in violation of the fundamental principles of judicial procedure. A fortiori, the order of the Government made under Section 3(2) on the basis of the

recommendations of the special officer was not in conformity with the provisions of the Act and was therefore outside the purview of Section 3(2) and consequently Section 8(1) was inapplicable. Thus, Section 8(1) was held not to apply because the Government's determination could not be said to be one under Section 3(2).

15. The word "jurisdiction" has both a narrow and a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter it is used in several aspects, one of such aspects being that the decision of the tribunal is in non-compliance with the provisions of the Act or it may have given its decision in bad faith (intentional usurpation of power motivated by considerations that are incompatible with the discharge of public responsibility). Other than the aforesaid lack of jurisdiction may arise in many ways. The learned Author H.W.R. Wade in his authoritative text *Administrative Law*, fifth Edition, at pp. 42, 348 and 369 aptly sums up situations in which error of jurisdiction may arise, at p. 42 ;

"Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction.

It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.”(see *Express Newspapers (P) Ltd. v. Union of India*, (1986) 1 SCC 133) But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.

16. With a view to determine the question as regards exclusion of jurisdiction of the civil court in terms of the provisions of the Act, the court has to consider what, in substance, and not merely in form, is the nature of the claim made in the suit and the underlying object in seeking the real relief therein. If for the purpose of grant of an appeal, the court comes to the conclusion that the question is required to be determined or dealt with by an authority under the Act, the jurisdiction of the civil court must be held to have been ousted. The questions which are required to be determined are within the sole and exclusive jurisdiction of the authorities whether simple or complicated.

17. I have examined the plaint filed by the respondents carefully. As per the averments in the plaint, it is contended that the partition proceedings have not been conducted by the Assistant Collector, 1st Grade in accordance with the law/guidelines as prescribed under the H.P. Land Records Manual and the H.P. Land Revenue Act. Other than the aforesaid, it is alleged that the proceedings were conducted against dead persons without bringing on record their legal heirs.

Moreover, it is contended that some of the respondents had not been served in accordance with law during the partition proceedings. Lastly it is alleged that though served parties had not been given a right to file objections.

18. In the aforesaid backdrop, I do not see any allegation made regarding violation of any provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. There is also no pleading with regard to non-compliance with any fundamental provisions of the statute whereby a lack of jurisdiction in the Assistant Collector, 1st Grade could be pointed out. A plain reading of the plaint would suggest that the order impugned in the suit is at the most an erroneous order. No jurisdictional error is pleaded in the plaint. Therefore, in my considered view the suit filed by the respondent is not maintainable.

19. In view thereof, the present petition is allowed and impugned order dated 30.10.2023 is quashed and set aside. Pending miscellaneous applications, if any also stand disposed of.

(Bipin Chander Negi)
Judge

April 7, 2025
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