

(1990) 07 SHI CK 0034

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 164 of 1988

Faquir Chand

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 39
Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 10, 10(1), 10(2), 11, 12

Citation : (1991) 1 ShimLC 282

Hon'ble Judges : V.K. Mehrotra, J;D.P. Sood, J

Bench : Division Bench

Advocate : Pratima Malhotra and H.K. Bhardwaj, for the Appellant; M.S. Chandel, Asstt. A.G., for the Respondent

Judgement

V.K. Mehrotra, J.—These two appeals have come up before us on the basis of a reference made by one of us (V.K. Mehrotra, J.) for determination of a question relating to the interpretation of some provisions of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (briefly, the Act). We have heard Shri H.K. Bhardwaj and Mrs. Pratima Malhotra as well as the learned Asstt. Advocate General Shri M.S. Chandel at some length and proceed to decide the legal aspect of the matter alone.

2. The Appellants in both these appeals claim to be tenants of some land which has been declared to be surplus by the landowners concerned under the provisions of the Act. The Appellants approached the civil court for relief at a stage when, according to them, they were faced with the prospect of their dispossession at the hands of the Collector who had not given any heading to them before directing their dispossession.

3. The Act, as is clear from its preamble, was enacted "...to consolidate and amend the laws relating to ceiling on land holdings in the State of Himachal Pradesh". The enactment of the Act was, in terms of Section 2, for "giving effect

to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution of India" u/s 6, 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 another land within the State of Himachal Pradesh exceeding the permissible area on or after the appointed day.

4. "Appointed day" in Section 3(b) means the 24th day of January, 1971. "Person" in Section 3(n) means the landowner, tenant and mortgagee in possession and includes a company etc capable of holding property "Landowner" is defined in Section 3(g) while "tenant" is defined in Section 3(t) and includes a sub-tenant

5. The "permissible area" of a landowner or a tenant or a mortgagee with possession or partly in one capacity or partly in another of a person is mentioned in Section 4. "Surplus area" is defined in Section 3(r) as the area in excess of the permissible area.

6. An elaborate procedure is contained in the Act to give effect to the provisions thereof relating to ceiling on the extent of land which can be held by a person, as defined in the Act, in the State of Himachal Pradesh. Section 8 provides that every person, who, on the appointed day or at any time thereafter, holds land exceeding the permissible area shall furnish to the Collector particulars of all his lands and that of the separate units within a prescribed period and in the prescribed form and manner stating therein the selection of land not exceeding in the aggregate the permissible area which he desires to retain. If he has selected as part of his holding, to be included in the permissible area, land under tenants, he cannot eject the tenants except on the ground given in the tenancy laws for the time being in force in the State of Himachal Pradesh. Section 9(1) requires a person furnishing a return u/s 8, whose land is situate in more than one patwar circle, to furnish a declaration supported by an affidavit in respect of the land owned or held by him, within the period prescribed, to the Collector. If a person fails to select the permissible area in accordance with the provisions of Section 8, the Collector may select the permissible area for him after collecting the necessary information but he shall do so only after giving the person concerned an opportunity of being heard. This is contemplated by Section 9(2). Section 10 casts a duty upon the Collector to prepare a draft statement in a prescribed manner, on the basis of the information given in the return u/s 8 or the declaration furnished u/s 9(1), after its verification or on the basis of information obtained by him u/s 9(2) showing total area of the land owned or held by such a person, the specific parcel of land which he may retain by way of permissible area, of exemption from ceiling and also the surplus area.

7. The Himachal Pradesh Ceiling on Land Holdings Rules, 1973 (briefly the Rules) have been framed in exercise of powers u/s 26. Forms in which a return is to be submitted u/s 8 and the draft statement is to be prepared and published by the Collector have been prescribed by these Rules. They are Form C-II and C-V.

These forms require details to be filled in, with respect to khasra and khewat numbers, of area which a person selects for retaining as a part of his permissible area u/s 4 or that which is exempt from the application of ceiling u/s 5 of the Act. These Forms do not provide for a description of the surplus area of a person with respect to khasra and khewat numbers.

8. Section 10(2) says that after a draft statement prepared by the Collector u/s 10(1) is published, objections may be filed within 30 days which shall be duly considered by the Collector who shall, after affording the objector an opportunity of being heard, pass such order as he may deem fit. The draft statement is to be made final in terms of the order of the Collector or the order, if any, passed in revision, appeal, or review. The Rules contemplate service of the draft statement upon the person concerned in the prescribed form. By way of a foot note in Form C-V it is mentioned that a copy of the draft statement is "forwarded to the landowner/tenant/mortgagee with possession for necessary action" u/s 10 of the Act and if he desires to take any objection regarding this draft statement he can send the same to the Collector before the expiry of 30 days after the date of service of the draft statement upon him. Obviously, service of the draft statement is contemplated upon a person whose permissible area is to be determined and not on anyone else.

9. The ceiling on land contemplated by Section 6 is applicable to a person with all vigour. This is clear from the provisions of Sections 16 and 17 wherein a bar is created on future acquisition of land by transfer, exchange, mortgage, lease, agreement or settlement or inheritance which will result in the person holding land in excess of the permissible area. The intendment is clear. A person must be confined to the permissible area envisaged for him under the provisions of the Act. He cannot hold any land in excess thereof. After the determination of the permissible area which a person can hold, any area which is found to be surplus with him is to vest in the State Government u/s 11. The possession of the surplus area is to be taken by the Collector and, on the date on which the Collector takes possession, the surplus area is deemed to have been acquired by the State Government for a public purpose on payment of amount provided for by way of compensation. All rights, title and interests recognised by any law, custom or usage for the time being in force of all persons in such area shall stand extinguished and they are to vest in the State Government free from all encumbrances. Under the proviso to Section 11, where the land falls within the surplus area of the mortgagee with possession, only the mortgagee rights shall be deemed to have been acquired by the State Government and would vest in it.

10. The provisions clearly have drastic effect upon the rights of a person who may be found in possession of an area which is surplus area of a landowner, tenant or mortgagee in possession. Once possession of that area is taken by the Collector, the rights of the persons in possession thereof come to an end in their entirety.

11. Section 12 which enables the Collector to take possession of the surplus area

says that:

12. Power to take possession of surplus area.--(1) The Collector may, by order in writing, at any time after an area becomes surplus, direct the person in possession of such area to deliver possession thereof within ten days of the service of the order on him to such person as may be specified in the order.

(2) If the person in possession of surplus area refuses or fails without reasonable cause to comply with the order made under Sub-section (1). The Collector may take possession of the surplus area and may for the purpose use such force as may be necessary.

12. This provision is of some importance, inasmuch as, it is only after possession is taken by the Collector that all rights, title and interest of all persons in that area stand extinguished and vest in the State Government free from all encumbrances. Prior to the stage when the Collector takes steps to take possession of an area which has become surplus, there is no stage contemplated by the Act or the Rules where a person in possession of an area found to be surplus area of another person can show to the appropriate authorities under the Act that he is in possession over that area in pursuance of rights recognised by law. In a case, like the present two appeals, where a person in actual possession of the surplus area of the landowner claims to be a tenant thereof, there is no stage, contemplated during the entire proceeding under the Act, when he can put forward his claim for retaining possession of that land in his own rights.

13. The language in which Section 12 is couched does not contemplate expressly an opportunity to be afforded to the person in possession of an area declared to be surplus to show cause against his dispossession. Literally read, Section 12 enables the Collector to direct a person in possession of a surplus area to deliver possession thereof within 10 days of the service of the order on him and to take possession of that area by use of force as well in case the person in possession refuses or fails to comply with his order without reasonable cause. The provision so read appears to be arbitrary.

14. The grievance of the Appellants is that they were being asked to hand over possession of an area of which they were claiming to be tenants on the ground that the land in their possession was found to be surplus area of the landowners concerned. And that too, without any opportunity to them to show that they were in possession thereof rightfully. Apparently, the direction to an occupant of surplus land, like the Appellants, to hand over possession is harsh. Can the framers of the Act be presumed to have intended an unjust situation like it? The answer seems to be in the negative.

15. The Collector is empowered u/s 12(1) to direct the person in possession of the surplus area to deliver possession thereof by order in writing. He is empowered u/s 12(2) to take possession of the surplus area even by use of such force as may be necessary, if the person in possession refuses or fails without reasonable cause to comply with his order. It is implicit in these provisions that

where the person in possession has a reasonable cause not to comply with the order of Collector, the Collector will have no jurisdiction to require him to hand over possession or to pass an order in writing requiring him to do so. In other words, before passing an order in writing, requiring a person to hand over possession of the surplus area, the Collector will have to go into the reasonableness of the cause which may be put forward by the person in possession of the surplus area before him. It is clear that the Collector will have to give notice to a person found to be in possession over a surplus area before passing an order in writing directing him to hand over possession to him. This requirement must necessarily be read in Section 12 else it may be found to confer arbitrary powers upon the Collector.

16. Principles of natural justice require an opportunity of hearing to a person who is to be adversely affected by an order which may be made by the Collector u/s 12, requiring him to hand over possession of land which is in possession of such a person. To borrow the words of the Supreme Court in "Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , in paragraph 32:

It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action...

True it is that Section 12 does not, in terms, require the Collector to hear a person before directing him to hand over possession of surplus" area to the Collector. Yet, the requirement to do so must necessarily be implied in view of the fact that the order by the Collector may adversely effect the right of the person in possession of the surplus area to continue therein. We find support for our view also from the observations of the Supreme Court in Jagdish Pandey Vs. The Chancellor University of Bihar and Another, where a Constitution Bench of the Court, while dealing with Section 4 of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi)(Amendment) Act (13 of 1962), said (in paragraph 9):

It is then urged that no provision was made in Section 4 for hearing of the teacher before passing an order thereunder. Now Section 4 provides that the Chancellor will pass an order on the recommendation of the Commission. It seems to us reasonable to hold that the Commission before making the recommendation would hear the teacher concerned, according to the rules of natural justice....If an order is passed u/s 4 even though on the recommendation of the Commission but without complying with the principles of natural justice, that order would be bad and liable to be struck down....But we have no difficulty in reading Section 4 as requiring that the Commission before it makes its" recommendation must hear the teacher concerned according to principles of natural justice. Reading the section therefore in this way--and that is the only

way in which it can be read--we are of opinion that it cannot be struck down under Article 14 of the Constitution as discriminatory

These observations, though made in the context of Section 4 of the Bihar Act and Article 14 of the Constitution, are apposite in the circumstances of the present case where, as seen earlier Section 12 of the Himachal Pradesh Ceiling on Land Holdings Act does not expressly provide for an opportunity of hearing to a person found in possession of surplus area though an order prejudicially affecting his right to remain in possession can be made by the Collector.

17. We may also notice the observation of the Supreme Court in its recent judgment in *Carborundum Universal Ltd. Vs. Central Board of Direct Taxes*, New Delhi, to the effect that:

The legal position is that where a statutory provision does not exclude natural justice, the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised.

18. We feel that the requirement of giving notice to a person, in possession of surplus area of another person, by the Collector is also necessitated on account of the fact that the aggrieved person cannot take recourse to a civil court for redress, in the event of his dispossession from the surplus area although he may have some legal right to continue in possession thereof, due to the bar created by Section 18 of the Act. That section clearly provides that no civil court shall have jurisdiction, amongst other things, to deal with the matters which under the Act are required to be dealt with by the Collector, Section 12 contemplates that it is the Collector who shall decide whether a person in possession of surplus area was refusing to comply with an order made by him for handing over possession without reasonable cause or not.

19. We have already noticed that the provisions contained in Sections 4 and 6 of the Act are equally applicable to a tenant and even a mortgagee with possession. In other words, the limit upon a person not to hold land in excess of the permissible area is attracted in the case of a tenant as well who also has to select permissible area u/s 8. A tenant can, therefore, place material before the Collector after being served with a notice u/s 12(1), that he was validly in possession over a surplus area of another person as a tenant and the area in question was in part of the permissible area selected by him. Quite clearly, therefore, a tenant, who is to be asked to deliver possession of a surplus area of another person u/s 12, should have an opportunity to place his case before the Collector before being visited with the penalty of eviction under Sub-section (2) of Section 12 of the Act.

20. In sum, we hold that it is the requirement of law that before proceeding to take possession of surplus area u/s 12 by making an order in writing, the Collector is bound to issue a notice to the person in possession of that area and

give to such a person an opportunity of placing his version before actually passing an order requiring him to hand over possession.

21. With this opinion, let these appeals be placed before a learned Single Judge for their final disposal.