
(1976) 02 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 363 of 1976

Bakshi Surinder Mohan etc.

APPELLANT

Vs

The Sub-Registrar

RESPONDENT

Date of Decision : 09-02-1976

Acts Referred:

Registration Act, 1908 — Section 20, 21, 22, 71

Citation : (1976) 5 ILR HP 776

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : Inder Singh, for the Appellant; B. Sita Ram, General and H.K. Paul, for the Respondent

Final Decision : Allowed

Judgement

C.R. Thakur, J.—Shri Surinder Mohan and the other Petitioners own land, Khasra No. 268 measuring 66 Kanals 1 Maria, in village Raj-palwan, Tehsil Nurpur, District Kangra, according to the Jamabandi for the year 1970-71. The Petitioner No. 1, Bakshi Surinder Mohan, holds the general power of attorney on behalf of the other three Petitioners. The Petitioners decided to transfer a portion of the land comprised in Khasra No. 268 and the Petitioner No. 1 who is legally competent to act on behalf of the other Petitioners executed a sale deed dated June 14, 1976 in respect of a share of the land measuring 22 Kanals 11 Marias for a consideration of Rs. 9,000/- in favour of Sarvshri Ramesh Chand, Des Raj and Narinder Kumar. The sale deed is Annexure "D" with its English transliteration Annexure "D/1". The Petitioner No. 1 presented the sale deed before the Respondent for acceptance and for registration accompanied by the title deed and the affidavit of Shri Tulsi Ram father of Sarvshri Ramesh Chand and Des Raj. The Petitioner No. 1 also filed his own affidavit Annexure E/1, to the effect that he had sold the land on his own behalf as also on behalf of Petitioners 2 and 3 as their general attorney for a sum of Rs. 9,000/- and that the sale did not contravene the provisions of the Land Ceiling Act.

2. When the deed was presented before the Respondent he refused even to entertain the documents and said that he will not accept, entertain and register the deed. It is on that account that the Petitioners filed this writ petition for issue of a writ of mandamus to the Respondent to accept the deed, Annexure "D", and register the same in accordance with the Registration Act.

3. This Court on June 28, 1976, ordered issue of a Show Cause Notice to the Respondent. On the next adjourned date, that is July 20, 1976, the learned Advocate-General made a statement that if the Petitioner submits the documents for registration during the office hours either to the Registrar or to the Sub-Registrar or to the Joint Sub-Registrar (Naib-Tehsildar, Nurpur), the document will be registered if there is no legal objection. The matter was accordingly adjourned.

4. The Petitioners presented an application C.M.P. No. 1451 of 1976 on August 2, 1976, in which he had submitted that he had presented the document for the purposes of registration which was neither entertained, accepted or refused; that after the orders of the Court, dated July 20, 1976, he presented the document for registration during the office hours before the Joint Sub-Registrar on July 24, 1976, but the Joint Sub-Registrar passed an order to the following effect:

Presented to-day, the 24th July, 1976. I am busy in Family Planning Programme.

Thereafter the Petitioners presented the document on the same date before the Sub-Registrar and he also declined to accept the document for registration saying that he was busy in Family Planning and refused to give anything in writing and thereafter on July 27, 1976, he went to the Registrar, Dharamsala to present the document for registration during the office hours at 11.30 A.M., and a chit was sent by Petitioner No. 1, on which he was directed to see the General Assistant. The latter had a talk with the Petitioner No. 1 but that had no relevancy because he had no jurisdiction to deal with the case of registration of the deeds and he also did not register the document or pass any orders.

5. A return was filed by the Respondent in which it was denied if he had ever refused to accept and register the document. This was controverted by the Petitioner by his rejoinder.

6. I have heard the learned Counsel. In para 5 the Petitioner has submitted that the deed was complete in all respects and there was no infirmity attached to the deed or there was any deficiency and under law as is intended to by Sections 20 - 22 of the Indian Registration Act the Respondent was bound to accept the deed for registration. The Respondent has admitted that he was bound to accept the presentation of the deed for such orders as were appropriate between the notified hours. It was denied that the deed was presented between the notified hours. If it is a fact that the deed was complete in all respects, it was the bounden duty of the Respondent to have accepted and registered the deed because according to the rejoinder of the Petitioner he had presented the deed within the notified hours and, therefore, the submission of the Respondent is

totally wrong that the deed was not presented during the notified hours. Even from the C.M.P. 1451, to which there is no reply it is manifest that after an undertaking was given by the learned Advocate-General that if the Petitioner presents the deed before the Joint Sub-Registrar at Nurpur or the Sub-Registrar then the Respondent shall accept and register the same and that he would advise them accordingly. But the Petitioner vide this application has submitted that even though he presented the deed during the working hours yet he was put off on the pretext that the Joint Sub-Registrar and the Sub-Registrar were both busy in the Family Planning Programme and the latter even refused to give anything in writing. Similarly the General Assistant who was approached by the Petitioner at the instance of the Registrar also put him off without giving anything in writing. Therefore, it is a clear case of dereliction of duty which was cast upon the Respondent and he has deliberately disobeyed the mandatory provisions of the law. If there had been any legal flaw it was incumbent upon him to have complied with the provisions of Section 71 of the Indian Registration Act which lays down that every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No. 2 and endorse the words "registration refused" on the document but what the Sub-Registrar has done is that he has neither appended any such order nor he has accepted the document for purpose of registration.

7. In these circumstances the act of the Respondent is highly improper and a writ of mandamus directing the Respondent to do his duty in accordance with law must issue. I accordingly allow this petition and direct that the Respondent shall do his duty in accordance with law forthwith. The Respondent is also burdened with costs amounting to Rs. 200/- payable to the Petitioner.

8. It may also be stated here that this Court has already ordered on 3-8-1976 to issue a Show Cause Notice against the Joint Sub-Registrar, Nurpur, why contempt proceedings should not be taken against him in view of the proceedings of this Court dated 20-7-1976. On receipt of this notice the file shall be put up before the Court even though the main case has been disposed of by this writ petition for appropriate orders to be taken on a separate file to be compiled for the purpose of the contempt proceedings.