

(1994) 12 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 192 of 1994

Dinesh Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 30-12-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 300A, 311, 31B
Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 — Section 1(3), 104
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 104(9), 2
Transfer of Property Act, 1882 — Section 105, 117

Citation : (1995) 2 ILR HP 836

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; C.L. Sharma, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—These four appeals (R.S.A. No. 192 of 1994 Dinesh Kumar v. State of H.P. and Ors.; R.S.A. No. 193 of 1994 Mansha Ram v. State of H.P. and Ors.; R.S.A. No. 207 of 1994 Smt. Rattni Devi v. State of H.P. and Ors. and R.S.A. No. 227 of 1994 Rishi Ram v. State of H.P. and Ors.) are being disposed of by a common judgment as similar facts and substantial question of law arise in them. These are against the decrees and judgments dated 24.5.1994 passed by the District Judge, Hamirpur, whereby the appeals of the Respondent-Defendant, State of Himachal Pradesh, were accepted and the decrees and judgments passed by the Sub Judge 1st Class, Hamirpur, impugned in each the appeals were set aside. Hence the present Regular Second Appeals by the Appellants-Plaintiffs.

2. The dispute between the parties is in respect of land measuring 28 Kanals 4 Marlas comprised in Khasra No. 124, situated in tika Chukhniar, Tappa Garli, Tehsil Badsar, Distt. Hamirpur (hereinafter called "the land in dispute").

Admittedly the land in dispute was of the State of Himachal Pradesh and was in occupation of one Sh Bakshi Ram who, on coming into force of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter called "the Act"), acquired proprietary rights. Mutation No. 157 was also attested in his favour on 25.7.1987. Thereafter, said Bakshi Ram sold one-fourth of the land in dispute to each of the Appellants-Plaintiffs by registered sale deed in September, 1989. The mutations of sale were not attested in their favour on the ground that by virtue of proviso added to Sub-section (9) of Section 104 of the Act, proprietary rights in respect of the land owned by the Government cannot be conferred on the tenants occupying the said land. This proviso was added by Amendment Act of 1987 which has been given retrospective effect. Feeling aggrieved, the Appellants-Plaintiffs filed separate civil suits which were decreed and mandatory injunction was issued in their favour directing the Respondent-Defendant to attest mutations of sale in their favour. In appeal, the decrees and judgments of the trial Court were set aside by the District Judge.

3. This Court has heard the learned Counsel for the parties and gone through the record. The substantial question arising in these appeals is what is the effect of proviso to Sub-section (9) of Section 104 of the Act over the vested rights which have accrued to the persons from 21.2.1974, when the Act had come into force to 14.4.1988, when the Amendment Act of 1987, came into operation though retrospectively from 21.2.1974.

4. The proviso to Sub-section (9) of Section 104 of the Act is as under:

Provided that nothing contained in this Section shall apply to such land which is either owned by or is vested in the Government under law, whether before or after the commencement of the Act, and is leased out to any person.

5. Sub-section (3) of Section 1 of the Amendment Act of 1987 provides that the proviso in question shall be deemed to have come into force from the date of commencement of the Act. The precise argument of Sh. Kuldip Singh, learned Counsel for the Appellants is that though the proviso in question has been given retrospective effect, yet, from its plain language it is clear that the Legislature had no intention to take away the vested rights of the persons on whom proprietary rights stood conferred and mutations thereof were duly attested in accordance with law and they have further transferred the lands in favour of other persons whereby rights of other persons have also come into existence. According to him, had the Legislature intended to put the clock back and take away the vested rights, they would have provided in the proviso itself. He has also supplemented his argument by saying that the proviso applies to only those leases which were created after the coming into force of the Act as all those who were tenants of Government land on the date of commencement of the Act, had acquired proprietary rights automatically and attestation of mutation in their favour was only a ministerial act.

6. On the other hand, Sh. C.L. Sharma, learned Additional Advocate General, has

supported the impugned decrees and judgments and has submitted that since the proviso is deemed to have come into operation from the commencement of the Act, proprietary rights on Govt. land could not be conferred on the tenants thereof. As such, all the mutations attested in this regard from 21.2.1974 to 14.4.1988 were null and void and all the vested rights accruing from them were taken away. According to Sh. Sharma, by giving retrospective effect to the proviso in question, the vested rights of all the persons accrued by virtue of the original provision of Section 104 of the Act have been taken away impliedly.

7. By now, it is well settled rule of interpretation, sanctified by judicial decisions that unless the term of the statute expressly so provides or necessarily requires it, retrospective operation should not be given to it so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards the matter of procedure. The general rule, as stated by Halisbury in Volume 36 of the Laws of England (3rd Edition) and reiterated in several decisions of the Supreme Court of India as well as English Courts is that:

All statutes other than those which were merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective....

and retrospective operation should not be given to a statute so as to affect, alter or destroy any existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language, of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. Further, there cannot be any dispute that the Legislature may affect substantial rights by enacting laws which "are expressly retrospective or by using language which has that necessary result and this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens, the provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights, which, but for such operation, would have continued undisturbed. In nutshell, the well recognised rule is that a statute should be interpreted, if possible, so as to respect vested rights and such a construction should not be adopted if the words are open to another construction.

8. Applying the above stated principles of interpretation of Statutes to the proviso in question, it is clear that though it is not declaratory or procedural, yet, it has been given retrospective effect. The Legislature intended that it should be read in Section 104 of the Act from the date of commencement thereof. Therefore, there is no doubt that the proviso in question has been made retrospective expressly. The real question is whether the legislature intended to take away the vested substantial rights which had accrued to those in whose favour proprietary rights stood conferred and mutations thereof attested and they had made further transfers resulting in creation of further substantial rights in favour of other persons. In other words, this Court is to examine from the language used in the proviso in question to what extent retrospectivity was

intended by the Legislature.

9. The objects and reasons given at the time of introducing the bill, which later on became the Amendment Act of 1987, may be of some assistance. These are:

Under the existing provisions, contained in H.P. Tenancy and Land Reforms Act, 1972, the right, title and interest of the Government in the lands owned by it and leased out to a person vests in tenants. It is imperative that the proprietary rights in Governments lands by and large regenerated through public funds, should not pass to private persons. It has, therefore, become necessary to make suitable amendments in Section 104 of the said Act.

10. From the statement of objects and Reasons, it appears that it was not in the mind of the Legislature to put the clock back to the date of commencement of the Act and take away the substantial rights vested in the tenants of the Government land from the date of commencement of the Act to the date of promulgation of the Amendment Act of 1987. Nothing has been said in respect of necessity of giving retrospective effect to the proviso in question. Reading the proviso in question in the backdrop of Objects and Reasons, it is clear that the retrospectivity has been given only in respect of those lands of the Government which continue to be under the A lease and in respect of which proprietary rights had not been conferred in between 21.2.1974 and 14.4.1988. Though the word "lease" has not been defined in the principal Act but looking to the definition given u/s 105 of the Transfer of Property Act, though u/s 117 thereof agricultural lands are exempt from the provisions of Chapter V of that Act, it seems that the word "lease" has been used synonymous to the word "tenancy" as defined in Clause (18) of Section 2 of the Act. It is:

"tenancy" means a parcel of land held by a tenant of land owner under one lease or one set of conditions.

11. The proviso in question applied to the leases in existence on the date it stood promulgated and so far retrospectivity is concerned, it is given to the extent that these leases might be created before the coming into force of the Act or thereafter. The tenants over the land belonging to the Government cannot claim proprietary rights u/s 104 of the Act on the ground that since their tenancy/lease was created before the proviso in question was added, they had already acquired proprietary rights which were not affected by the proviso in question. In view of this interpretation, this Court does not find any substance in the argument of Sh. Kuldip Singh, learned Counsel for the Appellants, that the proviso in question applies only to leases created after the coming into force of the Act. Therefore, in the absence of any specific provision incorporated in the proviso in question for taking away the substantial rights which vested during the period from 21.2.1974 to 14.4.1988 on the tenants/lessees and on others by virtue of legal transfers made by them, the only interpretation possible of the proviso in question is that, by its retrospectivity, it does not take away the rights of those tenants who have been conferred proprietary rights and mutations have been

attested in their favour and those persons who have got the said land by way of transfer.

12. Sh. C.L. Sharma, learned Addl. Advocate General, has tried to urge that since the Act has been put in the 9th schedule and it enjoys the protection of the Umbrella under Article 31B, therefore, it is immune from the challenge as violating any of the provisions in Part III of the Constitution, this Court cannot test the retrospectivity of the proviso in question that it takes away the vested substantial rights of the persons. In the opinion of this Court, this argument has been raised to be rejected as the validity of the proviso in question has not been challenged but only its interpretation has been sought for that how far the substantial rights, already vested, have been taken away. However, this Court would like to recapitulate" the observations made by the learned Judges of the Supreme Court in *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, in respect of legislative enactments which are given retrospective effort to take away or impair any vested right acquired under the existing laws. These are:

...The legislature is undoubtedly competent to legislate with retrospective effect to take away; or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirement of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A Legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history....Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional as it offends Articles 311 and 314 and is arbitrary and unreasonable.

13. In the present case, the proviso in question may be challenged on the ground that it is violative of Article 300A of the Constitution of India that no person shall be deprived of his property save by authority of law. The absence of any such provisions to take away the proprietary rights already conferred and

rights accrued by transfer thereof further fortifies the interpretation given by this Court to the proviso in question that the vested substantial rights were not taken away. In other words, the proprietary rights already conferred on the tenants of the Government land were not affected.

14. No other point has been raised by the learned Counsel for the parties.

15. The result of the above discussion is that these appeals are accepted and the decrees and judgments dated 24.5.1994 of the District Judge are set aside and the decrees and judgments of the trial Court are upheld. No costs.