
(1988) 07 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 469 of 1976

Dalip Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-07-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 10, 11, 20, 20(3), 3
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104

Citation : (1988) 17 ILR HP 255

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Dev Darshan Sood, for the Appellant; M.S. Guleria, Asstt. A.G., for the Respondent

Judgement

V.K. Mehrotra, J.—Dalip Singh has approached this Court for relief in the present petition under Article 226 of the Constitution in respect of proceedings taken under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Act No. 19 of 1973)(for brief, "the Act"). Before approaching this Court he had exhausted the remedies available to him under the Act by first filing an appeal before the Divisional Commissioner against the order passed by the Collector and thereafter a revision before the Financial Commissioner.

2. Collector Una issued a notice to Dalip Singh u/s 10 of the Act along with which a draft statement was also appended containing, inter alia, particulars about the total area of land owned or held by Dalip Singh, the specific parcels thereof which he may retain by way of permissible area or exemption from ceiling and also the surplus area. Dalip Singh gave reply to this notice and set up the plea that no land was surplus with him. In the alternative he also said that in case some land was found to be surplus with him, he may be permitted to retain some land from the two Khewats, namely No. 696 and 698 (as numbered in the consolidation proceedings and shown in the draft statement as Khewat No. 582 and 585).

3. Collector Una considered the objections in proceedings which were registered as Case No. 436 of 1974. He passed an order on January 27, 1975. He gave benefit to Dalip Singh (alongwith his brother Singh) of some area which had been transferred by his father Shri Gurdyal Singh after January 24, 1971 (the appointed day under the Act) and excluded land in respect whereof the civil court had recognized the rights of Smt. Krishna Devi, the mother of Dalip Singh, in a litigation between them after the death of Gurdyal Singh. The decision which the Collector recorded was that Dalip Singh and his brother Daljit Singh were entitled to retain 633 kanals of land as permissible area. An area measuring 494 kanals 8 marlas situate in village Ambota was declared to be surplus. A final statement showing the particulars of the land declared as surplus was directed to be prepared and the Tehsildar Amb was directed to separate the shares of Dalip Singh and his brother Daljit Singh from other land owners in the land held by them along-with Ors. . The order dated January 27, 1975 was reviewed by the Collector on May 14, 1975. Dalip Singh filed an appeal before the Divisional Commissioner u/s 20 of the Act. The appeal was dismissed by the Divisional Commissioner by order dated August 23, 1975.

4. Section 20 Sub-section (3) provides for revision before the Financial Commissioner by saying that he may, at any time, call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit. Dalip Singh filed an application in revision before the Financial Commissioner under this sub-section against the orders passed by the District Collector and the Divisional Commissioner. The case was registered as Revision Petition No. 173 of 1975. The revision was filed on October 21, 1975. Later, after obtaining permission from the Financial Commissioner, the Memorandum of Revision was amended by raising some additional grounds. This was done on June 18, 1976. The revision was disposed of by the Financial Commissioner by order dated August 17, 1976. It was dismissed. Thus the decision of the District Collector stood affirmed. Thereafter, Dalip Singh filed the present writ petition in this Court. On notice being issued to the Respondents, namely the Secretary (Revenue) to the Government of Himachal Pradesh, the Financial Commissioner, Himachal Pradesh and the Collector, Una, a reply sworn by Smt. Rashima Gupta, Deputy Secretary to the Government of Himachal Pradesh, Shimla, was filed on their behalf. The Petitioner then filed an affidavit-in-rejoinder.

5. Shri Dev Darshan Sood, who has appeared for the Petitioner in this Court and has argued the case with ability, has made three submissions on behalf of the Petitioner. The first of these is that the Financial Commissioner was in error, in not advertng to or considering the additional grounds raised on behalf of the Petitioner in the amended Memorandum of Revision dated June 18, 1976 even though he had permitted these grounds to be added by way of amendment. The submission is well founded. In the very first paragraph of his order, the Financial Commissioner has said that the Petitioner had presented the revision petition on

October 27, 1975 and that a request was made for permission to amend the petition which permission was granted and that the Petitioner accordingly filed an amended petition on June 18, 1976. In spite of it, while deciding the revision, the learned Financial Commissioner failed to notice or record any conclusion on the additional grounds raised in the amended Memorandum of Revision dated June 18, 1976.

6. The two main grounds raised in the amended petition were to the effect that the Petitioner be allowed the benefit of Gair Mumkin land of the description and to the extent mentioned in ground (a) and secondly, that the Collector should have declared surplus land from both the Khewats, Nos. 696 and 698. Instead of doing so, the Collector has declared it only out of Khewat No. 696 whereas the Petitioner is full owner of the land in Khewat No. 696 and half owner out of the total land of Khewat No. 698. What would be the consequence of this non-consideration by the Financial Commissioner will be seen later.

7. The second submission which Shri Sood made was that even though benefit of Gair Mumkin land had been extended to the Co-Khatedars of the Petitioner in Khewat No. 698, the same had not been extended to the Petitioner who also was entitled to it. The Respondents had, as such, acted in a discriminatory manner so far as the Petitioner was concerned.

8. In paragraph 11-C of the amended writ petition the Petitioner has made this grievance, giving but therein the area of Gair Mumkin land of which advantage was given to Sarvshri Kashmir Singh and Kuldip Singh who were joint Khatedars with the Petitioner in Khewat No. 698 (formerly Khewat No. 585) though the same was riot extended to the Petitioner. In the reply which has been filed on behalf of the Respondent's all that has been said about the assertions made in these paragraphs of the petition is that it was clear from the order of the Collector, that, inasmuch as, 325 kanals 7 marlas of land had been excluded from the holding of the Petitioner being "Gair Mumkin" land not falling in the definition of "land" under the Act, in similar situation as compared by the Petitioner, the allegation made by the Petitioner was denied. When one reads the order of the Collector it becomes apparent that the grant of benefit, as claimed by the Petitioner in paragraph 11, C of the amended writ petition, has not been considered at all. From annexure PH filed along-with the writ petition it becomes clear that Kashmir Singh had been given the benefit of exclusion of Gair Mumkin land of the nature in respect whereof the Petitioner was also seeking exemption. Annexure PH is a copy of the order dated May 19, 1976 passed by Collector, Una in the case of Kashmir Singh registered as case No. 438. The grievance of the Petitioner on this score is justified,

9. The third submission of Shri Sood is that some area of land, which had been treated to be land belonging to him and, therefore, liable to be taken into account for determining the surplus area of the land with him was, in reality, in possession of tenants who had acquired proprietary rights u/s 104 of the HP. Tenancy and Land Reforms Act, 1972. This area, according to the submission,

could not be taken into account.

10. The provisions of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 reveal a clear scheme which excludes consideration of the land of the nature aforesaid as part of land which can be taken into account for determining the surplus area of a person like the Petitioner.

11. A look at the definitions mentioned in the various clauses of Section 3 would show that "surplus area" means the area in excess of the permissible area [Section 3]; while "permissible area" means the extent of land specified in Section 4 of the Act [Section 3]. "Land owner" has been defined in Section 3 as a person defined as such in the Himachal Pradesh Land Revenue Act, 1954 or the Punjab Land Revenue Act, 1887, as the case may be, and shall include the predecessor or successor in interest of the land owner. "Land" is then defined in Section 3(f) as follows:

"Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes--

- (i) the sites of buildings and other structures on such land,
- (ii) orchards,
- (iii) ghasnies,
- (iv) banjar land, and
- (v) private forests.

Then in Section 3(t) "tenant" has been defined 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).....
- (ii) the predecessors or successors in interest of a tenant or a sub-tenant, as the case may be, but it does not include--
- (a)
- (b) a person to whom a holding has been transferred or an estate or holding has been let in farm under the Himachal Pradesh Land Revenue Act, 1954 or the Punjab Land Revenue Act, 1887, as the case may be, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear.

"Tenancy" means a parcel of land held by a tenant of a landowner under one lease or one set of conditions. Section 4, occurring in Chapter II, gives out the "permissible area" while Section 6 provides for the ceiling on land. It says--

"CEILING ON LAND.--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 Anr. , the land within the State of Himachal Pradesh exceeding the permissible area on or after the appointed day.

Then follows Section 7 in regard to transfers which are not to affect the surplus area. It reads thus--

"7. CERTAIN TRANSFERS NOT TO AFFECT THE SURPLUS AREA.-

(1) Except in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the Pepsu Tenancy and Agricultural Lands Act, 1955 (13 of 1955), or the Punjab Security of Land Tenures Act, 1953 (10 of 1953), or the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974), no transfer by a person holding land in excess of the permissible area except a bona fide transfer after the appointed day shall affect the right of the State Government to the surplus area to which it would be entitled but for such transfers.

(2) 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 first and the transferred land will be taken into account only for making up of deficiency of land to be vested.

Section 8 provides for selection of permissible area by a person. The next important provision is contained in Section 11 of the Act and provides for vesting of surplus area in the State Government. It is in the following terms.--

11. VESTING OF SURPLUS AREA IN THE STATE GOVERNMENT.--

The Surplus area of a person shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose on payment of amount hereafter provided and all rights, title, and interests (including the contingent interest, if any), recognised by any law, custom or usage for the time being in force, of all persons in such area shall stand extinguished and such rights, title and interests shall vest in the State Government free from any encumbrance:

Provided that where any land within permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it. The other provisions of the Act need not be read for it is not necessary to notice them for the purposes of this case.

12. The scheme discernible from the aforesaid provisions is clear. It is to the

effect that on or after the appointed day no person shall be entitled to hold land as a land holder in excess of the permissible area. The area which is in excess of the permissible area and is declared as surplus area of a person is to be deemed to have been acquired by the State Government for a public purpose on the date on which possession thereof is taken by or on behalf of the State Government and all the rights, title and interest in such surplus land shall stand extinguished.

13. In order to find out whether any area can be treated to be surplus area with a person the appropriate authorities under the Act are required amongst other things to take into consideration certain transfers which are not to affect the surplus area of that person. Section 7, which has been read earlier, deals with these transfers. A perusal of this section shows that apart from land of the nature mentioned in the earlier part of Section 7(1), the right of the State Government to the surplus area to which it would be entitled would not be affected by any transfer made by a person, holding land in excess of the permissible area, except where the transfer is found to be bona fide by the Collector. The decision of the Collector has been made final in this regard. In its opening part Section 7(1) deals with land which may be acquired by the Union or the State Government under any law for the time being in force or by a tenant under the Pepsu Tenancy and Agricultural Lands Act, 1955, or the Punjab Security of Land Tenures Act, 1953, or the Himachal Pradesh Tenancy and Land Reforms Act, 1972. Section 7(1) starts by saying that except in the case of land of these categories, no transfer by a person, unless it is found to be bona fide, after the appointed day will affect the right of the State Government to the surplus area of a person.

14. A reading of the provisions of Section 7 makes it clear beyond doubt that like a transfer by a person, after the appointed day, which, if not bona fide, shall not affect the right of the State Government to the surplus area, the acquisition of land by the Union or the State Government or acquisition (of rights) by a tenant, inter alia, under the Himachal Pradesh Tenancy and Land Reforms Act, 1972 will have bearing on the question of determination of surplus area of a person in the like manner. In other words, if a tenant acquires rights by operation of law in an area of land belonging to person whose surplus area is to be determined, after the appointed day, the said area would have to be excluded from consideration when the question of permissible and surplus area of that person is being considered.

15. It was urged on behalf of the State by the learned Assistant Advocate General that the first part of Section 7, where it deals with acquisition of land by the Union or the State Government or by a tenant, contemplates acquisition prior to the appointed day and not thereafter. This submission overlooks the language in which Section 7 is couched. The language is clear. It talks of transfer by a person whose surplus area is to be determined or a transfer by operation of law, in the sense, that the person whose surplus area is to be determined loses rights in some area of land in which originally he had an interest as a land holder (with

which case alone are we concerned in the present petition). It is not possible to accept the submission of Shri Guleria in this respect.

16. The second limb of the submission of Shri Guleria, on this aspect of the case, was that it was not known in the present case whether some persons had acquired rights under the Himachal Pradesh Tenancy and Land Reforms Act, 1972 in respect of any plot of land of the Petitioner which was being taken into account for determining surplus area, if any, with him under the Act. As such, according to the submission, the Petitioner should not be permitted to raise this plea.

17. True it is that on the record of the present writ petition there is nothing to indicate whether in fact any person has acquired rights under the Himachal Pradesh Tenancy and Land Reforms Act, 1972 in respect of any plot belonging to the Petitioner which was taken into consideration for determining his surplus area under the Act, yet, the legal position in that regard deserves to be clarified on account of the ultimate order that this Court proposes to pass in the present petition. The factual aspect in this regard can be done into by the appropriate authority later. The assertion which the Petitioner has made in this respect is contained in paragraph 11-A of the amended writ petition. It has been averred in that paragraph that in Khewat No. 698 176.5 kanals and in Khewat No. 696, 283.10 kanals area is in the holding of tenants as was clear from the Jamabandies for the years 1968-69 of which copies have been filed with the petition. Out of these, the claim of the Petitioner is that the area of 176.5 kanals was to be excluded from the share. What the Respondents say in reply to this assertion is contained in paragraph 11-A of the affidavit sworn by the Deputy Secretary. The stand taken in that paragraph is that the fact that the land was with the tenants had nothing to do with the Ceiling Act or the action taken thereunder.

18. By way of a submission it was said by Shri Guleria that the only exemptions which are contemplated by the Act are those mentioned in Section 5. No other land can be excluded while considering the question of surplus area of a person. This submission loses sight of the fact that Section 5 enumerates the category of lands to which the provisions of the Act shall not apply at all. It has nothing to do, whatsoever, with the question whether land which was once owned by a landowner, and to which he has lost title later, can be treated to be part of the land which he is entitled to hold or not. The provisions of Section 5 do not negate those of Section 7 which envisages inter alia, the case of a tenant, who acquires rights in land, subsequent to the appointed day, by operation of law.

19. The above discussion leads to the irresistible conclusion that the determination of the question of surplus land in the case of Petitioner Dalip Singh has not been done in accordance with law. The matter deserves to be examined afresh. The three aspects aforesaid, which should have been considered by the authorities, deserve to be looked into properly. The orders passed by the District Collector, the Divisional Commissioner and the Financial Commissioner are quashed. The matter is sent back to the District Collector for consideration afresh

in accordance with law, expeditiously. The District Collector shall permit the Petitioner to place such documentary evidence which is relevant to the inquiry which he may hold, if the Petitioner makes a prayer to that effect before him. The Petitioner shall appear before the District Collector, with a copy of this judgment, on August 22, 1988, to enable the District Collector to proceed with the matter afresh. A copy of the judgment shall be made available to the learned Counsel for the parties within ten days.

20. Parties are left to bear their own costs of this petition.