

(1988) 08 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 142 of 1977

Gian Devi and Others

APPELLANT

Vs

The Financial Commissioner and Another

RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 17, 2, 20, 3, 4

Citation : (1988) 17 ILR HP 344

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

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant; M.S. Chandel, Assistant A.G., for the Respondent

Judgement

V.K. Mehrotra, J.—This petition under Article 226 of the Constitution was instituted by one Sarvdaman Singh and relates to proceedings under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (for brief "the Act"). During the pendency of the petition, Sarvdaman Singh died and he is now represented by his heirs and legal representatives.

2. The Act has defined the "appointed day" to mean January 24, 1971. Section 6 of the Act says that 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. land within the State of Himachal Pradesh exceeding the permissible area on or after the appointed day."

3. "Person" has been defined in Section 2(n) to mean the landowner and includes a family. "Landowner" in Clause (g) of Section 3 has been given the same meaning as in the Himachal Pradesh Land Revenue Act, 1954. "Family" has been defined in Section 3(e) to mean husband, wife and their minor children or any one or more of them. Section 4 describes the permissible area. According to it, the permissible area of a family is to be increased by one-fifth of the permissible

area for each additional minor member of a family subject to the condition that the aggregate permissible area shall not exceed twice the permissible area of a family under Sub-sections (1) and (2) of Section 4. It is also provided in Sub-section (4) that every adult son of a person shall be treated as a separate unit and he shall be entitled to land upto the extent permissible to a family under Sub-sections (1) and (2) subject to the condition that the aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible.

4. Land of all classes, other than the land under assured irrigation capable of growing two crops in a year or capable of growing one crop in a year, which a person can hold has been given out in Sub-section (1) Clause (c) of Section 4 of the Act. In the present case we are concerned with this category of land.

5. Baldev Singh was the land-holder. He was father of Sarvdaman Singh. He was alive on January 24, 1971. However, by the time the return contemplated by Section 8 of the Act came to be filed, he had died. The return was, therefore, filed by Sarvdaman Singh. This was in prescribed form C-II as provided by the Himachal Pradesh Ceiling on Land Holdings Rules, 1973. In this form particulars of the family, which were disclosed by Sarvdaman Singh, included himself, his wife and five minor children.

6. The permissible area which was determined for Sarvdaman Singh and his family was, in terms of the information given out in the return filed by Sarvdaman Singh, calculated at one unit plus one-fifth of the permissible area under Sub-sections (1) and (2) of Section 4 for each additional minor member of a family. In other words, the permissible area in the hands of Sarvdaman Singh and his family was calculated at 42 acres. Out of it 30 acres were for one unit and 12 acres for the two additional minor members of the Family.

7. The case which was set up on behalf of Sarvdaman Singh before the Collector and thereafter before the Divisional Commissioner in appeal and the Financial Commissioner in revision u/s 20 of the Act was that he was entitled to two units by way of permissible area. In other words, he claimed that he was entitled to retain 60 acres of land as permissible area in his hands. He said that his father Baldev Singh was alive on January 24, 1971. As such, he was also liable to be treated as one unit for purposes of inclusion of permissible area. In the alternative, according to Sarvdaman Singh, he was entitled to one extra unit as one of his sons had become adult before determination of permissible area by the Collector. The case so set up was not accepted by any of the authorities. That brought Sarvdaman Singh to this Court for relief in the present petition.

8. Shri H.K. Bhardwaj, appearing for the Petitioners, has urged that the basis of calculation of the permissible area which the family of Sarvdaman Singh was entitled to retain is contrary to the provisions of the Act. According to him, the calculation of the permissible area and, consequentially, the surplus area is to be made with reference to the "appointed day" namely January 24, 1971. Since,

admittedly, Baldev Singh was alive on that date he was entitled, in his own right, to retain 30 acres of land as one unit and Anr. 30 acres could be retained by the family treating Sarvdaman Singh and his family to be one unit. In the alternative, according to Shri Bhardwaj, one of the sons of Sarvdaman Singh, who had become adult before the determination of the permissible area, though he was a minor on January 24, 1971, was to be treated as one unit and on that basis more land was to be allowed to the family.

9. The provisions of Section 6 of the Act are imperative in nature. They do not permit a person to retain land exceeding the permissible area on or after the "appointed day". In the present proceedings the permissible area in the case of Sarvdaman Singh alone is under scrutiny. It is he who had filed a return, after the death of his father, Baldev Singh, as a person whose permissible area was to be calculated under the Act. On the "appointed day", namely, January 24, 1971, Sarvdaman Singh together with his family, as defined in the Act, constituted one unit. No member of his family was an adult on that date. As such, the calculation of permissible area in the hands of Sarvdaman Singh and his family, as defined in the Act, with reference to the "appointed day", namely January 24, 1971 could not exceed what was provided by Sub-sections (1) and (3), of Section 4 of the Act. This is what was precisely done by the authorities.

10. The death of Baldev Singh, subsequent to January 24, 1971, led to inheritance by his heirs of a share in his holding as on January 24, 1971. Whatever, therefore, was inherited either by Sarvdaman Singh or any other member of his family, as heirs of Baldev Singh, could only be taken into consideration for determining the permissible area of the heirs separately and not as members of the family of Sarvdaman Singh. As far as Sarvdaman Singh is concerned, under the provisions of Section 17 of the Act, accretion to his holdings was to be taken into account and the permissible area which Sarvdaman Singh was entitled to hold was to be calculated in terms of the provisions of Section 4 itself. There is a clear indication, by what is provided for in Sub-section (6) of Section 4, that in any eventuality the permissible area which a person, including a family, can hold, cannot exceed the area contemplated by Section 4 and calculated in accordance therewith.

11. Thus, the determination of the permissible area of Petitioner Sarvdaman Singh cannot be characterised as contrary to the provisions of the Act or the Rules framed thereunder. Of course, if any member of his family, including the son who had become an adult on the date when the determination permissible area of Sarvdaman Singh came to be made, has any independent rights, including on account of the land inherited from Baldev Singh, he would be free to establish it in accordance with the provisions of the Act.

12. In conclusion, it must be held that the Petitioner is not entitled to any relief in this petition which is disposed of in the aforesaid terms.

13. Costs on parties.