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**(1991) 12 SHI CK 0011**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.W.P. No. 905 of 1985**

Dharam Chand

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 04-12-1991

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 104(3), 2(7), 59

**Citation :** (1992) 2 ShimLC 218

**Hon'ble Judges :** V.K. Mehrotra, J; Lokeshwar Singh Panta, J

**Bench :** Division Bench

**Advocate :** None, for the Appellant; Chhabil Dass, General, for the Respondent

**Final Decision :** Allowed

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## Judgement

V.K. Mehrotra, J.—The Petitioner, Dharam Chand, a resident of Mauza Sujana Pargana Satrol, Tehsil and District Shimla, instituted the present writ petition under Article 226 of the Constitution on November 2, 1985 seeking relief in respect of a "Gharat" situate in the village aforesaid in Khata/Khatauni 12min/24. Khasra No. 210 (0.3 biswas) The case of the Petitioner is that the 3rd Respondent, Dhani Ram, was paying Rs. 16 to the Petitioner yearly by way of licence fee for the use of the "Gharat". At the back of the Petitioner, however, the Assistant Collector Shimla, granted proprietary rights to the said Respondent through his order dated August 12, 1976 u/s 104 of the H.P. Tenancy and Land Reforms Act, 1972 The Petitioner felt aggrieved and assailed the order in a revision petition before the Collector Shimla objecting to the grant of proprietary rights on the ground, inter alia, that the "Gharat" did not fall within the definition of "land" nor had it been let out for agricultural purpose or for purposes subservient to agriculture. The Collector dismissed the revision The Petitioner then approached the Financial Commissioner by filing a further revision petition which too was dismissed.

2. A copy of the order of the Financial Commissioner has been appended as Annexure P/F to the petition which is an order passed in Revenue Revision No. 9/81 decided on May 27, 1985. A perusal of the order shows that in para 5, the Financial Commissioner posed for determination the question whether there was a relationship of landowner and tenant between the parties and whether "Gharat" could be treated as land within the definition contained in Section 2(7) of the Act. He came to the conclusion, on the basis of the material on record, that the Respondent had been recorded as a non-occupancy tenant on payment of annual rent of Rs. 16. On this basis, it was concluded by the Financial Commissioner that the relationship of landlord and tenant existed between the parties and that on account of being a non-occupancy tenant, the Respondent was entitled to the grant of proprietary rights.

3. The Financial Commissioner proceeded to say that:

...While it is true that the land is used as a "Ghart" and Gharat has not been specifically included in the definition of land u/s 2(7) of the Act, but broadly speaking it comes within the scope of land which is subservient to agriculture as Gharat is used for grinding wheat and maize etc. into flour and wheat and maize etc. are agriculture produce....

The aforesaid extract of the order passed by the Financial Commissioner shows misconception about the legal position.

4. "Land" has been defined in Section 2(7) of the Act. It admittedly does not include a "Gharat". The definition says that.

"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,?

- (a) the sites of buildings and other structures on such land,
- (b) orchards,
- (c) ghasnies,
- (d) banjar land, and
- (e) private forests;

5. The definition, in the form in which it stands, rules out inclusion of any kind of property beyond what is actually stated in it. It is a settled rule of interpretation that where a term is defined as saying that it "means" a particular thing, it has to be confined to what is contained in it, except where the context requires otherwise. As observed in *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, (in paragraph 6):

...It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses....Therefore in finding out the meaning of the word "insurer" in various

sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context....

6. Nothing has been brought to our notice on which we may be persuaded to take the view that in defining land as aforesaid, the legislature intended an extended definition in some circumstances.

7. In this view of the matter, it is difficult to sustain the order of the learned Financial Commissioner to the extent that it gives an extended meaning to the word "land" beyond what is defined as such in the Act.

8. The matter is not *res Integra* The Lahore High Court had occasion to deal with it in the past, We may only refer to a Division Bench judgment of that Court in *Ujagar Singh and Anr. v. Bhagwana* AIR 1936 Lah 780 where it was considering the question whether a water mill could be said to be covered by the provisions of the Punjab Tenancy Act which enabled a suit to be filed u/s 59 for recovery of possession of land. Placing reliance on two earlier decisions in *Farman Ali v. Imam Din* (1904) 77 PR 1904 and *Devta Jamiu v. Hari Dass* (1912) 13 IC 318 the learned Judges took the view that the site of a water mill was not governed by the Tenancy Act as it did not constitute "land" within the meaning of the Act.

9. In conclusion, we find that the decision that "Gharat" constituted "land" in respect whereof proprietary rights could be conferred upon the third Respondent u/s 104(3) of the H.P. Tenancy and Land Reforms Act, is unsustainable. To that extent the decision shall stand quashed We may, however, add that If the third Respondent had acquired any other right under law or under any agreement with the Petitioner, the same would not be adversely affected by this decision. The petition shall stand allowed to the extent aforesaid.

10. Before we conclude, we must record our sense of gratitude to the learned Advocate General who has assisted us in this case even though no one is present on behalf of the Petitioner.