
(2012) 08 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 511 of 2007

Dhyan Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118(1)

Citation : (2013) 1 ShimLC 147 : (2012) 3 ShimLC 1741

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Rahul Mahajan, for the Appellant; P.K. Sharma, Additional Advocate General with Mr. R.P. Singh, Assistant Advocate General, for the Respondent Nos. 1 and 2 and Mr. Ajay Mohan Goel, Advocate, for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sud, J.—The petitioner, who is undisputed owner of the land, challenges the order Annexure-P passed by the Financial Commissioner rejecting his revision petition u/s 65 read with Section 118 sub-section 3(d) of the H.P. Tenancy and Land Reforms Act (hereinafter referred to as the "Act") upholding the order of the Divisional Commissioner, Kangra passed in appeal No. 170 of 1997 affirming the order of the Collector, Chamba holding the petitioner herein responsible for violation of Section 118 (1) of the "Act", and directing the vestment of the property in the State. The genesis of the entire case is based on the order of the Collector, Chamba passed in Case No. 200/3-XII/A/95 which was instituted on 9.8.1995 and decided on 21.11.1996. The case of the State was that the petitioner herein, resident of village Kotlu P.O. Patta, District Hamirpur at present resident of Mohal Moti Tibba, Dalhousie, executed a general power of attorney in favour of Smt. Renu Bali (respondent No. 3 herein) wife of Sh. Anil Kumar, who is permanent resident of B-526, New Friends Colony, New Delhi. According to the State, the general power of attorney was irrevocable and the attorney was authorized to sell or to perform any other act in respect to the land

comprising Khasra Nos. 1465, 1466, 1467 and 1470 measuring 0.20.05 hect. situated at Mohal Moti Tibba, Tehsil Bhattiyat, District Chamba. This power of attorney was registered in the office of Sub Registrar, Dalhousie on 19.3.1992. It was found by the Collector that Smt. Renu Bali was a non-agriculturist and that she could not deal with any property in Himachal Pradesh in view of the prohibition imposed by Section 118 of the "Act". Proceedings were initiated after issuance of notice u/s 30-B of the H.P. Tenancy and Land Reforms Rules. It is undisputed before me that the power of attorney was revoked by the petitioner on 19.8.1994. On the date when the proceedings were initiated i.e. 19.8.1995, there was no power of attorney in favour of Smt. Renu Bali.

2. The petitioner appealed to the Divisional Commissioner, who by his order rejected the appeal of the petitioner holding therein that irrevocable power of attorney was in violation of Section 118 of the "Act" as aforesaid. Revision has also been dismissed by the Financial Commissioner holding that Smt. Renu Bali has been enjoying the rights of a true owner of the land in dispute and it is immaterial that the proceedings u/s 118 of the "Act" were initiated on 9.8.1995 by the District Collector, Chamba. The Commissioner holds that it has been proved on the record that Smt. Renu Bali has been granted permission by the Municipal Committee, Dalhousie for construction /extension of the structures built upon the land. The Commissioner further holds that Dhiyan Singh petitioner does not seem to have interest in this property except being a mere titular owner.

3. Learned Counsel appearing for the petitioner submits that the orders passed by the revenue authorities are in grave violation of the provisions of the "Act", Learned Counsel also submits that the power of attorney already stood revoked and that Section 118 of the "Act" did not contemplate any penal action/ consequences in case power of attorney was executed in favour of the non Himachali/agriculturist etc. prior to the amendment in the Act. There can be no dispute with this proposition.

4. I find that the provisions of Section 118 of the "Act" were the subject matter for decision of this Court in Smt. Santosh Malhotra Vs. State of H.P. and Others, . The Court while discussing the applicability of the amendment prohibiting execution/grant of power of attorney holds:

13. The State of Himachal Pradesh enacted the H.P. Tenancy and Land Reforms Act, 1972. Chapter XI deals with Control on transfer of land. Section 118 prohibits the transfer of land to non-agriculturists which reads as under:

118. Transfer of land to Non-Agriculturists Barred.--(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being, in force, but save as otherwise provided in this Chapter, on transfer of land (including sales in execution of a decree of a civil Court or for recovery of arrears of land revenue), by way of sale, gift, exchange, lease, mortgage with possession or creation of a tenancy shall be valid in favour of a person who is not an agriculturist.

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of--

(a) to (h)....

(i) a non-agriculturist with the permission of State Government for the purpose that may be prescribed:

Provided....

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 (16 of 1908), shall register any document pertaining to a transfer of land, which is in contravention to sub-section (1) and such transfer shall be void ab initio and the land involved in such transfer, if made in contravention of sub-section (1), shall together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances.

14. The revenue authorities below have miss-directed themselves in applying the above extracted provisions of Section 118 of the "Act" in the present case. Suresh Kumar Shukla has not transferred his ownership rights and interest in the property in favour of Smt. Santosh Malhotra by way of General Power of Attorney (Annexure: P1) and the transfer by way of execution of the General Power of Attorney is not incorporated in Section 118(1) of the Act. The transfer of land to non-agriculturist is only barred u/s 118(1) if the transfer is by way of sale gift, exchange, lease, mortgage with possession or creation of tenancy including sales in execution of a decree of a Civil Court or for recovery of arrears of Land Revenue. The General Power of Attorney has been executed on 7.11.1991 by Suresh Kumar Shukla the owner of the property in favour of Smt. Santosh Malhotra in which she has only been authorized to look after, manage, sell or construct the building on the piece of land, to enter into agreement, to sell, to receive the earnest money, to execute or sign on the sale deed etc. etc. On bare reading of the General Power of Attorney it cannot be concluded that Suresh Kumar Shukla has transferred the land by way of sale, gift, etc. etc. envisaged in Section 118(1) of the Act in favour of Smt. Santosh Malhotra or in favour of Jai Dev Malhotra nor it is proved on record that Smt. Santosh Malhotra has sold the land to her son Jaidev Malhotra on the strength of the General Power of Attorney. The reasoning of the Collector that as Jaidev Malhotra had spent a sum of Rs. 1,90,000/- on the construction of the building on the land as reflected by him in his income tax returns will not be a sufficient proof that Suresh Kumar Shukla has transferred the land to Jaidev Malhotra on the bases of the General Power of Attorney executed in favour of his mother. The H.P. Tenancy and Land Reforms (Amendment) Act, 1994 came into force on 22.3.1995 whereas the General Power of Attorney (Annexure P-1) has been executed on 7.11.1991 as noticed above and the Collector passed the order (Annexure-P2) on 20.2.1995 prior to the date of the enforcement of the amended Act. Explanation of Section 118(1) of the Amendment "Act" reads as under:

Explanation-For the purpose of this sub-section, the expression "transfer of land"

shall include:-

(a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non-agriculturist, and

(b) an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land."

15. On perusal of the above said amendment, it is clear that an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in like manner as it he is a real owner of the land has been brought on the statute on 20.2.1995 and this restriction was not the mode incorporated in Section 118(1) of the Principal Act.

16. In that view of the matter, the revenue authorities below have passed the impugned orders against Jaidev Malhotra contrary to the provisions of Section 118 of the Principal Act as the provisions of the Amendment Act cannot be applied retrospectively in the present case.

(Emphasis supplied)

5. Learned Counsel also places reliance on the decision of the Supreme Court in *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, . The Court holds:

22. In view of the facts and circumstances of the case and to the alternative Mr. Agarwal, the learned Counsel for the respondent has urged that the amending Act being substituted legislation would have retrospective effect.

23. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, Chief Justice S.R. Das speaking for the Court observed as follows:

The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

24. We may also refer to Francis Bennion's *Statutory Interpretation*, 2nd Edn., at p. 214 wherein the learned author commented as follows.

The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post facto law is enshrined in the United States

Constant ion and in the Constitutions of many American States, which forbid it. The true principle is that Lex prospicit non respicit (law looks forward not back). As Willes. J. said, retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.

25. This Court in *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, has culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

There can be no dispute to the proposition of law as enunciated/ laid down by the Supreme Court. I find that the case is squarely covered by the decision of this Court in *Santosh Malhotra's* case (supra). The amendment in the Act prohibiting execution of power of attorney is not retrospective. It came into force on 20.2.1995. The power of attorney subject matter of the present petition was revoked on 19.8.1994. In these circumstances, this writ petition is allowed. The order of the Financial Commissioner affirming the orders of the authorities below are quashed and set aside. Writ petition is allowed. No order as to costs.