

(1990) 09 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 133 of 1988

Chuhniya Devi

APPELLANT

Vs

Jindu Ram
 Piar Singh and Others Vs Anant Ram

 Premu Vs Pear Singh and Others
 Ram Singh
and Another Vs Udham Singh

RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 11, 92
Himachal Pradesh Land Revenue Act, 1954 — Section 111, 171, 171(2)
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 10, 100, 101, 102,
103
Himachal Pradesh Tenancy and Land Reforms Rules, 1975 — Rule 13, 14, 15, 16, 17
Punjab Tenancy Act, 1887 — Section 77(3)

Citation : (1991) 1 ShimLC 223

Hon'ble Judges : V.K. Mehrotra, J; Kamlesh Sharma, J; Bhawani Singh, J

Bench : Full Bench

Advocate : Ishar Singh, in R.S.A. No. 388 of 1988, R.K. Duggal, in R.S.A. No. 174 of 1982, Bhupinder Gupta, in R.S.A. Nos. 75 and 76 of 1983 and S.S. Kanwar, in R.S.A. No. 133 of 1988, for the Appellant; B.K. Malhotra in R.S.A. No. 388 of 1988, R.S. Kanwar in R.S.A. No. 174 of 1982, R.K. Duggal in R.S.A. Nos. 75 and 76 of 1983 and K.D. Sood in R.S.A. No. 133 of 1988, for the Respondent

Judgement

V.K. Mehrotra, J.—These appeals have come up before this Bench for an answer to the question whether the civil court has 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 u/s 104 of the H.P. Tenancy and Land Reforms Act, 1972,

which has not been assailed under the provisions of these Acts.

2. We will confine our attention to the legal aspect of the matter alone, without going into the facts of these appeals, which shall thereafter be placed for

disposal on merits before the appropriate Bench.

3. The question, as is clear, is in two parts. We will consider the two aspects separately.

About H.P. Land Revenue Act, 1954.

4. First, about an order by the competent authority under the H.P. Land Revenue Act, 1954;

The H.P. Land Revenue Act, 1954 (Act No. 6 of 1954) is "an Act to amend and declare the Land Revenue Law of the Himachal Pradesh". The various enactments mentioned in the Schedule to the Act stood repealed, to the extent specified in the third column thereof, upon the coming into force of this Act. The scheme of the Act is familiar and akin to similar Acts in the different States. Primarily, the Act is to ensure assessment and collection of land revenue in respect of an estate as defined in it. Chapter IV pertains to record of rights and periodical records. Chapter XI provides for special jurisdiction in regard, inter alia, to making of the record-of-rights while Chapter XII, containing supplemental provisions, includes Section 171, which relates to exclusion of jurisdiction of civil court in connection with the matters within the jurisdiction of the Revenue Officers. In its material part Section 171 provides:

171. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.--Except as otherwise provided by this Act--

(1). A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act, to dispose of, or take cognizance of the matter in which the State Government or any Revenue Officer exercises any powers vested in it or him by or under this Act, and in particular.

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely --

.....

.....

(v) the framing of a record-of-rights or annual record or the preparation, signing or attestation of any of the documents included in such a record;

(vi) the correction of any entry in a record-of-rights, periodical record or register of mutations...

5. A look at Chapter IV would reveal that any dispute relating to the record-of-rights envisaged by Section 32, or its preparation or revision under the succeeding provisions, is to be determined by the Revenue Officer u/s 37 subject to the provisions of Section 38. The Revenue Officer has primarily to find out as to who is in possession of the property to which the dispute relates. He can do so on his own motion or on the application of any party interested. The enquiry

which the Revenue Officer makes is in connection with the entries in respect of the matters about which it is to be made in terms of Section 32. In other words, enquiry about the persons who as landowners, tenants or assignees of land revenue receive any of the rents, profits in the estate, or who are entitled to the produce of the estate or to occupy land therein; the nature and extent of the interests of these persons and the conditions and liabilities attaching there to; and the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government; a statement of customs respecting rights and liabilities in the estate.

6. The Revenue Officer, on the basis of his decision, is to direct that the person, found by a summary enquiry as best entitled to the property, be put in possession thereof and an entry in accordance with his order be made in the records of right. The direction so made is subject to any decree or order which may subsequently be passed by any Court of competent jurisdiction.

7. An entry made in the record-of-rights in accordance with law is presumed to be true, until the contrary is proved or a new entry is lawfully substituted there for, u/s 45. The succeeding Section 46 provides that:

if any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in a periodical record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1963.

8. Section 47 enables the Financial Commissioner to make Rules, inter alia, for the survey of land so far as may be necessary for the preparation and correction of the records and registers and for the conduct of inquiries by the Revenue Officer under Chapter IV.

9. Chapter II provides for the Classes of Revenue Officers, their powers, administrative control upon them as well as for appeal from and the review and revision of the orders passed by Revenue Officers.

10. Section 14 deals with appeals from orders of an Assistant Collector to the Collector and from the orders of the Collector to the Commissioner and where the order is made by the Commissioner, to the Financial Commissioner. It, however, does not contemplate a second appeal. Section 16 provides for review of an order by a Revenue Officer in certain circumstances and lays down that no appeal shall lie from an order refusing to review or confirming on review a previous order. Power to revise proceedings of Revenue Officers is vested in the Financial Commissioner as also in the Commissioner or the Collector in certain circumstances u/s 17.

11. From the provisions noticed by us it is clear that the matters which are entrusted specifically to a Revenue Officer by or under the Act are excluded from the jurisdiction of the Civil Court. But the exclusion, as is evident from the opening part of Section 171 is "except as otherwise provided by this Act."

12. Stated more precisely, the position is that though a civil court cannot give any direction, amongst others, about correction of any entry in a record-of-rights, periodical register of mutation or for framing of a record-of-rights or annual record or the preparation, signing or attestation of any of the documents included in the record, any decision which it may record in respect of a direction given by a Revenue Officer under Sub-section (2) of Section 37 relating to the question as to who is in possession of a property to which the dispute relates or is the person best entitled to it as well as about any right under which a person is in possession, it will have to be given effect to in the record-of-rights by the Revenue Officer. This is more than clear from what is provided in Section 37(3) and Section 46. The finality of the decision of the Revenue Officer is expressly made subject to a decision by the Civil Court by these provisions. The jurisdiction of the Civil Court, in matters falling within the ambit of these provisions, is not excluded. Instead, it has been expressly preserved.

Regarding, H.P. Tenancy and Land Reforms Act, 1972.

13. Now, regarding conferment of proprietary rights u/s 10 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

Its Objects

14. The H.P. Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974)(for short, "the Act") was passed by the H.P. Legislative Assembly on December 22, 1972, and after receiving the assent of the President of India on February 2, 1974, was published in the H.P. Rajpatra (Extraordinary) dated February 21, 1974. It is "an Act to unify, amend and consolidate the laws, relating to tenancies of agricultural lands and to provide for certain measures of land reforms in Himachal Pradesh". The Statement of Objects and Reasons for the Bill says that:

As a result of the re-organisation of the erstwhile State of Punjab in November, 1966, same areas were integrated in Himachal Pradesh u/s 5 of the Punjab Re-organisation Act, 1966. There are different enactments regarding tenancy and agrarian reforms in force in new and old areas of the Pradesh. In the areas as comprised in Himachal Pradesh immediately before 1st November, 1966, the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 is in force which is a progressive legislation about the security of tenures of tenants and their other rights. In the areas added to Himachal Pradesh u/s 5 of the Punjab Re-organisation Act, 1966, however, occupancy tenants have been vested with proprietary rights under two Acts on the subject namely, the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, and the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954 In the old areas the occupancy tenants have to apply for ownership u/s 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act.

It has, therefore, been considered necessary to unify the various laws relating to tenancies as in force in the Pradesh and to provide for a measure of land reforms to remove disparities.

Restrictions have been imposed to purchase land by the non-agriculturists to avoid concentration of wealth in the hands of non-agriculturists moneyed class.

The Bill is to achieve the above objects.

15. The Act, thus, aims at bringing about measures of land reforms, apart from consolidating law relating to tenancies. It is one of the Acts included in the Ninth Schedule of the Constitution. The relevant provisions of the Act reveal that the object was to ensure that land goes to the actual tiller. The interpretation of its provisions must, therefore, ensure fulfilment of this object. They must bear their contextual meaning. The adoption of a purposive approach, while interpreting the provisions, is a legitimate rule of interpretation available in the case of a statute.

Its Scheme

16. The Act defines a "tenant" in Section 2(17) to mean:

a person who holds land under a landowner, and is, or but for a contract to the contrary would be liable to pay rent for that land to that landowner, and includes--

(i) a sub-tenant, and

(ii) the predecessors or successors in interest of a tenant or a sub-tenant...but it does not include--

(a) a mere mortgagee of the rights of land-owner,

(b)

Under Section 2(10) "landowner" means:

a person defined as such in the Himachal Pradesh Land Revenue

Act, 1954...or the Punjab Land Revenue Act...and shall include the predecessor or successor in interest of the landowner.

17. Chapter II deals with the right of occupancy of a tenant in respect of land occupied or broken up by him for cultivation or taken in exchange by him for other land belonging to the same landowner. Chapter III deals with the question of rents while Chapter IV deals with lease, relinquishment and ejectment. Section 30, occurring in Chapter IV, enables a landowner, who is a minor, or an unmarried woman, or if married, divorced or separated from husband or a widow or who is permanently incapable of cultivating land by reason of any physical or mental infirmity or is a serving member of the Armed Forces and is prevented by sufficient cause from cultivating land to lease land owned by him for such period during which his inability or disability to cultivate in person lasts. It permits the landowner to apply to get back the possession of the land from the lessee within the prescribed period after cessation of his inability or disability. Where he fails to make an application for the resumption of land within the period prescribed, the lessee can claim the benefit accruing to him under Chapter X. Section 31

prohibits relinquishment of a tenancy by a tenant. It says that where a tenant wants to make a voluntary surrender of his tenancy land, the same shall be in favour of the State Government which shall have right to induct any suitable tenant or landless agricultural labourer to the relinquished land. Section 35 then provides that if land comprising the tenancy of a tenant is mortgaged to him with possession by the landowner and such land is subsequently redeemed by the landowner, the tenant shall be deemed to be a tenant of the landowner in respect thereof notwithstanding such redemption. If such a tenant has been dispossessed by the landowner in execution of a decree or order of resumption, he shall be entitled to be restored to his tenancy on an application made by him to an Assistant Collector of the first grade within a period of one year from the commencement of the Act. The tenant is not to be ejected except in execution of a decree for ejectment but when the decree for arrears of rent in respect of land has been passed and remains unsatisfied he will have option to save his ejectment by payment of the arrears of rent within a period of one year from the commencement of the Act. In a suit for his ejectment on the grounds mentioned in Section 34, the Court may relieve him from ejectment by directing him to remedy the injury for which his ejectment is sought within a period to be fixed in the order or direct him to pay into Court such compensation as it considers fit.

18. Chapter VII provides for Revenue Officers and courts, their powers and jurisdiction, appeal, review and revision against their decisions and related matters.

19. Chapter VIII consisting of Sections 90 and 91 says that an entry in any record-of-rights providing for a landowner preventing a tenant from, or ejecting him from, making improvements on his tenancy as he is entitled to make under the Act ; or that a tenant ejected from his tenancy shall not be entitled to compensation for the improvement or that the landowner may eject a tenant otherwise than in accordance with the provisions of the Act shall be void and further that nothing in any agreement made between a landowner and a tenant, after the passing of the Act, shall over-ride any of the provisions of the Act with respect to the acquisition of a right of occupancy or take away or limit the right of a tenant as determined under the Act for conferment and vestment of the proprietary rights upon him or entitle a landowner to eject a tenant otherwise than in accordance with the provisions of the Act.

Chapter IX

20. Chapter IX, which relates to acquisition of proprietary rights by occupancy tenants, then follows:

We may read some of the provisions of this Chapter.

Section 92(b) says that:

"Occupancy tenant" means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and

includes a kismi tenant and a tenant who, after such commencement obtains a right of occupancy in respect of the land held by him whether by agreement with the landowner or through a Court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant- Section 94 provides that:

Notwithstanding anything to the contrary contained in any law, contract, custom or usage for the time being in force on and from the appointed day, all rights, title and interest (including the contingent interest, if any), recognised by any law, custom or usage for the time being in force, and, including the share in the Shamlat with respect to the land concerned of the landowner in the land held under him by an occupancy tenant shall be extinguished and such rights; title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landowner.

"Appointed day" has been defined in Section 92(a) to mean, in relation to any person who at the commencement of the Act, is, or is deemed to be, an occupancy tenant, the date of such commencement; and in relation to any other person, who obtains a right of occupancy after the commencement of the Act, the date on which he obtains such right of occupancy.

21. Section 95 provides for payment of compensation by the occupancy tenant to the landowner whose right has been extinguished u/s 94. The determination and payment of compensation is provided for in Sections 96 and 98. Orders passed by the Land Reforms Officer in connection therewith are subject to appeal and revision u/s 100. Section 101 then says that:

101. Bar of jurisdiction.--Save as otherwise expressly provided in this Chapter, every order made by the Collector, Commissioner or Financial Commissioner shall be final, and no proceeding or order taken or made under this Chapter, shall be called in question, by any Court or before any officer or authority.

22. Section 102 bars legal proceedings against the State Government or any officer or authority for anything done or intended to be done in good faith in pursuance of the provisions of the Chapter or any Rules made thereunder. Section 103 enables the State Government to frame Rules to carry out the purpose of the Chapter.

23. As far as occupancy tenants, as defined in Section 92(b), are concerned, the only dispute can be in regard to the determination of the amount of compensation payable to a landowner and its payment. Section 94 vests in the occupancy tenant the right title and interest of the landowner free from all encumbrances if any, created by the landowner. A decision taken by the Collector, Commissioner or the Financial Commissioner in respect of these matters have been given finality and cannot be questioned in a civil court. The provisions of the Chapter constitute a complete Code in themselves.

24. The H.P. Tenancy and Land Reforms Rules, 1975 deal with the acquisition of

proprietary rights by occupancy tenants in Part IV consisting of Rules 13 to 20. These rules deal with attestation of mutation of proprietary rights of tenancy of land in favour of occupancy tenants after making a summary enquiry, preparation of a statement u/s 96, the determination of amount of compensation and apportionment thereof, manner of service of notices, form and manner of appeals, stamp duty on application for revision to the Financial Commissioner and the maintenance of register of amount received from the tenant and its payment to the landowner by way of compensation.

Chapter X:

25. The acquisition of proprietary rights by tenants other than the occupancy tenants is dealt with in Chapter X of the Act. That Chapter consists of Sections 104 to Section 117. Before reading them, we may notice that each of these appeals is in respect of tenants other than occupancy tenants.

26. Part V of the Rules comprising of Rules 21 to 37 deals with acquisition of proprietary rights by non-occupancy tenants.

The crucial Section 104:

27. Section 104 is the crucial section. In its material part it says:

104. Right of tenant other than occupancy tenant to acquire, interests of landowner.--(1) Notwithstanding anything to the contrary contained in any law, contract, custom or usage for the time being in force...if the whole of the land of the landowner is under non-occupancy tenants....

(i) such a landowner shall be entitled to resume before the date to be notified by the State Government...in the manner prescribed...land under tenancy from one or more than one tenants for his personal cultivation and the right, title and interest...of the tenant or tenants...therefrom shall stand extinguished free from all encumbrances created by the tenant or tenants to that extent.

Provided....

(ii) in case the landowner holds less than one and a half acres of irrigated land or three acres unirrigated land in his personal cultivation, he shall be entitled to resume tenancy land only to make up the land under his personal cultivation to the extent of one and a half acres of irrigated land or three acres of unirrigated land....

(iii) the right, title and interest in the rest of the tenancy land of the landowner, who is entitled to resume land under Clauses (i) and (ii), shall vest in the tenant free from all encumbrances...

(iv)... .. (v) in the event of any dispute between the landowner and the tenant with regard to the selection of the land for resumption, the first right of selection of land shall be that of the tenant...

(vi) in case the tenant fails to exercise his right of selection of land by the date

notified under clause (v), the Land Reforms Officer shall determine his share after giving the parties an opportunity of being heard. In such a case also, the tenant shall be given the first choice to select the land.

(2) Where the landowner does not cultivate the land resumed under Sub-section (1) personally within one year from taking possession thereof, then such land shall vest in the State Government...and...shall be disposed of by the State Government....In such an event the first right to get such land shall be that of the tenant from whom the land was resumed by the landowner.

(3) All rights, title and interest...of a landowner other than a landowner entitled to resume land under Sub-section (1) shall be extinguished and all such rights, title and interest shall...vest in the tenant free from all encumbrances;

Provided that if a tenancy is created after the commencement of this Act, the provision of this Sub-section shall apply immediately after the creation of such tenancy.

(4) Whenever a dispute arises whether a person cultivating the land of a landowner, is a tenant or not, the burden of proving that such a person is not a tenant of the landowner shall be on the latter.

(5) The landowner, where rights, title and interest are extinguished under this section, shall be entitled to receive an amount...either in lump sum or...in such number of instalments...as may be prescribed:

Provided....

(6) Save as otherwise provided in Section 114, every decision of the Land Reforms Officer, under this section shall be binding on all persons claiming an interest in a holding notwithstanding the fact that any such person has not appeared or participated in the proceedings before the Land Reforms Officer or any other revenue authority.

(7) (8) Save as otherwise provided in Sub-section (9), nothing contained in Sub-sections (1) to (6) shall apply to a tenancy of a landowner during the period mentioned for each category of such landowners in Sub-section (9) who,--

(a) is a minor or unmarried woman, or if married, divorced or separated from husband or widow; or

(b) is permanently incapable of cultivating land by reason of any physical or mental infirmity; or

(c) is a serving member of the Armed Forces; or

(d) is the father of the person who is serving in the Armed Forces upto the extent of inheritable share of such a member of the Armed Forces, on the date of his joining the Armed Forces, to be declared by his father in the prescribed manner.

(9) In the case of landowners, mentioned in clauses (a) to (d) of Sub-section (8),

the provisions of Sub-sections (1) to (6) shall not apply,--

... ..

Other Sections

28. Sections 105 and 106 relate to the total amount payable by way of compensation by a tenant as assessed by the Land Reforms Officer and determination by that officer, after publication of a notice in the prescribed manner, of the amount payable on a claim being filed.

Section 107 then says:

Reference to Civil Court.-- Where any dispute arises between persons claiming amount the Land Reforms Officer shall require them to refer their claims to a competent Civil Court for adjudication.

29. Section 108 enables the Land Reforms Officer to dispose of the claim filed before him u/s 106 in accordance with the respective shares of the claimants while Section 109 says that payment shall be made by the Land Reforms Officer to the claimants where there is no dispute about their respective shares. In case of a dispute about the respective shares, he shall make payment in accordance with the adjudication of the Civil Court u/s 107. In case the landowner is a minor, the Land Reforms Officer shall cause the amount to be deposited as provided in Section 110. Section 112 then says that:

112 Bar of jurisdiction -Save as otherwise expressly provided in this Chapter, the validity of any proceedings or orders taken or made under this Chapter shall not be called in question in any Civil Court or before any other authority.

Section 113 contains restrictions upon transfer by a person of land by way of sale, mortgage gift or otherwise during a period of ten years after he acquires proprietary rights therein except as envisaged by the two provisos -to it. Any transfer in contravention of this provision is declared to be void under Sub-section (2). Section 114 provides for appeal and revision in the following terms:

114, Appeal and revision--{1} Any person aggrieved by an order made by the Land Reforms Officer may, within thirty days from the date of the order, prefer an appeal to the Collector, in such form and manner, as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Collector may, within sixty days from the date of the order, prefer an appeal to the Commissioner, in such form and manner, as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(3) With respect to all matters dealt with under this Chapter, the Financial Commissioner shall have the same power to call for, examine and revise the proceedings of the Land Reforms Officer, or the Collector or the Commissioner as provided in Section 65 of this Act.

Then comes Section 115 which reads:

115 Bar of jurisdiction.--Save as otherwise expressly provided in this Chapter, every order made by the Collector, Commissioner or Financial Commissioner shall be final, and no proceeding or order taken or made under this Chapter, shall be called in question by any Court or before any officer or authority.

30. Section 117 enables the State Government, by notification in the official Gazette, to make Rules to carry out the purpose of the Chapter.

31. Chapter XI contains provisions which restrict transfer of land to non-agriculturists and enables an agriculturist to transfer his land in favour of the State Government. The State Government is empowered to distribute land transferred in its favour u/s 119 to the various persons mentioned in the order of preference mentioned in it.

Object of Chapter X:

32. What is noticeable is that the provisions contained in Chapter X, in particular, aim at ensuring that the proprietary rights in land are with the actual tiller thereof. The landowner is entitled to resume, in the manner provided u/s 104, land to the specified extent for subjecting it to personal cultivation. If he fails to do so the resumed land vests in the State Government. The expression "to cultivate personally" has been given a realistic meaning in Section 2(4). The land which a landowner is entitled to resume is that which is under a non-occupancy tenant. It is defined in Section 2(7) as primarily one which is occupied or has been let for agricultural purposes or for purposes subservient thereto. What is permitted to be resumed is tenancy land which is under non-occupancy tenant. "Tenancy" has been defined in Section 2(18) to mean--

a parcel of land held by a tenant of a landowner under one lease or one set of conditions.

33. The right, title and interest of the tenant stands extinguished in tenancy land permitted to be resumed by the landowner and it shall become free of all encumbrances created by the tenant thereon. Likewise, the right, title and interest, in the rest of the tenancy land of the landowner would vest in the tenant free from all encumbrances. The payment of an amount by way of compensation for such extinction is provided for in the Chapter.

The implicit dispute.

34. The scheme of Chapter X being what it is, it is clear that there are bound to be occasions where the landowner may come out with a plea that the person cultivating his land is not a tenant. The person, who is actually cultivating the

land, would be interested in asserting that he is in occupation as a tenant. If such a dispute arises, it would have to be resolved before the claim of a landowner for resumption of any part of such land can be considered.

The Rules

35. The claim for resumption is to be dealt with in the manner prescribed. Rule 21 of the H.P. Tenancy and Land Reforms Rules, 1975, (for brief, "the Rules") requires a landowner to submit an application for the purpose in prescribed Form LR-V to the Land Reforms Officer in whose jurisdiction the land is situate. The Land Reforms Officer shall issue a receipt of having received the application in the prescribed Form LR-VI and enable selection of land by the landowner in terms of Rule 22. The Land Reforms Officer shall then issue a 10 days notice in Form LR VII to the parties concerned under Rule 24 and proceed to pass an order about the extinguishment of the rights of the tenant in such land after selection of land, where mutually agreed upon, by the parties. He shall further order that the possession of the land be given to the landowner from the date to be specified in the order and in respect of the remaining land, shall confer proprietary rights on the tenant. Where there is a dispute about selection of land he shall proceed under Sub-rule (2) of Rule 24 by passing requisite orders, including the one for extinguishment of the rights of tenancy on the land resumed by the landowner, and hand over possession thereof to the landowner as well as conferment of proprietary rights upon the tenant and the determination of an amount payable by the tenant to the landowner. Mutation, in terms of an order under Rule 24, shall be made under Rule 25.

36. Rule 27 deals with the procedure for conferment of proprietary rights on tenants covered by Section 104(3) and says that:

27. Procedure for conferment of proprietary rights on tenants covered by Sub-section (3) of Section 104--All rights, title and interest in the tenancy land of landowners who have already under their personal cultivation 3 acres unirrigated or 1-1/2 acres irrigated land shall vest in the non-occupancy tenants with effect from the commencement of these rules. Similarly, the proprietary rights of tenancy land of the non-occupancy, tenants on Government land shall also vest in the tenants from the commencement of these rules.

37. Mutation of the ownership in favour of non-occupancy tenants, on whom proprietary rights vest under Rule 27, shall, be made in terms of Rule 28 Then follows Rule 29 which may be read in its entirety, it says:

29. Determination of disputes under Sub-section (4) of Section 104.-If there is a dispute regarding the entries of the land records the Land Reforms Officer, in his capacity as an Assistant Collector, of the First Grade, shall decide the dispute under Sub-section (4) of Section 104 in accordance with the relevant provisions of the Punjab Land Revenue Act, 1887, (17 of 1887) or the Himachal Pradesh Land Revenue Act, 1954, (6 of 1954) as the case may be. The disputes of such cases will be determined on a summary inquiry on the files.

Where a tenancy is in a part of a field number, tatima shajras of that part will be prepared.

38. The other rules need not be noticed in connection with the question which we are considering.

Who decides

39. True it is that Rule 29 contemplates determination of disputes of the nature contemplated by Section 104(4) of the Act "on a summary inquiry on the file", yet, it cannot be over-looked that the dispute is envisaged about the question "whether a person cultivating the land of a landowner, is a tenant or not; as is clear from the language in which Section 104(4) is couched. The Legislature must be deemed to know its own mind when enacting a provision of this nature. It is not possible to say, as was canvassed before us by Shri B.K. Malhotra, that Section 104(4) only lays down a rule of evidence when it says that "the burden of proving that such a person is not a tenant of the landowner shall be on the latter" whenever a dispute arises whether a person cultivating the land of a landowner is a tenant or not. It is implicit in Sub-section (4) of Section 104 that the Legislature envisaged that a dispute may arise whether a person cultivating the land of a landowner, is a tenant or not, when proceedings were in progress under Chapter X, and provided that it shall be decided by the authorities contemplated under this Chapter who shall require the landowner to establish that a person cultivating his land is not a tenant.

Not the Civil Court

40. Any enquiry by a Civil Court on the question was barred by the Legislature by specifically providing in Sections 112 and 115, both occurring in Chapter X, that the validity of any order made under the Chapter shall not be called in question in any court and that the order shall be final except as expressly provided in the Chapter. The Legislature knew its mind fully well. Where it wanted a dispute to be determined by the Civil Court, it provided so in Chapter X itself. One has only to look at Sections 107 and 109(2). Not only that the Legislature ruled out any determination by a Civil Court, by necessary implication, of other matters, it expressly said so in Sections 112 and 115.

Why

But Land Reforms Officer

41. The measure of land reforms which the Legislature has in mind, namely, making the actual tiller of land its proprietor, was such which could not be permitted to be postponed indefinitely. From that point of view, in particular, the Legislature appears to have provided for summary determination of the dispute whether a person cultivating the land of a landowner was a tenant or not by the Land Reforms Officer by going into the dispute regarding the entries of the land records in his capacity as Assistant Collector of the First Grade in that respect. The decision was made subject to appeal and revision by the Collector, the

Commissioner and the Financial Commissioner u/s 114. The Financial Commissioner has been given wide revisional powers u/s 114(3) read with Section 65 of the Act.

His competence

42. An Assistant Collector of the First Grade is one of the Revenue Officers u/s 7 of the H.P. Land Revenue Act. Section 56 of the H.P. Tenancy and Land Reforms Act, 1972, provides that there shall be same classes of Revenue Officers under it as under the H.P. Land Revenue Act. Section 58 says that "when a Revenue Officer is exercising jurisdiction with respect to any such suit as described in Sub-section (3), or with respect to an appeal or other proceeding out of any such suit, he shall be called a Revenue Court." Section 58(4) says that:

(4) Except as otherwise provided in this Act or by any rule made by the State Government in this behalf--

(a) a Collector may hear and determine any of the suits

mentioned in Sub-section (3);

(b) an Assistant Collector of the First Grade may hear and determine any of the suits mentioned in the second and the third groups of that sub-section...

43. May be, as pointed out by the learned Counsel, the determination of a dispute whether a person cultivating the land of a landowner is his tenant or not is not covered by Section 58(3), yet, such a determination by an Assistant Collector of the First Grade is provided for by Section 104(4) read with Rule 29 and would, thus, be within the competence of the Land Reforms Officer, in his capacity as Assistant Collector of the First Grade, to determine in view of the opening part of Section 58(4).

Rationale for exclusion of Civil Court

44. The exclusion of the jurisdiction of the Civil Court, in the matter of determination of the question whether a person cultivating the land of a landowner is his tenant or not for purposes of Chapter X, is both reasonable and understandable. Permitting such a question to be determined by the civil court also would have introduced an element of unpredictability, spread over a long period while the matter was under adjudication before the civil court at the trial or an appellate stage, which could have made the effective implementation of measures of land reform aimed at by the Act, uncertain. The Legislature could legitimately think of ruling out such a situation. It has done so by excluding the jurisdiction of the civil court expressly in that matter.

45. Shri K.D. Sood, who also assisted the Court during the hearing, urged that where there was no dispute about the relationship of landowner and tenant, the civil court would have no jurisdiction in the matter but where there was such a dispute, the civil court would have jurisdiction to go into the matter. The reasons which we have mentioned earlier rule out acceptance of the plea that the civil

court would have jurisdiction where there is a dispute about the status of a person cultivating the land of a landowner being his tenant. The acceptance of the plea would negate the accomplishment of the object of securing to the actual tiller proprietary rights in the land under his cultivation as a measure of land reforms envisaged in the Act.

Courts

46. Several decisions were brought to our notice by learned Counsel. Only some of them merit a mention.

In *Bhura v. Bhagirath etc.* ILR 1981 HP 258, V.P. Gupta, J. took the view that:

if the status of a person as a non-occupancy tenant is disputed, then it cannot be said that he is admitted to be a tenant of the suit land and in that case the provisions of Chapter X of the Act or Part V of the Rules will not be applicable. As the whole Chapter X of the Act will be inapplicable to a case where the status of the person claiming to be a tenant is in dispute, therefore, Section 112 of the Act will not become applicable. The Plaintiffs have definitely a right to seek the protection and invoke the jurisdiction of civil court for getting their title declared in the suit land or for getting a declaration to the effect that the Defendant is not a tenant of the suit land...

47. We are unable to share the view expressed in the case. True it is, as observed by the learned Judge in *Bhura*, that the person who is to acquire the ownership rights in the land possessed by him should be a "tenant" of the land and that Section 104 would be applicable only if the person in possession is admitted or proved to be a tenant of the land, yet, the scheme of the Act rules out any approach to the civil court for a determination of the question whether the person in possession is a tenant of the land or not. The matter is to be decided within the forecorners of the Act itself.

48. *Daulat Ram etc. v. The State of Himachal Pradesh* ILR 1978 HP 742 was a case in which the Petitioner had been recorded as tenant of the Ghasni land in the revenue papers. C.R. Thakur, J, who decided the case, held that all rights of the landowner would vest in them free from all encumbrances in accordance with Section 104. The question whether civil court had jurisdiction to determine the status of the person in possession as tenant neither arose nor was considered by the learned Judge.

49. *Smt. Kanu v. Smt. Chanu and Anr.* ILR 1975 HP 807 was a case decided by R.S. Pathak, C.J. The learned Judge held that Section 171(2)(vi) of the Himachal Pradesh Land Revenue Act, 1953, did not oust the jurisdiction of the civil court when a suit brought before it, from the essential substance of the pleadings in the plaint, was for the principal relief of declaration of the title of the Plaintiffs to the land. He also observed (in paragraph 8) that:

...that provision prohibits a civil court from exercising its jurisdiction in the matter of the correction of any entry in a record of rights, annual record or

register of mutations. My attention has been invited to Sections 35, 37, 45 and 46 of the Act....In any event, the Respondents are not claiming the correction of the entry in the register of mutation; they are praying for its cancellation altogether....It may be noticed that in the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, Section 111 details the different groups of suits which are cognizable by the Revenue Court alone and by no other kind of court. A suit for declaration of title, such as the present case, does not fall within any of those groups...

These observations must be read in the context of the provisions of Section 171(2)(vi) of the H.P. Land Revenue Act and must be confined to them alone. They do not lend assistance to the plea that for purposes of Chapter X of the H.P. Tenancy and Land Reforms Act, 1972, it would be open to the civil court to go into the question of the status of the person in occupation of land being a tenant thereof or not. More so, in view of what we have said earlier, about the purpose of the Act and the provisions thereof.

50. Shri S.S. Kanwar, who also was pleading for exclusion of the jurisdiction of the civil court in the matter, brought to our notice the observations of the Privy Council in AIR 1940 105 (Privy Council) to the effect that:

...It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity, with the fundamental principles of judicial procedure...

and urged that the only exception which can bring in the jurisdiction of the civil court can be where it is found that the statutory authorities had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. He also drew our attention to the decision of the Supreme Court in *Maddada Chayanna Vs. Karnam Narayana and Another*, in which the Supreme Court was considering the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), which conferred on every tenant in an estate the right to obtain a ryotwari patta in respect of ryoti lands which were included or ought to have been included in his holding before the notified date and on the landholder the right to obtain a ryotwari Patta in respect of lands which belonged to him before the notified date as his private lands, The observations upon which Shri Kanwar placed reliance were:

The Act makes express provision for the determination of claims by landholders for the grant of ryotwari patta in respect of the alleged private lands. If there is provision for the determination of the claims of a landholder for the grant of ryotwari patta in respect of his alleged private lands surely, in an Act aimed at the abolition of intermediaries and the introduction of ryotwari settlement, there

must be a provision for the determination of the claims of ryots for the grant of ryotwari patta. Section 56(1) is clearly such a provision....It would indeed be anomalous and ludicrous and reduce the Act to an oddity, if the Act avowedly aimed at reform by the conferment of ryotwari pattas on ryots and the abolition of intermediaries is to be held not to contain any provision for the determination of the vital question as to who was the lawful ryot of a holding. The object of the Act is to protect ryots and not to leave them in the wilderness....

These observations support the view taken by us.

51. Shri B.K. Malhotra, in his effort to persuade us to take the view that the jurisdiction of the civil court was not ousted inspite of express provision to that effect contained in Sections 112 and 115, placed reliance upon certain decisions. The first of these was rendered by a Division Bench, sitting as the Himachal Bench of the Delhi High Court at Simla in the case of Balak Ram v. Kenehya 1968 DLT 384. In it, the Bench was called upon to consider the question whether the decision of the Compensation Officer on the question of an applicant u/s 11 of the Himachal Pradesh Abolition of Big Landed Estate and Land Reforms Act, 1953, being a tenant was conclusive and excluded the jurisdiction of the Civil Court to examine or re-examine whether or not he is a tenant. After noticing the provisions of the Act and the general principles governing the exclusion of the civil court's jurisdiction, the Bench held (in paragraph 15) that:

On this ratio, the decision of the Compensation Officer on the question of the applicant u/s 11 being a tenant, cannot be conclusive so as to exclude the jurisdiction of civil courts to examine or re-examine whether or not he is a tenant....The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Rules, also do not seem to us to contemplate any exclusive jurisdiction in the Compensation Officer to determine the question of the status as a tenant of the applicant u/s 11 of the Abolition Act. Looking at Section 92 of the Abolition Act, in the background of the foregoing discussion, in our view, the right of the landholder to establish in a competent civil Court that the person claiming to be his tenant is not a tenant, cannot be deemed to have been taken away or lost to him by virtue of Sections 9, 11 and 12 or any other section in Part III of the Abolition Act.

52. While noticing the scheme of the Act the learned Judges had found that Section 92 reserved the right to persons to establish their claims in respect of any land or part thereof by due process of law in the courts having jurisdiction. The scheme of the Abolition Act, obviously, is different from the Land Reforms Act, 1972.

53. In Magiti Sasamal Vs. Pandab Bissoi, the Supreme Court was dealing with Section 7(1) of the Orissa Tenants Protection Act, 1948. That section read thus:

Any dispute between the tenant and the landlord as regards, (a) tenant's possession of the land on the 1st day of September, 1947 and his right to the benefits under this Act, or (b) misuse of the land by the tenant, or (c) failure of

the tenant to cultivate the land properly, or (d) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable, or (e) the quantity of the produce payable to the landlord as rent, shall be decided by the Collector on the application of either of the parties.

54. On the language aforesaid it was urged before the Supreme Court that the above said clauses did not cover a dispute between the parties as to whether relationship of landlord and tenant existed between them. That was the submission on behalf of the Appellant. The case of the Respondents was that the dispute as to the status of the tenant was also included in Section 7(1). Speaking through Gajendragadkar, J. (as he then was) the Supreme Court said that:

It is true that having regard to the beneficent object which the Legislature had in view in passing the Act its material provisions should be liberally construed. The Legislature intends that the disputes contemplated by the said material provisions should be tried not by ordinarily civil courts but by tribunals specially designated by it...

While bearing this principle in mind we must have regard to another important principle of construction, and that is that if a statute purports to exclude the ordinary jurisdiction of civil courts it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion....We must enquire whether Section 7(1) expressly takes away the said jurisdiction or whether the material words used in the section lead to such an inference or the scheme of the Act inescapably establishes such an inference...in our opinion, even on a liberal construction of Section 7(1) it would be difficult to uphold the argument that a dispute as regards the existence of relationship of landlord and tenant falls to be determined by the Collector u/s 7(1)....All that we wish to emphasise is that the initial dispute between the parties about the relationship subsisting between them will still continue to be tried by the civil court and is outside the purview of Section 7(1)...

55. It is obvious that on a reading of Section 7(1) and, thereafter, upon reading some other provisions thereof, along with these of Orissa Tenancy Act, 1913, the Supreme Court came to the conclusion that the civil court had jurisdiction to entertain the dispute whether the Respondents were the tenants of the Appellant and that the view taken by the High Court that the Collector was competent to try that issue was incorrect.

56. In *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, the question was about the construction of Section 64 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, which section said:

64-C. Finality of orders passed under this Act--(1) Any order passed by the Government or other authority under this Act in respect of matters to be determined for the purposes of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order shall be liable to be questioned in any court of law.

57. Section 11 of the Act provided that every ryot in an estate shall be entitled to a ryotwari patta in respect of all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly included in his holding.

58. The Supreme Court noticed (in paragraph 9) that the Counsel for the Appellant had fairly conceded that there was nothing in the Act which expressly barred the civil court's jurisdiction. Such exclusion was sought to be inferred by the implication contained in Section 64-C which accorded finality to any order. The learned Judges examined the scheme of the Act and the relevant provisions thereof including Section 64-C and concluded (in paragraph 16) that the Civil Court's jurisdiction to adjudicate on the real nature of the land was not ousted u/s 64-C by reason of the Settlement Officer's decision to grant or refuse to grant a patta u/s 11 read with the proviso to Section 3(1) of the Act. That proviso said that where a person was found *prima facie* entitled to a ryotwari patta he would not be dispossessed from any land in the estate in respect of which it was considered that he was entitled to it, pending the decision on the matter by the Settlement Officer as to whether he was actually entitled to the patta or not.

59. On the basis of this decision it was urged by Shri B.K. Malhotra that where the right of a person to get proprietary rights u/s 104 is founded upon summary enquiry, the exclusion of the jurisdiction of the civil court about his status as a tenant cannot be readily inferred. This submission of Shri Malhotra, however, over-looks, in our opinion, that there is an express ouster of the jurisdiction of the civil court in the matter by virtue of Sections 112 and 115, as read by us in the context of the other provisions of the Act and the rules.

60. *Richpal Singh and Others Vs. Dalip*, according to Shri B.K. Malhotra, is an authority which lays down that there could not be an ouster of the jurisdiction of the civil court where a provision, like Section 58(3) of the H.P. Tenancy and Land Reforms Act, 1972, was there in a statute. According to him, Section 77(3) of the Punjab Tenancy Act (16 of 1887) with which the Supreme Court was concerned, was in *parimateria* with Section 58(3). Yet, the Supreme Court held (in paragraph 14) that:

...it appears to us that if the dispute was as to the nature of the relationship of landlord and tenant between the parties, the Revenue Court under the Punjab Tenancy Act had no jurisdiction when there was admitted position, the relationship of landlord and tenant was accepted, the remedies and rights of the parties should be worked out under the scheme of the Act.

61. The question which the Supreme Court was considering was "how far an order directing eviction of a person by the Revenue Court u/s 77(3) of the Punjab Tenancy Act, 1887...operates as *res judicata* for a title suit filed by a person claiming to be a mortgagee and not a tenant of the alleged landlord". The Supreme Court was not considering a question of the nature that is being

considered by us, namely, whether on the scheme of the Act, a determination about the relationship as landlord and tenant could only be done by the forum envisaged in the Act and whether the jurisdiction of the civil court was barred in the matter by express exclusion.

62. There was no express bar pointed out to the Supreme Court, nor was it necessary to do so in view of the controversy which was receiving the attention of the Court to any express exclusion of the jurisdiction of the civil court the exclusion was being pleaded by implication. The Supreme Court did not accept the plea in view of the nature of the controversy and the provisions relating to its determination. The attention of the Supreme Court was basically directed towards determination of the question whether the order of eviction of a person by the Revenue Court u/s 77(3) of the Punjab Act operated as *res judicata* for a civil court for restoration of the possession in a suit filed by the person claiming to be mortgagee and not a tenant of the alleged landlord.

63. We may recall, with advantage, what the Supreme Court has observed in *Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri*, (in paragraphs 46 and 47) speaking through Sabyasachi Mukharji, J. (as his Lordship then was). The Court observed:

...the task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used....It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning...

...If the purpose of a particular provision is easily discernible from the whole scheme of the Act...then bearing that purpose in mind, we should find out the intention from the language used by the Legislature...

64. We have attempted to do it in the present case and have come to the conclusion that the Legislature has envisaged a complete Code in the provisions of the H.P. Tenancy and Land Reforms Act, 1972, inter alia, for effectuating its purpose of land reforms and has ruled out determination of any question connected therewith by the civil court.

The Answer

Our answer, therefore, is:

(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 relates 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 u/s 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is 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.

65. With these answers, let these appeals be listed before the appropriate Bench for final disposal.