**HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

R.S.A. No. 68 of 2009

Judgment reserved on : 23.04.2021

Date of decision: 30.04. 2021

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Girdhari Lal …Appellant

Versus

Sukhdev and others .. .Respondents

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**Coram:**
Jyotsna Rewal Dua, Judge

*Whether approved for reporting*[1] *:* ***Yes***

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| For the Appellant : | Mr. Bhupender Gupta, Senior Advocate, with Mr. Janesh Gupta, Advocate. |
| For the Respondents: | Mr. N.K.Thakur, Senior Advocate, with Mr. Divya Raj Singh, Advocate. |
| | **Through Video Conferencing** |

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**Jyotsna Rewal Dua, J.**

Name of defendant No. 2 was recorded as non-occupancy tenant over the suit land on payment of *'Chakota'* of Rs. 0.47 per kanal per year in revenue records w.e.f. 1968. In a suit filed by the plaintiff/land owner on 08.12.1995, inter alia, these

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[1] Whether Reporters of local newspaper are permitted to see the judgment ?

revenue entries were challenged. Defendant No. 2 pleaded that the entries were incorporated in the revenue record on the basis of spot position, after the orders were passed in this regard by the competent authorities in accordance with law and that after coming into force of the H.P. Tenancy and Land Reforms Act, she had become owner of the land in question. Learned trial Court decreed the suit on 27.04.2006. The decree was reversed by the learned first appellate Court on 15.10.2008 and suit was dismissed. Aggrieved, plaintiff has filed this second appeal.

**2. Facts**

**2(i) (a)** Suit was filed by the appellant on 08.12.1995 for declaration to the effect that :-

***i)*** He is owner in possession of the land measuring 22-75 hectares, comprised in Khasra Nos. 1055 and 1056, as entered in *missal hakiyat bandobast jadid sani* for the year 1992-93, situated in mauza Khad, Tehsil and District Una, H.P.

***ii)*** Revenue entries appearing in the name of defendants No. 1 and 2 are wrong, hence have no binding effect on the right, title and interest of the plaintiff over the suit land.

***iii)*** Consequential relief of permanent injunction for restraining the defendants from causing interference and dispossession with respect to the suit land.

***iv)*** In alternative, decree for possession was claimed in case of plaintiff's dispossession by the defendants during the pendency of the suit.

**2(i) (*b*)** The basis of the suit was that :-

***i)*** Plaintiff's predecessor was owner in possession of the suit land as entered in the jamabandi for the year 1966-67.

***ii)*** Jamabandi for the year 1966-67 was made the basis for partition proceedings during consolidation, which took place in 1969-70. In these proceedings, joint holding of co-owners was partitioned and the suit land came to the share of the plaintiff.

***iii)*** Defendant No. 1 i.e. *Gurdas and Society* never existed. It had no legal entity. Defendant No. 1 was never inducted as a tenant over the suit land either by the plaintiff or by his predecessor. Its name was wrongly reflected as such in the possessory column. The revenue record reflecting defendant No. 2 as tenant under defendant No. 1 is also incorrect as defendant No. 2 could not be inducted as tenant by defendant No. 1.

***iv)*** Taking advantage of the revenue entries, defendants are interfering over the suit land.

**2(ii)** In their written statement, the defendants' stand was :-

a) The defendants were in cultivating possession over the suit land for the last 26 years, firstly as tenants and thereafter in the capacity as owners after coming into force of the H.P. Tenancy and Land Reforms Act, 1972.

b) The plaintiff, alongwith various others, owned 415 kanals 14 marlas of land. Nature of the land was *banjar/ khadkana*. Under the provisions of the East Punjab Utilization of Lands Act 1949, this land was allotted to *harijans* of village Khad by the State Government in 1965. The defendants being the *harijans*, were also amongst the allottees/tenants of the land and in possession thereof as such. The *harijans/allottees/tenants* had jointly re-claimed 415 kanals 14 marlas of land. However, the landowners, in connivance with the revenue staff, did not let the entries of cultivating possession of these persons recorded in the revenue record. It was only pursuant to the repeated applications moved by these persons that finally an

order was passed by the Tehsildar Una on 24.09.1968 pursuant to which names of these persons were appropriately entered in the revenue record as non-occupancy tenants. Accordingly, the entries also came in *missal hakiat* consolidation for 1973-74. The entries continued in *misal hakiyat bandobast* (Settlement) in 1992-93.

c) The land owners got their *khewats* partitioned during consolidation. Names of *harijans*/allottees/tenants were also recorded in partitioned *khewats* as '*Gurdas and Society'*. The word '*Gurdas and S*ociety' was innovated by the revenue staff for their own convenience. There were numerous tenants/allottees. It was not possible to enter names of several tenants in every *khatauni paimaish.* Therefore, under the leadership of Gurdas, son of Hiru, the names of all other allottees/tenants were construed to be included by consolidatedly referring them as *'Gurdas and Society'*. This name, therefore, is not to be understood in the strict legal sense of the word '*Society'* as defined under the Societies Act.

**2(iii)** The learned trial Court decreed the suit holding that the entries in *missal hakiat bandobast jadid* were wrong, incorrect and in violation of principles of natural justice. There was no legal basis for incorporating such entries. The column of rent was without any basis. The plaintiff was declared as owner in possession. Entries in the revenue record appearing in the name of defendants were declared illegal and void. Defendants were restrained from interfering in the suit land measuring 22-75 hectares.

**2(iv)** Learned first appellate Court reversed the decree and observed that the revenue entries in favour of respondents/defendants were continuous, uninterrupted, came in the revenue record on the basis of actual position on the spot and after the order was passed by the competent authorities in the regular proceedings in accordance with law. Resultantly, suit of the plaintiff was dismissed.

**3.** Aggrieved by the dismissal of his suit by the learned first appellate Court, the appellant/plaintiff has invoked the provisions of Section 100 of the Code of Civil Procedure. This regular second appeal was admitted on 02.03.2009 on the following questions of law :-

*"1. Whether the Lower Appellate Court has committed grave illegality in putting undue reliance on Ex. D-4 which was illegal, null and void as the same was in violation of principle of natural justice as well as fundamental rules of procedure ?*

*2. Whether the Lower Appellate Court has committed grave error of jurisdiction in relying upon Ex. DW-2/A which had no presumption of truth being Khasra girdawari, especially when the entries in the revenue record were not proved to be lawfully substituted ?*

*3. Whether the Lower Appellate Court has acted in erroneous and perverse manner in putting wrong interpretation to the entries in the revenue record pertaining to "Gurdas and Society" which had no legal existence ? In absence of any contract of tenancy proved between individuals, has not Lower Appellate Court recorded erroneous and perverse findings that defendants were tenants over the suit land ? Are not such findings recorded based on no evidence hence erroneous, illegal and perverse ?*

*4. When the defendants took mutually contradictory pleas of tenancy as well as adverse possession and failed to prove the same, has not Lower Appellate Court acted in excess of jurisdiction in not at all considering the findings of the Trial Court whereby the plea of adverse possession of defendants were negated ?*

## 4. Contentions

**4(i)** Shri Bhupender Gupta, learned Senior Counsel for the appellant contended that the order passed by the Tehsildar on 24.09.1968 (Ex. D-4), was in violation of principles of natural justice. The foundational facts for passing the order were figment of imagination. These facts did not exist in reality. Therefore, the order was null and void. As a necessary corollary, the entries

recorded in favour of defendants on the basis of this order were also illegal. Learned Senior Counsel for the appellant/plaintiff contended that defendant No. 1 *'Gurdas and Society'* had no legal entity. This society was not in existence. Name of defendant No. 2 appearing in the revenue record as tenant under defendant No. 1 is, therefore, of no significance. Entry of name of defendant No. 2 under defendant No. 1 in possessory column of revenue record in relation to Khasra Nos. 1055 and 1056 in *missal hakyiat bandobast jadid* 1992-1993 is illegal. The plaintiff is owner in possession of the suit land and had never inducted the defendants as tenants over it. Defendants, besides taking the plea of being *harijans/*allottees/tenants over the suit land, had taken an inconsistent plea of being in adverse possession. The evidence led by defendants on all these aspects was insufficient. Therefore, suit of the plaintiff was liable to be decreed.

**4(ii)** Shri Naresh Kumar Thakur, learned Senior Counsel for the respondents submitted that defendant No. 1 is actually a fiction created by the revenue authorities for their convenience. It is a fact that no such defendant No. 1 by the name of *'Gurdas and Society'* existed. Actually, Gurdas and various other persons, including predecessor of defendant No. 2, were in possession of

land inter alia measuring 415 kanals 14 marlas. They were in possession as *harijans*/tenants/allottees under the East Punjab Utilization of Lands Act. These persons had broken the land, re-claimed it and made it cultivable. However, their names were not being allowed to be entered in the revenue record by the land owners. Upon repeated applications made by these tenants/allottees to the higher authorities, the revenue proceedings were initiated for correction of revenue entries. Finally, the Tehsildar Una passed an order on 24.09.1968 settling the pending disputes. This order dated 24.09.1968 was passed by the Tehsildar after following due legal process and procedure. The order was implemented and names of various persons, including defendant No. 2, were appropriately entered in the revenue record as non-occupancy tenants. Pursuant to this order, correction in the revenue record was carried out on 04.11.1968. The entry in *missal hakiyat* consolidation also came in 1973-74 reflecting the same position. The order and the revenue entries were accepted by the appellant. The order at Ex. D-4 has not been challenged by the appellant till date. Revenue entries are based upon this order. The challenge to revenue entries is barred by limitation. Defendant No. 2 was in possession of suit land as a non-occupancy tenant.

*'Gurdas and Society'* is just a nomenclature used by the revenue officers to collectively refer to a large number of persons/allottees/tenants. Defendant No. 2 was non-occupancy tenant, not under defendant No.1/*'Gurdas and Society'*, but under the land owners.

**5. Observations**

**5 (i)** Plaintiff had filed the suit on the strength of jamabandi for the year 1966-67 (Ex. P-5). In this jamabandi, names of plaintiff and various others are entered as owners in possession of Khasra Nos. 4662, 4663 and 4643, measuring 56 kanals 19 marlas. The land is classified as *Khadkana.* Another jamabandi for the year 1967-68 (Ex.D-14) reflectes Khasra Nos. 4401 (45 kanals 8 marlas), 4643 (26 kanals 19 marlas), 4661 (6 kanals 8 marla), 4662 (23 kanals 5 marla), 4663 (6 kanal 15 marlas) and 4665 (3 kana1 9 marla) in Khewat No. 257 min in joint ownership of plaintiff alongwith other co-owners. Plaintiff is recorded as owner of 2, out of 45 shares of land. The classification of land is *Gair Mumkin/Khadkana/Banjar Kadeem.*

The names of defendants are not there in this document. However, in this regard, the stand of defendants assumes significance that though the land measuring 416 kanals

35 marlas was in cultivating possession of many persons, including Gurdas and Amru (predecessor-in-interest of defendant No.2) either as allottees under the East Punjab Utilization of Lands Act or as non-occupancy tenants, but their possession was not being recorded in the revenue record.

*Khasra Girdawari* for the year 1967-68 (Ex. DW-2/A) gives credence to the stand of the defendants, wherein Shiv Saran etc. are recorded as owners of Khasra Nos. 4363/1 measuring 7 kanals 16 marlas, but the land is in possession of various other persons, including Gurdas, son of Hiru and Amru Ram (predecessor in interest of defendant No.2). Name of Gurdas figures at the top of the list in the column of possession. Maize crop is shown to have been sown over the land during 1967 *(Khareef)* and wheat crop during 1968 *(Rabi)*. *Khasra Girdawari* records that all the persons named in the possessory column are in cultivating possession as tenants in equal shares and further that there is a dispute regarding the rent payable by the tenants to the land owners.

The order passed by the Tehsildar on 24.09.1968 (Ex. D-4) further supports the version of the defendants about their being in cultivating possession of the land as tenants. This order

was passed on the application of Gurdas son of Hiru and various others, resident of Mauza Khad, seeking correction in the revenue documents. The case file was referred to the Tehsildar for decision by the Sub Divisional Officer (C) vide order dated 21.03.1968. The order (Ex. D-4) records the fact that Gurdas and various others were allotted land under the East Punjab Utilization of Lands Act on *Chakota* of Rs. 0.47 per annum per kanal. The allottees and the tenants had deposited Rs. 194.96 in the treasury in this regard. The order further mentions that entire case file relating to the allotment was misplaced, which gave rise to disputes between the land owners and the tenants. The tenants/allottees submitted many applications to the revenue officers for correcting the revenue entries for incorporating their names in the revenue record. The matter remained under investigation for a considerable period. On the basis of spot position, names of these persons/*harijans*/allottees/tenants in possession of the land, were entered in the revenue record. However, no decision with respect to the rate of rent was taken. After observing that since the matter remained under investigation for a long time and that the inquiry into the matter had since been completed, therefore, in respect of 415 kanals 14 marlas of land,

detailed in the specified khasra numbers, the rent was determined at Rs. 0.47 per kanal per year. It was also mentioned by the Tehsildar in this order that in case any other land of the land owners is found to be in cultivating possession of these persons, then the rent of that land would be recorded as *batai tihara.* The order was directed to be communicated to the parties.

**5(ii)** The above order dated 24.09.1968 (Ex. D-4) was implemented in the following manner :-

**5(ii) (a)** Rapat No. 76 was entered on 04.11.1968 (Ex.DW-2/C) recording the fact that land measuring 415 kanals 14 marlas comprised in specified khasra numbers stood allotted to Gurdas and others/*Harijans* ; Their names are to be entered as non-occupancy tenants on payment of Rs. 0.47 *Chakota* per kanal per annum. The rapat also records that in case there is any other land in cultivating possession of the non-occupancy tenants Gurdas etc., then the same be also entered in *Khasra Girdawari* in their names on *batai tihara*. On the basis of this rapat, corrections in the revenue record were carried out.

**5(ii)(b)** Consolidation proceedings were carried out in the village. The joint land was partitioned amongst the land owners.

Old Khasra Nos. 4693, 4662 and 4663 measuring 6 kanal were given new khasra number 103/16/2 in the consolidation proceedings. *Missal Hakiyat Istemal* for 1973-74 (Ex. D-15) evidences this fact wherein these khasra numbers (suit land) fell to the share of the plaintiff. In the column of possession, *Gurdas and Society* figured as non-occupancy tenant. The *Chakota* being paid by the tenants was Rs. 0.47 per kanal per year.

**5(ii)(c)** After consolidation, the tenants/allottees partitioned the jointly re-claimed tenancy land. Khasra No. 103/16/2 measuring 6 kanal came to the share of defendant No. 2 i.e. Smt. Geeta Devi, mother of Sukhdev, son of Shri Amru as non-occupancy tenant *tehat* non occupancy tenant '*Gurdas and Society'*. This all is reflected in jamabandi for the year 1981-82 (Ex. D-16).

**5(ii)(d)** The settlement operations (*bandobast)* were carried out in the village. Previous Khasra No. 103/16/2 was given new Khasra Nos. 1055 and 1056, total measuring 22-75 hectares (6 kanal). *Bandobast Jadid Sani 1992-93* to this effect is Ex. D-1(P-1). Name of defendant No. 2,

who is the mother of Sukhdev-posthumous son of Amru is recorded as non-occupancy tenant *tehat 'Gurdas and Society'* on payment *of* Rs. 0.47 rent per 0-03-84 per hectare per year. Similar entries are there in Ex. D-12, *Misal Hakiyat Bandobast Jadid Sani* for the year 1994-95.

**5(iii)** It is the contention of the appellant that the order dated 24.09.1968 (Ex. D-4) is null and void as it was passed in violation of principles of natural justice behind the back of land owners. The order is based upon assumed facts regarding allotment of land in favour of Gurdas and various other persons. These facts were figment of imagination of the authority. No such allotment had ever taken place. No document in respect of allotment of land under the East Punjab Utilization of Lands Act 1949 was placed on record. No officer in this regard was examined. Therefore, it is contended that the corrections carried out in the revenue record on the basis of this order are also null and void. Relying upon an apex Court judgment in **1969 PLJ 105** titled **Durga (deceased) and others** Vs. **Milkhi Ram and others**, it was contended by the learned Senior counsel for the appellant that earlier revenue entries were changed in the later revenue entries in an illegal and

unauthorized manner. Therefore, presumption in favour of later entries stood rebutted. Para 3 of the judgment reads as under :-

> *"3. Relying on Shri Raja Durga Singh of Solan v. Tholu* (1963) 2 SCR 693, 700 = 1962 P.L.J. 88)*, it was urged before the High Court, as before us, that the lower appellate court had wrongly relied on the earlier entries placing the burden on the defendants, whose names appeared in the later entries, to rebut the presumption. This Court observed in that case as follows:*
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> > *"It was urged before us that there are prior entries which are in conflict with those on which the learned District Judge has relied. It is sufficient to say that where there is such a conflict, it is the later entry which must prevail. Indeed from the language of Section 44 itself it follows that where a new entry is substituted for an old one it is that new entry which will take the place of the old one and will be entitled to the presumption of correctness until and unless it is established to be wrong or substituted by another entry."*
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> *Grover J., --observed as follows:*
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> *"It is clear from the pedigree-table set out in its judgment that Mathar Mal had three sons Jiwan, Amin Chand and Relu. Durga and Sidhu are the descendants of Jiwan whereas the plaintiff and defendant No. 3 are the descendants of Amin Chand and Relu. Now, in the entries prior to 1929-1930 each one of the descendants of the three sons of Mathar Mal had been shown to have 1/3rd share and without any mutation the entries were changed in 1929-30. Admittedly there is no order of the revenue authorities showing how the change was made. Thus although the presumption would be in favour of the latter entries but that presumption was a rebuttable one and it would stand rebutted by the fact that the alteration in the*

*entries in 1929-30 was made unauthorisedly or mistakenly, there being no material to justify the change of entries."*

*Grover, J., distinguished Shri Raja Durga Singh of Solan v. Tholu (1963) 2 S.C.R. 693, 700 = 1962 P.L.J. 88) thus:*

*"There is nothing to indicate that in the case decided by their Lordships such was the position. More-over, the decision in that case proceeded largely on the finding of fact arrived at by the District Judge on a consideration of the evidence "being not open to interference in second appeal. The finding in the present case of the lower appellate Court is also based on evidence from which it has been inferred that the later entries are not the correct ones."*

The revenue record, as discussed above, had reflected Gurdas and others in cultivating possession of land as *harijans/*allottees/tenants. The defendants had also pleaded that the *harijans*/allottes/tenants had formed a group, to whom the State Government allotted 415 kanals 14 marlas of land owned by the plaintiff and various others. These persons were in possession of the land either in the capacity of allottees or tenants. All these persons were in cultivating possession of the land, had jointly re-claimed and broken the same. Their dispute with respect to the land owners was regarding rate of payable rent. Ex. D-4 is the final order, which notices that the matter regarding correction of revenue entries for recording possession of these persons, their

status over the land and in respect of determination of rate of rent qua these lands remained under investigation for a considerable period. The spot was inspected by the revenue authorities. During investigation, the possession of these persons over the land was ascertained, their status in the capacity of allottees/tenants was also determined, the dispute remained with respect to the rate of rent. It is this dispute, which was finally resolved by the Tehsildar on the direction of the Sub Divisional Officer (C) vide order dated 24.09.1968. This order was never challenged by the plaintiff. Even in this plaint, there is no specific challenge to this order. Even if the order is assumed to be *void*, being in violation of principles of natural justice, as alleged by the appellant/plaintiff, then also the fact remains that the order passed in 1968 was implemented immediately thereafter. Even a void order in the facts and circumstances of the case would require specific challenge. There is no whisper about this order in the plaint. The subsequent corrections in the revenue record incorporating the name of defendant No. 2 as non-occupancy tenant over the suit land are the necessary corollary of the implementation of the order dated 24.09.1968, passed by the Tehsildar. The long standing revenue entries from 1967-68 till the date of filing of the suit on

08.12.1995 cannot be discarded merely on an argument that the order dated 24.09.1968 was allegedly passed behind the back of the plaintiff. It is not that the change of entries in the revenue record was without any basis or without backing of any order.

In **State of Punjab** Vs. **Gurdev Singh (1991) 4 SCC 1**, it was held that a party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding. He must approach the Court within prescribed period of limitation. If the statutory time-limit expires then the Court cannot give the declaration sought for.

An order may be void for one and voidable for the other. An invalid order necessarily need not be non est ; in a given situation, it has to be declared as such. [**Refer (2004) 2 SCC 377**, titled **Sultan Sadik** Vs. **Sanjay Raj Subba and others]**

In **(2006) 7 SCC 470** titled **M. Meenakshi and others** Vs. **Metadin agarwal (Dead) By LRs and others**, the Hon'ble apex Court held that even a void order is required to be set aside by a competent Court of law as the order may be void in respect of one person but valid for the other. Also, it was held that a void order cannot even be declared as void in a collateral proceedings and that too, in absence of authors thereof. It was also

observed that when the appellants (therein) had not questioned the orders passed by the competent authority, then the Court could not go thereinto suo motu. Relevant portions from the judgment are as under :

> *"17. The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The Plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the Letters Patent Appeal.*
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> *18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in absence of the authorities who were the authors thereof. The order passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.*
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> *"38 The High Court, in our considered view, also committed a manifest error in opining that the Appellants should have questioned the orders passed by the competent authority. If they have not done so, the same would not mean that the Division Bench could go thereinto suo motu".*

In the facts of the instant case, plaintiff did not lay challenge to the order dated 24.09.1968 (Ex. D-4) at the appropriate time in appropriate proceedings. It is not his case that the authority, which passed the order, lacked jurisdiction for passing the order. The order has been alleged to have been passed in violation of principles of natural justice and, therefore, asserted to be a void order. However, this order called void by the plaintiff/appellant is valid for the defendants. Whether such an order, which was not challenged in appropriate proceedings in accordance with law, at the relevant time, could be challenged in a subsequent proceedings is a different question. However, in the present case, plaintiff/appellant has not sought any declaration questioning the order dated 24.09.1968. There is no mention in the plaint about this order at all. Therefore, it is not open for this Court to go suo-motu into the validity of order dated 24.09.1968.

Notwithstanding above, it is also admitted case of the appellant/plaintiff that even after passing of the order dated 24.09.1968, the consolidation operations were carried out in the area in 1969-70. While appearing as PW-1, he has admitted that land in question came to his share during consolidation proceedings. Defendant No. 2 Geeta Devi, w/o Shri Amru did not

step in the witness box. However, her son and power of attorney-Shri Sukhdev-posthumous son of Shri Amru appeared as DW-4. Non-examination of defendant No.2, in the facts of the case, would not lead to any adverse inference against her. The documents have been duly placed and proved on record by the defendants. Shri Gurdas appeared as DW-3 and completely supported the defence of the defendants. The revenue record prepared during consolidation proceeding, as discussed above, reflects defendant No. 2 as non-occupancy tenant on payment of rent under the plaintiff. Consolidation proceedings are carried out under the provisions of The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, which is a complete code in itself. There is presumption that proceedings have been carried out in accordance with the procedure prescribed under the Act. It is not even the contention of the plaintiff that provisions of law were not complied during consolidation proceedings. Therefore, plaintiff must have had the knowledge of consolidation proceedings and of revenue entries incorporated in the revenue record as a result of consolidation proceedings. However, plaintiff did not challenge the revenue entries at appropriate time. Settlement *(bandobast)* was carried out

in the area thereafter. Incorporation of revenue entries in favour of defendants was not without any basis. These entries are backed by the order passed by the competent authority.

The sum total of above discussion is that the cause of action, if any, available to appellant/plaintiff is now lost in oblivion.

**6. Conclusions**

On the basis of above discussion the questions of law framed are being answered as under :-

**6(a) Question of Law No.1**

Ex. D-4 is an order passed by the Tehsildar on 24.09.1968 on the direction of Sub Division Officer (C)**.** The order was in respect of applications moved by Gurdas and various others i.e. *harijans/*allottees/tenants for correction of revenue entries with a prayer to incorporate their names in the revenue record on the ground that they had broken and reclaimed the land and were in cultivating possession of the same, but their names were not being reflected in the revenue documents. The order itself records that on the directions of higher authorities, these applications were inquired into. The matter remained under investigation for a considerable period. The spot position was also verified,

cultivating possession of these applicants was ascertained and orders were passed for correction of *Khasra Girdawaries* (harvest inspection register). The authority after satisfying itself that no further inquiry was necessary in the matter, passed the order (Ex. D-4) on 24.09.1968. This is the final order and does not record presence of any of the parties. It is based upon the investigations/inquiry conducted over a period of time into the applications moved by a large number of persons with respect to the correction in the revenue record. Appellant/plaintiff did not challenge this order at the relevant time in appropriate proceedings in accordance with law. The order, even if it is assumed to be void for the plaintiff for alleged violation of principles of natural justice, is valid for various others including defendants. It is not the appellant's case that author of the order lacked the jurisdiction to pass the order. Even in the present plaint, no declaration has been sought questioning this order. Plaint does not at all refers to this order. In view of subsequent entries incorporated, not only consequent to implementation of this order, but during consolidation proceedings and thereafter their retention in settlement operations, it is apparent that appellant was all along aware of the order dated 24.9.1968. There is no allegation that

consolidation proceedings were conducted in contravention to the Statute. The cause of action, if any, available to him against this order, therefore, is now lost in oblivion. This Court is not required to suo-moto question the validity of the order dated 24.9.1968 (Ext. D-4). Question of Law is answered accordingly.

**6(b) Question of Law No. 2**

Ex. DW-2/A is *Khasra Girdawari* (harvest inspection register) for the year 1967-68 reflecting that Gurdas and various others, including Amru Ram (predecessor of defendant No.2) were in cultivating possession over the land as non occupancy tenants under the land owners on payment of rent. It also records that there was a dispute regarding the payable rent between the non-occupancy tenants and the land owners. The document assumes significance in view of the stand of the defendants that they formed part of a group *of harijans*/tenants/allottees under the East Punjab Utilization of Lands Act 1949 and that they had broken and reclaimed the *banjar/khadkana* land. Further, that the dispute between them and the landowners regarding rate of rent was resolved by the Tehsildar vide order dated 24.09.1968. The learned first appellate Court committed no error in taking into consideration this document. It is not just this document alone

which lends support to defence of the defendants of being in possession of the land as non occupancy tenant w.e.f. 1965, but various other subsequent documents as well which have been noticed above. The question is answered accordingly.

**6(c) Question of Law No. 3**

From the perusal of record, it is amply clear that defendant No.1 *'Gurdas and Society'* had no existence as such. The word *'Gurdas and Society'* was coined by the revenue agencies only for their convenience for referring to a large body of *harijans*/allottees/tenants, including Amru-the predecessor-in-interest of defendant No.2. Name of Gurdas figures at the top of the list of persons in cultivating possession of the land. For avoiding entry of the names of each and every possessor of the land in every *khatouni,* the word '*Gurdas and Society'* was innovated and used by the revenue agency. Defendant No. 2 is reflected as non-occupancy tenant *tehat 'Gurdas and Society'*, however, she is actually a non-occupancy tenant under the land owners and not under defendant No.1. The word 'Society', therefore is not to be understood in the strict legal connotations under the Societies Act. The findings recorded by the learned first

appellate Court are in order. The question is answered accordingly.

**6(d) Question of Law No. 4**

Defendants have been able to prove their cultivating possession over the suit land in the capacity of non-occupancy tenants w.e.f. 1968 under the plaintiff. Plea of adverse possession was not pressed into service by the respondents either before the first appellate Court nor before this Court. The plea, therefore, becomes redundant. Question of law is answered accordingly.

**7** In ***Civil Appeal No.805 of 2021***, titled **Mallanaguoda and Ors.** Versus **Ninganagouda and Ors**., decided on 12.03.2021, the Hon'ble apex Court reiterated the settled legal position that "*the First Appellate Court is the final Court on facts. It has been repeatedly held by this Court that the judgment of the First Appellate Court should not be interfered with by the High Court in exercise of its jurisdiction under Section 100CPC, unless there is a substantial question of law. The High Court committed an error in setting aside the judgment of the First Appellate Court and finding fault with the final decree by taking a different view on factual findings recorded by the First Appellate Court*". The questions of law answered above are actually questions of facts.

Judgment of learned First Appellate Court based on proper appreciation of facts and evidence needs no interference.

This appeal, being devoid of any merit, is, therefore, dismissed.

**30th April, 2021 (K)** **Jyotsna Rewal Dua,**
**Judge**