
(1976) 12 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Revenue Revision No. 190/75

Amar Nath

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 10-12-1976

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 17, 20, 6, 7(2)

Citation : (1978) ShimLC 148

Hon'ble Judges : P.K. Mattoo, J

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant; Yudhvir Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mattoo, J.—This is a revision petition u/s 20 of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter called the Act) against the order of the Commissioner dated 25th August, 1975 whereby he dismissed an appeal against the order of Collector, Una, dated 8th May, 1975.

2. The first point contended before me by the learned Counsel for the Petitioner was that the Petitioner had not been granted full relief in respect of the bona fide sales made by him from time to time. In this connection he drew my particular attention to sale of 6 kanals 16 marlas of land purporting to have been made to one Shri Beant Singh in 1966 and subsequently confirmed through a formal sale deed registered on 22-10-1973. A copy of the sale deed was also brought on the record.

3. The learned Counsel for the State, on the other hand, contended that the Collector had after assessing the evidence on record provided full relief to the Petitioner in respect of sales made by him from time to time. The learned Counsel further mentioned that the sale deed dated 22-1(sic)-1973 did not make any reference to any earlier act of sale as suggested by the learned Counsel for the Petitioner. The learned Counsel also invited my attention to the provisions of

Section 7(2) of the Act and also cited *Hardwari Lal v. State of Himachal Pradesh*, Revenue Revision No. 3 of 1976 in support of his contention.

4. Section 7(2) of the Act reads as follows:

The Collector shall determine whether a transfer is bona fide or not and his decision shall be final:

Provided that the burden of proving the transfer to be bona fide one shall be on the transferer:

Provided further that if a person transfers any land in contravention of the provisions of this section, in case of vestment in the State, the land left with him after such transfer will be taken into account only for making up of deficiency of land to be vested.

5. It has been observed in *Hardwari Lal v. State of Him. Pra.*, (supra) that "according to Sub-section (2) of Section 7 of the Act, the Collector shall determine whether a transfer is bona fide or not and his decision on this issue shall be final. The burden of proving the transfer to be bona fide has been placed on the transferer.

6. The findings of the Collector in the present case regarding the bona fide nature of sale have been upheld by the Commissioner in appeal. Keeping in view the provisions of Section 7(2) of the Act and the observations made in *Hardwari Lal v. State of H.P.*, it has to be concluded that no case for interference with the orders of the Collector is made out on this count.

7. The second point raised before me was that "Kharkana" land which had subsequently been rendered unfit for agricultural purposes had been wrongly treated as land for the purpose of determining the surplus area by the Collector and that the Petitioner was entitled to relief in respect of the area which had ceased to be land within the meaning of the Act subsequent to the appointed date.

8. This contention has two aspects. The first concerns the sanctity which has to be attached to entries in the revenue records by the Collector while determining the nature of land. In this connection the learned Counsel for the State cited *Major General Jai Singh v. State of Himachal Pradesh*, Revenue Revision No. 180/75. In this case it has been observed that, "if land is entered in the revenue records as "gair mumkin" or under any other ambivalent classification but is actually occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, it shall have to be treated as land." It has also been held in the same case that the Collector is competent to decide the question whether a particular land falls within the definition of land as provided for in the Act or not. In view of these observations the Collector cannot be said to have acted wrongly in deciding that "Kharkana" land was land for the purposes of the Act in the present case, particularly since the Commissioner has also found nothing wrong with his orders in this behalf.

9. The second aspect of the second point concerns the effect which a change in the nature of an area after the appointed date will have on proceedings initiated under the Act.

10. Since it was contended by the Petitioner that certain areas which had ceased to be land within the definition of the Act stood included in his holdings for the purposes of determining his surplus area, the Deputy Commissioner, Una, was directed to visit the spot and submit a factual report regarding the nature of land in question. In his report the Deputy Commissioner indicated that on account of floods which occurred in 1975 land comprising Khasra No. 3624/2 was over flooded by Baruhi Khad as a result of which this land has become sandy. In respect of Khasra No. 3626 it was mentioned that 9 kanals more of land had been washed away during the year 1975.

11. The learned Counsel for the Petitioner contended very forcefully that in revision due notice should be taken of this change in the nature of land and the Petitioner should be granted adequate relief in this behalf. He cited *Ramcharan Tulsi Ram and Ors. v. Murli Dhar Ramchandra* AIR 1954 MB 193; *Ayyan Krishan v. Kunji Kutty Amma* AIR 1956 TC 203 and AIR 1941 5 (Federal Court) in support of his contention.

12. It has been held in *Ramcharan Tulsi Ram*'s case cited supra that the Court has powers to take notice of a subsequent event and to mould-relief according to the changed circumstances. In *Ayyan Krishan v. Kunji Kutty Amma*'s, it has been held that "where a suit for redemption is dismissed by the trial Court as premature, but during the pendency of appeal the right of redemption matures the appellate Court can take notice of this subsequent event and pass a decree for redemption for the purpose of doing complete justice between the parties and to avoid further litigation." In *Lachmeshwar Parsad Shukal and Ors. v. Keshwar Lal Chaudhuri* (supra), it has been, held that "appellate Court can consider even facts and events coming into existence after decree appealed against." All these rulings refer to a situation in which a change took place after the orders of the trial Court. In such case it was felt that the appellate Court can take notice of the changed situation.

13. The learned Counsel for the State, however, contended that the change whatever its nature, had actually taken place after the appointed date. As such it was not feasible to provide any relief to the Petitioner within the four corners of the law. He in this connection, placed reliance on *Raj Kumar Rajindra Singh v. Union of India and Ors.* C.W.P. No. 4 of 1974, a case decided by the Himachal High Court and Section 6 of the Act which reads as follows:

6. Notwithstanding anything to the contrary contained in any law, custom, usage or agreement, no person shall be entitled to hold whether as a landowner or a tenant or a mortgagee with possession or partly in one capacity and partly in another, the land within the State of Himachal Pradesh exceeding the permissible area on or after the appointed day.

14. Holding of an area in excess of the permissible area after the appointed day is prohibited by the provisions of Section 6 of the Act. Section 17 of the Act makes a provision regarding developments subsequent to the commencement of the Act. This section also does not in any way held in entertaining the claim of the Petitioner to relief on account of change of an area which took place subsequent to the appointed day.

15. It has been held in *Raj Kumar Rajindra Singh v. Union of India and Ors.* that, "it must be remembered that the ceiling is imposed from the appointed day, a fixed point in time and the needs of the family are to be assessed with sole reference to that point of time. "Keeping in view the provisions of the Act and law laid down in *Raj Kumar Rajindra Singh v. Union of India*, (supra) it can be unhesitatingly concluded that the Act does not make any provision for grant of relief on account of changes which take place after the appointed date in the nature of an area included in the holding of a person. The material date for determining the surplus area of a person is the appointed date. The express provisions of the Act leave no discretion with the Collector, Commissioner or the Financial Commissioner in this behalf. In the absence of such discretion any cognizance of subsequent events will tantamount to a contravention of the provisions of the Act and will as such not stand scrutiny. The Petitioner cannot, therefore, be granted any relief in revision in this behalf.

16. In view of what has been stated above there is no force in the revision petition which is accordingly dismissed.