Prita Vs Baldev Singh

Court: High Court of Himachal Pradesh

Date of Decision: Sept. 14, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Section 100
Specific Relief Act, 1963 - Section 34

Citation: (2017) AIRCC 244 : (2017) 2 CivCC 427 : (2016) sup HimLR 2664

Hon'ble Judges: Mr. Tarlok Singh Chauhan, J.

Bench: Single Bench

Advocate: Mr. N.K. Thakur, Senior Advocate with Ms. Jamna, Advocate, for the Respondents No. 1 to 3; Mr. R.K. Gautam, Senior Advocate with Ms. Megha Kapur Gautam, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

Tarlok Singh Chauhan, J. - The defendant is the appellant, who aggrieved by the concurrent decrees passed by the learned courts below, has

filed the instant appeal.

2. Relevant facts are that the plaintiffs/respondents (hereinafter referred to as Ã¯Â¿Â½respondentsÃ¯Â¿Â½) filed suit for declaration to the effect they have

been coming in physical cultivation and possession of the suit land as non occupancy tenants and now have become owners by virtue of coming

into force the H.P. Tenancy and Land Reforms Act (the Ã¯Â¿Â½Tenancy ActÃ¯Â¿Â½ for short) and the Rules, 1972. Suit land is stated to be measuring 13

kanal 4 marlas comprised in Khewat No.176 min, Khatauni No.2806 min, bearing new Khasra Nos.4387, 4389, 4388 and old Khasra Nos.

4060 to 4063 as entered in Misal Hakiat Ishtemal for the year 1989-90, situate in Village Kungrat Majra Chhetran, Tehsil and District Una (the

Ã¯Â¿Â½suit landÃ¯Â¿Â½ for short). It was averred that entries in the column of cultivation showing the name of defendant No.1 Prita as Ã¯Â¿Â½Gar MourusiÃ¯Â¿Â½

are wrong, null and void and further the mutation No.8713 dated 22.12.1990, conferring proprietary rights under the Act in favour of defendant

No.1 are also illegal, null and void and not binding on the plaintiffs. It is averred that in June, 1984, predecessors of defendants 2 to 21, who were

Khatri by caste were not ploughing the suit land and had inducted Mohna son of Hako, father of the plaintiffs as tenant-at-will on payment of rent

over 13 kanal 12 marlas of land which area was decreased in re-partition proceedings during the consolidation operation to 13 kanal 4 marlas.

Predecessors of the plaintiffs reclaimed that land and brought it under cultivation. After the death of Mohna, plaintiffs succeeded to the tenancy

rights being the sons of Mohna. It was further averred that the revenue officials wrongly mentioned the name of Prita son of Hako instead of

mentioning the name of plaintiffs being sons of Mohna son of Hako inadvertently without confirming the name of Mohna after his death, as a result

of which wrong and incorrect entry came to be incorporated in the Jamabandi for the year 1968- 69 in favour of defendant No.1. It was averred

that there was no person in the village in the name of Prita son of Hako and, it is only the plaintiffs who are successors in interest to the tenancy

rights under the law and, therefore, entries to the contrary in the revenue record were not only wrong, but null and void and inoperative qua the

legal rights of the plaintiffs. It was also averred that defendant No.1 was a clever person and with connivance of the revenue officials, got

sanctioned proprietary rights under the Tenancy Act in his favour vide order dated 28.9.2000 passed by A.C. Grade-II and, therefore, said

mutation was also wrong, illegal and null and void.

3. Suit was resisted and contested by the defendant No.1 only and other defendants did not contest the suit and were proceeded against ex parte.

As regard defendant No.1, he, in his written statement, took preliminary objection, inter alia of jurisdiction, locus standi, maintainability, plaintiff

being out of possession and approaching the court with unclean hands, limitation, estoppel and non joinder of necessary parties. On merits, it was

specifically denied that the plaintiffs or their predecessor were in possession of the suit land as tenants at any point of time and even the entry of

tenancy in favour of Mohna, father of plaintiffs, was claimed to be wrong and false and a stray entry which had resulted out of manipulation. It was

also alleged that the mutation of proprietary rights had been rightly sanctioned in favour of answering defendant. It is further claimed that the order

dated 28.9.2000 passed by Settlement Tehsildar-cum- AC Grade-I, Una pertaining to mutation No.8713 was legal as defendant No.1 was in

possession of the suit land as owner thereof. Defendant also took the plea of adverse possession as his possession was stated to be actual,

continuous, uninterrupted, open and hostile for a period exceeding 12 years.

4. Plaintiffs filed replication to the written statement filed by defendant and reiterated the allegation made in the plaint and denied those of the

written statement.

5. Learned trial court framed the following issues:

1.Whether the plaintiff has been coming in actual cultivatory possession of the suit land as gair marusi and now has become owners of the suit

land, as alleged? OPP.

2.Whether the plaintiff has no cause of action ? OPD.

3.Whether this court has no jurisdiction to try the present suit? OPD.

4. Whether the plaintiffs have no locus standi to file the suit? OPD.

5.Whether the suit is not maintainable in the eyes of law? OPD.

6.Whether the plaintiffs have not approached the court with clean hands? OPD.

7.Whether the suit is not within time? OPD.

8.Whether the plaintiffs are estopped from filing the suit by their acts and conduct? OPD.

9.Whether the suit is bad for non joinder of necessary parties, as alleged? OPD.

9-A. Whether the order dated 28.9.2000 of the AC 1st

Grade in Misal No.15/2000 is wrong as alleged? OPD.

10.Relief.

6. After recording evidence and evaluating the same, learned trial court dismissed the suit and even the appeal filed against the same was dismissed

by the learned lower appellate court constraining the defendant to file the instant appeal.

7. On 2.11.2004, appeal was admitted on the following substantial questions of law:

1. Whether civil court had no jurisdiction to try the suit?

2. Whether the trial Court and first Appellant court erred in ignoring long standing entries in the revenue record and based decisions on sole stray

entry in the revenue record?.

8. During the course of hearing, parties were put to notice and the appeal was also heard on the following additional question of law. (3) Whether

the proceedings initiated by the plaintiffs/respondents before the civil court were barred by principle of res judicata?.

Substantial Question No.1

9. As regards question No.1, there is no difficulty in concluding that since the dispute was not one between landlord and tenant and was rather

inter se two persons claiming themselves to be the tenant, therefore, it was the civil court alone which had the jurisdiction to determine the said

issue. This court in Tulsa Singh v. Agya Ram & ors,1994 (2) Sim.L.C. 434, was confronted with a similar issue and the same was repelled with

the following observations:

8. Learned counsel for the appellant has contended vehemently that as the appellant had already been granted proprietary rights under Section

104 or the Act and therefore the civil court will have no jurisdiction whatsoever to entertain and decide the case of present nature, where the rights

of tenancy in favour of appellant stood legally decided under the provisions of the Act by the competent authority and civil court will have no

jurisdiction to again go into that controversy. The learned counsel in support of the aforesaid contention has tried to rely upon (1991) 1 Sim LC

223 Chuhniya Devi v. Jindu Ram.

9. In the reported case the appellants came up before the Full Bench for answer to the question whether civil court had jurisdiction in respect of an

order:

(a) made by the competent authority under the H.P. Land Revenue Act, 1954, and

(b) of conferment of. proprietary rights under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972.

10. In so far as present case was concerned point (b) above was more relevant.

11. In this Chuhniya Devi case (supra) their Lordships answered to the question as under :

(a) that 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 related to matters falling within the ambit of Section 37(3) and Section 46 of that Act; and

(b) the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under Section 104 of the Act,

except in a case where it was found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles

of judicial procedure or where the provisions of the Act had not been complied with.

12. I think the applicability of the principle disposed of in the aforesaid case on the basis of the facts involved and proved on record in the present

case was not at all called for.

13. Firstly, in Chuhniya Devi''s case, (1991 (1) Sim LC 223) referred to above the dispute was between the landlord and tenant but in the

present case the dispute is between the two persons alleging themselves to be the tenant,

14. Secondly, in the aforesaid reported case the proprietary rights had been granted in favour of the tenant by the competent officer under the Act

and that too in the presence of the landlord. In the case under reference the suit Was filed on February 4, 1977 and the proprietary rights were

granted initially through mutation No. 2649 Ex. D-5 on record sanctioned on December (sic).

15. Thirdly, it may be pointed out that the suit was filed on February 4, 1977 and the written statement was filed by the defendant-appellant on

March 25, 1977 while replication was filed on April 12, 1977, meaning thereby the present appellant was in full knowledge of the present suit

where his tenancy rights were being assailed in so far as on the date when the proprietary rights were conferred in his favour. The appellant did not

bring .to the notice of the Revenue Officer under the Act sanctioning of mutation of proprietary, rights in his favour, pertaining to the alleged civil

suit. Thus, the order of proprietary rights in favour of the appellant was granted in the absence of the present plaintiffs.

16. Fourthly, it may again be referred that the landlord preferred an appeal before the Collector, Una, assailing the order of grant of proprietary

rights in favour of the present appellant which appeal was accepted and the case was remanded back to the Assistant Collector, for decision,

afresh as is evident from Ex. P-5, certified copy of the order of the Collector. Order of the Collector is dated April 5, 1978 and thereafter finally

the proprietary rights in favour of the appellant were granted behind the back of the present plaintiff-respondent, though later mutation granting

proprietary rights has not been brought on record.

17. The aforesaid facts which have been proved on record clearly make the present case of an altogether different nature than the facts involved in

Chuhniya Devi"s case (1991 (1) Sim LC 223) referred to above. The applicability of the ratio of that judgment as such on the basis of

dissimilarity of the facts in the two cases is not at all called for.

10. In Babu Ram (deceased) through L.Rs Smt. Sita Devi & ors v. Pohlo Ram (deceased) through L.Rs Smt. Vidya Devi & ors,

1991(2) Sim.L.C 211, this court has categorically held that the Legislature barred only those suits from cognizance of Civil Courts where there is

no dispute between parties about relationship of landlord and tenant and where such relationship was disputed, it was the civil court alone which

had the jurisdiction to entertain and decide the case. Relevant observations read as under:

5. I have heard the learned counsel for the parties. Learned counsel for the appellants urged before me that in view of the averments made in the

plaint, in which the plaintiff had claimed a decree for declaration that he was a tenant on the suit land, civil court had no jurisdiction to entertain and

decide the suit. It was further urged that there was cogent and convincing evidence adduced by the defendant on record to show that plaintiff was

not in possession of the suit property and before the Panchayat the plaintiff had, on April 3, 1974, admitted by giving a document in writing that he

was not in possession of the property and on the basis of this document, an order Ex D- 1 was passed on April 25, 1976, by the Assistant

Collector Second Grade, ordering the correction of entries in revenue records by showing the defendant to be in possession. It was on the basis of

this order that change was effected in Khasra Girdwari in Rabi 1976 and for which report in Roznamcha Waquati was also made by the Patwari

on May 11, 1976 vide copy Ex D-3. The learned counsel for the appellant further urged that the courts below were not right in discarding the

order passed by the Assistant Collector Second Grade on the ground that it was based upon the report of Girdawar Kanungo, who had not been

produced in the witness box. It was for this reason that application under Order 41, Rule 27 of CPC had been made seeking to produce by way

of additional evidence the report of Field Kanungo dated December 11, 1975 along with a copy of summon dated November 18, 1976, by which

Assistant Collector Second Grade had asked the plaintiff to appear before him to show cause as to why the correction in revenue records be not

made in favour of the defendant.

6. Learned counsel for the respondents, on the other hand, urged that the status of the plaintiff was not admitted by defendant and, therefore, there

was no bar for civil court to entertain and decide the suit and moreover incorrect entry had appeared in the revenue record against the plaintiff,

therefore, suit for declaration in a civil court was competent and maintainable in view of section 46 of the HP Land Revenue Act. It was further

contended that defendant could not be permitted to lead additional evidence merely to fill in the lacunae in the case especially when such evidence

was within the knowledge of the defendant and could have been easily produced in the trial court.

7. I see much force in the arguments advanced by the learned counsel for the respondent-plaintiff. The argument of the learned counsel for the

appellants that the suit is barred under Section 58 of the H.P. Tenancy and Land Reforms Act (hereinafter to be called as the Tenancy Act) is not

tenable. There is no clause in section 58 of the Tenancy Act which provides for a suit by or against a person claiming himself to be a tenant and

whose status as a tenant is not admitted by the land owner. The legislature barred only those suits from the cognizance of civil court where there is

no dispute between the parties about the relationship of landlord and tenant. It was a suit filed by the plaintiff claiming himself to be in possession of

the property as a tenant under the defendant and defendant had not admitted the status of the plaintiff, as such, rather, it was pleaded that the

plaintiff was not at all in possession. The provisions contained in the Punjab Tenancy Act, as applicable to Himachal Pradesh, which are

parimateria with the provisions of section 58 of the Tenancy Act came up for consideration before the Supreme Court in Raja Durga Singh v.

Tholu and others, AIR 1963 SC 361. The Supreme Court observed in it report as under:

Ã¯Â¿Â½Ã¯Â¿Â½There is no entry or item relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the

landlord. It would, therefore, be reasonable to infer that the legislature barred only those suits form the cognizance of a civil court where there was

no dispute between the parties that a person cultivating land or who was in possession of land was a tenantÃ¯Â¿Â½Ã¯Â¿Â½

8. In view of the specific pleadings and as observed by the Supreme Court in Durga SinghÃ¯Â¿Â½s case (supra), Civil Court undoubtedly had

jurisdiction to entertain and decide the suit. Moreover, plaintiff had felt aggrieved by an entry made in the revenue records on the basis of an order

passed by Revenue Officer. Section 46 of the Himachal Pradesh Land Revenue Act provides that if a person considers himself aggrieved as to any

right of which he is in possession by an entry in a record of right or any periodical record, he can institute a suit for declaration of the rights under

Chapter VI of the Specific Relief Act, 1963.

The courts below, as such, were right in their view that Civil Court had jurisdiction to entertain and decide the suit.

This question is answered against the appellant.

Substantial Question No.2

11. It is not in dispute that it was defendants 2 to 21 who were the owners of the suit land. It is also not in dispute that Mohna, father of the

plaintiffs, died in the year 1966 and the name of Mohna was recorded as tenant for the first time in Khasra Girdwari Ext P-6 for the year 1964-65.

This entry of tenancy continued upto 23.4.1971. In the Jamabandi for the year 1963-64, Ext P-2, there were no entries of tenancy in favour of

said Mohna or defendant No.1 and suit land is shown to be owned and possessed by Smt. Achhri. It is also not in dispute that under para 9.9,

Patwari has power to make entry in khasra Girdwari as per spot possession. As observed earlier, Mohna was recorded as a tenant during the

course of harvest inspection i.e. Kharif 1965 and this entry continued upto April, 1971, yet the owners did not challenge the said entry, nor did

they appear either before the trial court or any revenue officer to challenge the same. Entry in favour of Prita was made for the first time in the

Jamabandi for the year 1968-69, Ext P-3, wherein he has been shown as Gair Mourusi

12. Learned courts below, on the basis of evidence, have come to a conclusion that entry in favour of Prita son of Hako as Gair Mourusi was only

due to accidental slip or error of judgment on the part of revenue officer wherein instead of writing the name of Mohna son of Hako, name of Prita

son of Hako was recorded,. This is clearly evident from the fact that Prita was the son of Nandu and not the son of Hako and the onus was rightly

placed on defendant No.1 to explain that he is the son of Hako. That apart, there is admittedly no order of revenue officer whereby the defendant

No.1 was ordered to be entered as Gair Mourusi under the land owners and it is more than settled that change in the revenue entries effecting

proprietary title or tenancy cannot be made by a revenue officer without following procedure under he law. (Harbans Singh v. Karam Chand,

1991(2) SLC 222, Kanshi Ram v. Harbhajan, AIR 2002 HP 154.

Accordingly, this substantial question of law is answered against the appellant.

Substantial Question No.3

13. Learned Senior counsel for the appellant would vehemently argue that the application for leading additional evidence filed by his client before

learned lower appellate court has been wrongly rejected whereby he had only sought production of copy of the order passed by Settlement

Collector dated 14.9.2008, through which the filed by respondents was dismissed and the order passed by LRO dated 28.9.2000 in Misal

No.15/2000 was upheld. Order dated 14.9.2001 was stated to have attained finality as no appeal against the same had been preferred and thus

the instant proceedings were barred by the principle of res judicata.

14. In support of such submission, heavy reliance is placed by the learned Senior counsel for the appellant on the judgment rendered by me in

RSA No.332 of 2007, titled as Gurdev Singh v. Narain Singh & ors, more particularly the following observations:

Substantial Question No.1

8.It is not in dispute that during settlement, the karukans prepared were ordered to be rectified by the Collector vide order Ext P-8 and the order

so passed was affirmed by the Divisional Commissioner vide order Ext P-9. It is further not in dispute that this order has attained finality, having

not been assailed before any authority or even a court of competent jurisdiction. Now, what would be the effect of the order?.

9. Section 11 Explanation VIII of the Code of Civil Procedure reads as under:

An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent

suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been

subsequently raised.

10. It cannot be disputed that the Settlement Collector had the jurisdiction to entertain the application for correction.

Therefore, in such circumstances, whether the order was right or wrong or in accordance with law or not in accordance with law, would not make

the order coram non judice or void and the respondents/defendants, if at all aggrieved, were required to assail the same before the competent

authority.

11. To be fair to the learned counsel for the respondents/defendants, he has vehemently argued that once it is proved on record that no proper

procedure was followed by the Settlement Collector while ordering the correction of entries and also bearing in mind that these corrections were

carried out at the back of the respondents without affording proper and reasonable opportunity of being heard to them, these findings cannot be

held to be binding much less operate as res judicata against the respondents/defendants.

12. It is more than settled that where a court or Tribunal is having authority or jurisdiction to decide a particular dispute, but in exercise of such

jurisdiction, comes to a wrong conclusion then it is difficult to hold that such an order is void. The correctness of the order has nothing to do with

the jurisdiction of the court. It is equally settled that where a quasi judicial authority has jurisdiction to decide a matter, it does not lose its

jurisdiction by coming to a wrong conclusion whether it is wrong in law or facts and if decides wrongly, the party wronged can only take the

recourse prescribed by law for setting the matters right and if that course is not taken, the decision, however, wrong, cannot be disturbed.

13. Similar issue came up before a Constitution Bench of HonÃ¯Â¿Â½ble Supreme Court in Ujjam Bai v. State of Uttar Pradesh& anr, AIR 1962

SC 1621 and it was held as under:

15. Now, I come to the controversial area. What is the position with regard to an order made by a quasi-judicial authority in the undoubted

exercise of its jurisdiction in pursuance of a provision of law which is admittedly intra vires? It is necessary first to clarify the concept of jurisdiction.

Jurisdiction means authority to decide. Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or

fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding

until (1) (1962) 1 S.C.R. 540 reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its

jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact. The question, whether a tribunal hat; jurisdiction depends not on

the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is

determinable ""at the commencement, not at the conclusion, of the enquiry"". (Rex v. Bolten, (1841) 1 QB 66 at p.74). Thus, a tribunal

empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions of law and fact relating to the

measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determining any of those questions incorrectly but it

has no jurisdiction to entertain a claim for reinstatement or damages for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in

such terms, for it has no legal power to give any decision whatsoever on those matters. A tribunal may lack jurisdiction if it is improperly

constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an

incorrect determination of any question that it is empowered or required, (i. e.) has jurisdiction to determine. The strength of this theory of

jurisdiction lies in its logical consistency. But there are other oases where Parliament when it empowers an inferior tribunal to enquire into certain

facts intend to demarcate two areas of enquiry, the tribunal''s findings within one area being conclusive and with in the other area impeachable.

The jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact.

Such a, fact is collateral to the actual matter which the tribunal has to try and the determination whether it exists (1) [1841] 1 Q.B. 66,74. or not is

logically prior to the determination of the actual question which the tribunal has to try. The tribunal must itself decide as to the collateral fact when,

at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether

it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which, by virtue of

legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends;

but, subject to that an inferior tribunal cannot, by a wrong decision with regard to a collateral fact, give itself a jurisdiction which it would not

otherwise possess.

(Halsbury''s Laws of England, 3rd Edn. Vol. II page 59). The characteristic attribute of a judicial act or decision is that it binds, whether it be right

or wrong.

An error of law or fact committed by a judicial or quasi judicial body cannot, in general, be'' impeached otherwise than on appeal unless the

erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior

courts strito sensu but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have

been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be

accepted as valid unless set aside on appeal. Even the doctrine of res judicata has been applied to such decisions.

(See Living stone v. Westminister Corporation [1904] 2 K.B. 109, Re Birkenhead Corporation (1952) Ch. 359 Re 56 Denton Road

Twickenham [1953] Ch. 51, Society of Medical Officers of Health v. Hope [1959] 2 W.L.R. 377, 391, 396, 397, 402. In Burn & Co.

Calcutta v. Their Employees [1956] S.C.R. 781: (S) AIR 1957 SC 38) this Court said that although the rule of res judicata as enacted by

section 11 of the Code of Civil Procedure did not in terms apply to an award made by an industrial tribunal its underlying principle which is

founded on sound public policy and is of universal application must apply. In Daryao v. The State of U. P. [1961] 2 S.C.A. 591. this Court

applied the doctrine of res judicata in respect of application under Article 32 of the Constitution. It is perhaps pertinent to observe here that when

the Allahabad High Court was moved by the petitioner under Article 226 of the Constitution against the order of assessment, passed on an alleged

misconstruction of the notification of December 14, 1957, the High Court rejected the petition on two grounds. The first ground given Was that the

petitioner had the alternative remedy of getting the error corrected by appeal the second ground given was expressed by the High Court in the

following words:

We have, however, heard the learned counsel for the petitioner on merits also, but we are not satisfied that the interpretation put upon this

notification by the Sales Tax Officer contains any obvious error in it. The circumstances make the interpretation advanced by the learned counsel

for the petitioner unlikely. It is admitted that even handmade biris, have been subject to Sales Tax since long before the dated of the issue of the

above notification. The object of passing the Additional Duties of Excise (Goods of Special Importance) Central Act No. 58 of 1957, was to levy

an additional excise duty on certain important articles and with the concurrence of the State Legislature to abolish Sales Tax on those articles.

According to the argument of the learned counsel for the petitioner during the period 14th December, 1957, to 30th June, 1958, the petitioner was

liable neither to payment of excise duty nor to payment of Sales Tax. We do not know why there should have been such an exemption. The

language of the notification might well be read as meaning that the notification is to ''apply only to those goods on which an additional Central

excise duty had been levied and paid"".

If the observations ''quoted above mean that the High Court rejected the petition also on merits, apart from the other ground given, then the

principle laid down in Daryao v. The State of U. P. (1961) 2 S.C.A. 591. will apply and the petition under Article 32 will not be maintainable on

the ground of res judicata. It is,'' however, not necessary to pursue the question of res judicata any further, because I am resting my decision on the

more fundamental ground that an error of law or fact committed by a judicial body cannot, in general, be impeached otherwise than on appeal

unless the erroneous determination relates to a matter on which the jurisdiction of that body depends.

18. In Malkarjun Narhari [1950] L.R. 279, A, 216, 225 the Privy Council dealt with a case in which a sale took place after notice had been

wrongly served upon a person who was not the legal representative of the judgment. debtor''s estate, and the executing court had erroneously

decided that he was to be treated as such representative. The Privy Council said:

In so doing the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a Court has jurisdiction to decide wrong as well as right.

If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right and if that course is not taken the

decision, however wrong, cannot be disturbed"".

19. The above view finds support from a number of decisions-of this Court.

1. Aniyoth Kunhamina Umma v. Ministry of Rehabilitation , Petn No.32 of 1959, D/- 22.3.1961 (AIR 1962 SC 1616). In this case it had

been held under the Administration of Evacuee Property Act, 1950, that a certain person was an evacuee and that certain plots of land which

belonged to him were, therefore, evacuee property and vested. in the Custodian of Evacuee Property.'' A transferee of the land from the evacuee

then presented a petition under Article 32 for restoration of the lands to her and complained of an infringement of her fundamental right, under

Article 19 (1) (f) and Article 31 of the Constitution by the aforesaid order under the Administration of Evacuee Property Act. The petitioner had

been a party to the proceedings resulting in the declaration under that Act earlier mentioned.

This Court held that as long as the decision under the Administration of Evacuee Property Act which had become final stood, the petitioner could

not complain of any infringement of any fundamental right. This Court dismissed the petition observing :

We are basing our decision on the ground that the competent authorities under the Act had come to a certain decision, which decision has now

become final the petitioner not having moved against that decision in an. appropriate court by an appropriate proceeding. As long as that decision

stands, the petitioner cannot complain of the. infringement of a fundamental right, for she has no such right"".

2. Gulabdas & CO. v. Assistant Collector, of Customs (S) AIR 1957 SC 733. In this case certain imported goods had been assessed to

customs tariff. The assessee continued in a petition under Article 32 that the duty (1) [1962] 1 S.C.R. 505. (2) A.LR. [1957] S.C. 733, 736.

should have been charged under a different item of that tariff and that its fundamental right was violated by reason of the assessment order charging

it to duty under a wrong item in the tariff. This Court held that there was no violation of fundamental right and observed :

If the provisions of law under which impugned orders have been passed are with jurisdiction, whether they be right or wrong on fact,'' there is

really no question of the infraction of a fundamental right. If a particular decision is erroneous on facts or merits, the proper remedy is by way of an

appeal"".

3. Bhatnagar & Co. Ltd. v. The Union of India, 1957 SCR 701: (S) AIR 1957 SC 478). In this case the Government had held that the

petitioner had been trafficking in licences and in that view confiscated the goods imported under a licence. A petition had been filed under Article

32 challenging this action. It was held :

If the petitioner''s grievance is that the view taken by the appropriate authority in this matter is erroneous, that is not a matter which can be

legitimately agitated before us in a petition under Article 32"".

4. The Parbhani Transport Co-operative Society. Ltd. v. Regional Transport Authority, Aurangabad, 1960-3 SCR 177: (AIR 1960 SC

801). In this case it was contended that the decision of the Transport Authority in granting a permit for a motor carriage service had offended

Article 14 of the Constitution. This Court held that the decision of a quasi-judicial body, right or wrong, could not offend Article 14.

14. Once the Settlement Collector had the jurisdiction to make the necessary corrections and such order was affirmed by the Divisional

Commissioner who too had the jurisdiction, then even if it is assumed that the order passed was wrong, the same would not make such order a

nullity or having been passed without jurisdiction and would therefore, be binding on the parties.

15.Accordingly, question No.1 is answered in favour of appellant by holding that the order passed by Collector Settlement was required to be

assailed by the respondents before a competent authority or court and in absence of any challenge to the same, the learned lower appellate court

could not have gone into the validity of the order passed either by the Settlement Collector or the Divisional Commissioner and thereafter reverse

the judgment and decree passed by the learned Trial Court.

16.Since question No.1 has been answered in favour of appellant, the appeal succeeds on this sole count alone. Therefore, in such circumstances,

there is no requirement or even necessity to answer the remaining two other substantial questions of law framed by this Court on 1.8.2007 which

have now only become academic.

17.In view of the aforesaid discussion, appeal succeeds and is accordingly allowed and the judgment and decree passed by the learned lower

appellate court is set aside and that of the learned trial court is affirmed.

15. I am afraid that the reliance placed on the judgment in Gurdev SinghÃ¯Â¿Â½s case (supra) is totally misplaced as in that case the findings rendered

by the Settlement Collector had attained finality as the same were not even questioned before the Civil court while filing suit and having not been

assailed before any authority or even before the court of competent jurisdiction, the findings were held to operate as res judicata in the subsequent

lis between the parties. Whereas, this is not the fact situation obtaining in the instant case as admittedly in the suit itself, proceedings pending before

the revenue authority and the order passed therein were already assailed and were subject matter of the suit as the order passed by ST-cum-AC

Grade-I, Una in Misal No.15/2000 pertaining to Mutation No.8713 had specifically been assailed.

16. It may be relevant to observe here that the suit was filed in the year 1994 and was subsequently amended so as to assail the order passed by

revenue authorities. Once that be so, any subsequent order passed by the revenue authorities would be hit by the doctrine of lis pendens and

would otherwise have no effect on the proceedings initiated before the civil court, as it is more than settled that the findings recorded by the civil

court are binding on the revenue court and not vice versa.

17. That apart, the record clearly establishes that proceedings before the Settlement officer were initiated only after the proceedings were pending

before the civil court and, therefore, the defendant No.1 cannot take any advantage of the order passed by Settlement Officer.

18. In Gurnam Singh & ors v. Jagjit Singh Rosha, 1975 PLJ 505, it was held by HonÃ¯Â¿Â½ble Punjab & Haryana High Court that though the

entries in Khasra girdwaris are to be corrected by the revenue authorities, but once dispute has arisen between the parties, the controversy cannot

be allowed to be transferred for decision to the revenue authorities. If any orders for correction of entries in khasra girdwaris have been made by

these authorities, they would hardly be relevant in the civil proceedings and the evidence adduced by the parties in connection with the prayer for

correction of the entries in khasra girdwaris shall have to be assessed independently by the civil courts. It is apt to reproduce the relevant

observation which reads thus:

2. The point in controversy between the parties is whether possession of the land had been transferred to the proposed vendee under the

agreement of sale. There were entries in Khasra Girdawaris which showed that the vendee had succeeded in obtaining possession. These entries

have been ordered to be corrected on an application filed by the appellants before the revenue authorities but once the disputes have arisen

between the parties, the controversy cannot be allowed to be transferred for decision to the revenue authorities. If any orders for the correction of

the entries in the Khasra Girdawaris have been made by these authorities, they would hardly be relevant in the civil proceedings and the evidence

adduced by the parties in connection with the prayer for the correction of the entries in the Khasra Girdawaris shall have to be assessed

independently by the civil Courts. A Local Commissioner appointed by the trial court had also reported that the respondent was in possession of

the land in dispute. Under the circumstances, there was prima facie evidence about the plaintiff- respondent having succeeded in obtaining

possession of the land under the agreement of sale. No final verdict can, however, be given as to which party is in possession unless the parties

have had a full opportunity of examining their entire evidence. The order under appeal is apparently intended to maintain the status quo with regard

to possession over the land as it existed on the date of the passing of the temporary injunction on 9.6.1970 in the absence of the appellants. This

order had been made absolute by the trial Court on 26.6.1971 after hearing them.

It is, however, made clear that this temporary injunction is not supposed to authorise any party to disturb the actual physical possession of the

opposite party. The temporary injunction may, however, appear to be fully justified as the plaintiff- respondent had made out a prima facie case.

20. To the similar effect, are the observations made by the same court in case of Shri Niranjan Singh and others v. The Financial

Commissioner, Punjab (Revenue) and others 1979 PLJ 352, wherein court has held that though the correction of khasra girdawari entries

was within the exclusive jurisdiction of revenue officer, however, the civil court was seized of the matter. It is the civil court, which can interpret

entry either singly or in context of other relevant evidence proved on record by the parties. It has further been held that the findings of civil court

regarding the status of contesting party over-rides the findings of revenue authorities:-

6. The learned counsel for the petitioners confining his arguments to respondent No. 3 only has argued that the issue whether the latter is a

trespasser or a tenant of the land measuring 52 Kanals 7 Marlas is sub judice before the civil Court. The trial Court vide judgment dated

December 19, 1966 (A. 5) has found that respondent No. 3 was a trespasser. The civil court shall continue to be seized of this matter because

respondent No. 3 has filed an appeal against that judgment which is still pending. In this situation, the orders of the revenue authorities ordering the

change of the entries in the Girdawaris from 1962 to 1965 showing respondent No. 3 as a tenant of the land is ultra vires and the same are liable to

be quashed. I see no force in this contention. The Commissioner in his impugned order dated July 25, 1967, said that it was within the exclusive

jurisdiction of a revenue officer to correct the Khasra Girdawari and it is up to the civil court to interpret it in any particular civil proceeding pending

before it either singly or in the context of other relevant evidence brought on record by the parties. The learned counsel for the parties do not (and

rightly) dispute the correctness of the observation made by the Commissioner. The revenue authorities shall continue to be competent to effect

change in the entries in the Girdawaris irrespective of the fact that the civil court is seized of the same matter, though the finding of the civil court

regarding the status of the contesting respondents including respondent No. 3 being a tenant or otherwise will over-ride the finding of the revenue

authorities resulting in the change of entries in the Girdawaris.

7.In view of above, this substantial question of law is answered accordingly against the appellant.

8. In view of the aforesaid discussion and cumulative effect of the answers to the aforesaid three substantial questions of law, there is no merit in

this appeal and the same is dismissed leaving the parties to bear their own costs.