
(1976) 05 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Revenue Petition No. 180 of 1975

Major General Jai Singh

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-05-1976

Acts Referred:

Forest Act, 1927 — Section 38

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 10, 10(2), 20, 20(1), 20(2)

Punjab Security of Land Tenures Act, 1953 — Section 2(8)

Punjab Tenancy Act, 1887 — Section 3, 4(1)

Citation : (1978) ShimLC 157

Hon'ble Judges : P.K. Mattoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Mattoo, J.—This is a revision petition against the order of the Divisional Commissioner dated 22-8-1975 whereby he dismissed the Appeal of the Petitioner from the order of the Collector, Una dated 15-3-1975 declaring Petitioner's land, measuring 2229 kanals 2-marlas as surplus u/s 10(2) of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter called the Act).

2. I have heard the learned Counsel for the Petitioner and the standing Counsel for the State and have also gone through the records of the case.

3. The main grounds on which the order of the learned Divisional Commissioner are sought to be set aside, are that the Courts below have not correctly appreciated the import of "gair mumkin" and "banjar kadeem"; and that the definition of land given in the Act is not applicable to the land of the Petitioner, "which is governed by Section 38 of the Indian Forests Act through the Jandla-Cho-Reclamation Co-operative Society, which is a registered Society." The Petitioner has also raised various points regarding the constitutional validity of the Act.

4. In so far as the last mentioned point regarding the constitutional validity of the Act is concerned it is necessary to examine the scope of Section 20 of the Act under which the present petition has been moved. Section 20 reads as follows:

(1) Any person aggrieved by any decision or order of the Collector may within sixty days from the date of the decision or order prefer an appeal to the Commissioner:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Commissioner made under Sub-section (1) may, within ninety days from the date of the order, file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.

(3) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

5. From the contents of 20 it is obvious that the scope of revision proceedings is limited under Sub-section (2) of 20 of the Act to matters pertaining to legality or propriety of orders of the Commissioner and under Sub-section (3) of the said section to the proceedings and orders of any authority subordinate to the Financial Commissioner. The constitutional validity of the Act of Legislature is a matter far beyond the scope of revision proceedings and can, therefore, not be examined in such proceedings.

6. The other two grounds which were urged by the learned Counsel for the Petitioner are the legality and propriety of the interpretation placed on the definition of the term "land" by the learned Divisional Commissioner, and the effect of Section 38 of the Indian Forests Act and of the management of land by Jandla-Cho-Reclamation Society.

7. It was argued by the learned Counsel for the Petitioner that the land recorded as "banjar kadeem" and "air mumkin" should not be included in the scope of land for the purpose of determining the surplus area under the Act. Reliance was placed by the learned Counsel on the law laid down in the following cases

- (1) Hardit Singh v. Mahinder Singh and Ors. AIR 1937 Lah 755;
- (2) Nemi Chand Jain v. F.C. Punjab 1964 LLT 14;
- (3) Amolak Ram v. F.C. (Planning) Punjab and Ors. 1966 LLT 195;
- (4) Jiwna v. F.C. Haryana, Chandigarh and Anr. 1967 LLT 233;

(5) Jindu Ram v. State of Punjab 1972 RLR 283;

(6) Lal Singh and Anr. v. F.C. Punjab and Ors. 1972 RLR 359;

(7) Amarsurjit Singh v. State of Punjab and Anr. 1969 LLT 1.

8. The learned Counsel for the State argued that since the definition of land incorporated in the Act was wider than the definition in the Punjab Pre-emption Act, 1913 and Punjab Security of Land Tenures Act, 1953. None of these rulings was pertinent to the points at issue.

9. I find that the law laid down in Hardit Singh v. Mohinder Singh, is concerned with the definition of agricultural land as embodied in the Punjab Pre-emption Act, 1913 and is as such not material to the present case.

10. Nemi Chand Jain v. F.C. Haryana and Anr.; Jindu Ram v. State of Punjab, and Lal Singh and Ors. v. F.C. Punjab, all relate to cases under the Punjab Security of Land Tenures Act, 1953. The Punjab Security of Land Tenures Act, 1953 does not directly define land but provides that land and all other terms used but not defined therein shall have the same meaning as are assigned to them in Punjab Tenancy Act, 1887. The definition of "land" in the Punjab Tenancy Act is as follows:

4(1). "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 the sites of building and other structures on such land.

Section 3(f) The Act defines "land" as 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-

(i) the sites of buildings and other structures on such land;

(ii) orchards;

(iii) ghasnies;

(iv) banjar land; and

(v) private forests.

This definition is wider and more comprehensive than the definition incorporated in the Punjab Security of Land Tenures Act, 1953. The observations made in the cases cited by the learned Counsel for the Petitioner are, therefore, not on all fours with the present case.

11. The Supreme Court judgment cited by the learned Counsel for the Petitioner also deals with a case arising out of the provisions of the Punjab Security of Land Tenures Act and as such this case is also not directly relevant to the present proceedings in so far as the definition of "land" is concerned.

12. The Act includes banjar land as land and does not differentiate between "banjar kadeem" and "banjar jadid" land. The learned Commissioner has, therefore, rightly taken all "banjar land" into account while deciding the quantum of surplus area.

13. In the case of land classified as "gair mumkin" the position is slightly different. Since the classification of "gair mumkin" is not mentioned in the definition of the word "land" in the Act, care shall have to be exercised in determining as to whether a particular parcel of land entered in the revenue records as "gair murakin" is really land for the purposes of the Act or not. Similar care will have to be taken in the case of land recorded under other ambivalent classifications in the revenue records. Guidance in this behalf is available from the body of the definition of the word "land" which excludes land occupied as sites of buildings in a town or village but includes land which is occupied or has been let for agricultural purposes or for purposes subservient to agricultural or for pastures, as land for the purpose of the Act. If land is entered in the Revenue records as "gair mumkin" or under any other ambivalent classification but is actually occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, it shall have to be treated as land.

14. In *Amarsurjit Singh v. State of Punjab and Anr.*, referred to earlier, it has been laid down that the Collector is competent to decide the question whether a particular land falls within the definition of land in Section 2(8) of Punjab Security of Land Tenures Act. In the present case the Collector came to the conclusion that the land of the Petitioner admeasuring 2918 kanals 6 marlas was land within the definition of land as laid down in the Act. He also came to the conclusion that the Petitioner was entitled to two units u/s 4 of the Act besides an allowance for bona fide transfer of 76 kanals 4 marlas of land. He accordingly came to the conclusion that 2209 kanals 2 marlas of land were surplus within the meaning of Section 10 of the Act. This is a finding of fact, which has been fully upheld by the learned Commissioner. I see no reason to disagree with these concurrent findings.

15. The next point to be considered is the effect of Section 38 of the Indian Forests Act and the effect of the management of land by Jandla-Cho-Reclamation Society. These points have been examined by the learned Commissioner. He has observed that since Jandla-Cho-Society is not a registered farming Society within the meaning of Section 5 of the Act and further the Society has only been entrusted with the management of land of which the Petitioner continues to be the owner, no case for exemption u/s 5 of the Act is made out.

16. The Act does not exempt the land in respect of which action has been taken u/s 38 of the Indian Forests Act, from the operation of the Act. The Petitioner is, therefore, not entitled to claim any exemption on this account. Section 5 of the Himachal Pradesh Act besides lays down that the provisions of the Act shall not apply to land owned by the State Government or the Central Government or the land belonging to a registered Co-operative Farming Society and this not being the situation in the present case no advantage can accrue to the Petitioner on

this account also.

17. Considered in the light of what has been stated above, there is no force in the revision petition, which is hereby dismissed.