

(1996) 01 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 414 of 1990

Mangat Ram

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 — Section 2, 3, 8(1), 8(A)

Citation : (1996) 2 ShimLC 111

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : S.S. Kanwar and Maninder Sodhi, for the Appellant; M.L. Chauhan, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—Brief facts giving rise to this appeal are that the Appellant filed a suit for declaration and injunction in respect of land measuring 3 Bighas 17 Biswas (hereinafter referred to as the "suit land"). According to the Appellant, the suit land was allotted to him under the provisions of Himachal Pradesh Village Common Lands Vesting and Utilization Rules, 1975, which was framed under the provisions of Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 as well as the rules framed thereunder. This allotment was cancelled by the Additional District Magistrate, Solan exercising the powers of Commissioner vide Ext. P-1 on 25-10-1985. Ground for cancellation was that the Appellant at the relevant time was not a landless person within the meaning of Section 2(c) of the Act ibid read with Section 8(1)(b) thereof in addition to the fact that admittedly he was working in telephone exchange, though temporarily and his salary was Rs. 200 per month. The order, Ext P-1 was challenged by the Appellant and he prayed for a decree to the effect that he was owner in possession of the suit land and the Defendant has no right, title or interest in the suit land as also the order dated 25-10-1985 passed by the Additional District

Magistrate, Solan, exercising the powers of Commissioner is illegal, void, invalid, mala fide, ultra vires and non-est and as such inoperative on the rights of the Appellant qua the suit land. By way of consequential relief, a decree for permanent injunction restraining the Respondent from dispossessing and interfering in any manner with his possession over the suit land was also prayed for.

2. This suit was contested and resisted by the Respondent, amongst other pleas, on the ground that the Appellant had obtained the land by misrepresenting the facts as he was not entitled for such allotment under the Act *ibid*, rules framed thereunder as well as the scheme of 1975 framed by the State Government in respect of the land which was a lotable pool u/s 8(1)(b) of the said Act. According to Respondent, the Plaintiff has no cause of action, the jurisdiction of the Court was disputed and it was further pleaded that the Appellant has alternate remedy under the Act *ibid*. Lastly, it was pleaded that the suit is bad for want of notice u/s 80 of the CPC Although the allotment of suit land was admitted by the Respondent, but it was pointed out that the Additional District Magistrate, Solan exercising the powers of the Commissioner was competent to cancel the same and the order dated 25-10-1985 (Ext. P-1) has been rightly passed by him According to the Respondent, the suit was liable to be dismissed.

3. On the aforesaid pleadings, the parties went to trial on the following issues:

1. Whether the Plaintiff is owner in possession of the suit land, as alleged ? OPP
2. Whether the order passed by the A.D.C. Solan dated 25-10-1985 is illegal, null void, invalid, mala fide, ultra vires and non-est, as alleged ? OPP
3. Whether this Court has no jurisdiction to try this suit ? OPD
4. Whether the Plaintiff has no cause of action ? OPD
5. Whether the suit is not maintainable ? OPD
6. Whether the Plaintiff has complied with the Section 80, CPC OPD
7. Whether the suit of the Plaintiff has not been properly valued for the purpose of court fee and jurisdiction ? OPD
8. Relief.

4. The trial Court found issues No. 1 and 2 in favour of the Appellant and issues No. 3 to 6 against the Respondent. Under issue No. 7, it was held that there is deficiency of court-fee of Rs. 6.50 and the suit was conditionally decreed to the effect that the Appellant is the owner in possession of the suit land Consequently, a decree of permanent injunction restraining the Respondent from dispossessing the Appellant from the suit land was passed.

5. In support of the respective contentions, the Appellant appeared as PW 1 before the trial Court and produced on record documents, Ext. P-1, copy of impugned order dated 25-10-1985 passed by the Additional District Magistrate,

Solan, exercising the powers of Commissioner in case No. 445 of 1985, titled State v. Mangat Ram, whereby allotment was cancelled, Ext. P-2, copy of khasra girdwari in respect of suit land from Kharif 1983 to Kharif 1985 and Ext. P-3, copy of jamabandi for the year 1982-83 in respect of the suit land. On the other hand, Respondent examined Shri Ashwani Kumar, Patwari as DW 1 and produced on record Ext D-1, copy of Rapat Roznamcha Vaguati of Report No 197 which incorporates the order dated 25-10-1985 passed by the Additional District Magistrate, Solan exercising the powers of Commissioner. It clearly indicates that the order of cancellation has not only been given effect to, but on 16-1-1986, the Appellant had been dispossessed from the suit land. Ext. D-2 is the copy of Misal Haquit 1982-83 which shows that the Appellant is the owner of suit land to the extent of 1/3rd share comprised in Khata Khatauni No. 43/60 and the other 2/3rd share belong to other co-owners, namely, Shri Garibu and Hansu Ext D-3 is the copy of jamabandi for the year 1982-83 in respect of the suit land which shows the Appellant to be the owner in possession thereof and Ext. D-4 is a copy of khasra girdawari starting from Rabi 1984 to Rabi 1987, which specifies the sanctum of entry having been changed in favour of the State and mutation having been sanctioned in favour of the State on 27-1-1986, thereby cultivation having been recorded to be that of the State Government.

6. It is on the aforesaid oral as well as documentary evidence that the parties went to trial before the trial Court which decreed the suit of the Appellant-Plaintiff.

7. Respondent was aggrieved by the judgment and decree dated 25-9-1989 passed by the trial Court and went in appeal before the lower appellate Court, which quashed and set aside the judgment and decree passed by the trial Court. Consequently, the suit of the Appellant has been dismissed. Hence, this appeal.

8. Shri S.S. Kanwar, learned senior Counsel for the Appellant, while appearing in support of the appeal has forcefully argued that the dismissal of the suit by the lower appellate Court is not justifiable in the facts, circumstances as well as on the material on record and, therefore, has sought the reversal of the said judgment and decree. Shri Kanwar has further argued that the findings recorded by the trial Court under Issues No. 1 and 2 as well as under issue No. 8 need to be restored which are based on sound reasons and he has drawn the attention of this Court to the statement of PW 1 as well as Ext. P-1 to P-3.

9. On the other hand, Shri M.L. Chauhan, learned Assistant Advocate General has submitted that initially when the allotment was made in favour of the Appellant, he was ineligible and there is no material on record to show that he was either a landless person within the meaning of Section 2(c) of the Act *ibid* and was thus, covered u/s 8(1)(b) of the said Act. According to him, the Appellant was employed in Telephone Exchange and was a Government Servant. Thus, he was not entitled to obtain the allotted land in question under the Scheme of 1975.

10 It may be clarified here that so far as the income of the Appellant on the date of allotment is concerned, is of no consequence because there is positive evidence to the effect that the Appellant was getting Rs. 200 per month from the Telephone Exchange where he was employed at the time of allotment. In order to sustain his plea that he was eligible for the allotment of the land in question within the meaning of Section 8(1)(b) of the Act *ibid*, the Appellant had to show that he was a landless person or was otherwise eligible for being allotted the land under the Act *ibid*. While appearing as PW 1, he has stated no such thing. Here, the definition of landless person within the meaning of Section 2(c) of the Act *ibid* is reproduced which is to the following effect:

2(c) "landless person" means a person who holds no land for agricultural purposes, whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally:

Provided that a person whose father is alive or whose annual income from all sources exceeds Rs. 3,000 shall not be deemed to be a landless person.

11. u/s 8(1)(b) of the Act *ibid*, the village common land vested in the State Government u/s 3 of the said Act can only be utilized for the purposes enumerated in the said Act. 50% of the total area can be used for grazing and other common purposes of the inhabitants of an estate and the remaining for allotment to a landless person or any other eligible person or for allotment of site to a handicapped or houseless person for the construction of a house. Although power vests with the State Government for utilization of land for development of the estate u/s 8-A of the said Act.

12. There is no evidence to show that the Appellant was eligible for allotment of land under the provisions of the said Act, rules framed thereunder, much less under the scheme whereunder the allotment was made in favour of the Appellant. The allotment being contrary to the provisions of Section 8(1)(b) of the Act *ibid* has rightly been cancelled by the Revenue Officers below and no fault can be found with such cancellation and, therefore, order contained in Ext. P 1 dated 25-10-1985 is legal and valid and has rightly been upheld by the lower appellate Court, while dismissing the appeal of the Respondent.

13. In this context, it may be pointed out that the authority which is competent to grant the land is inherently entitled to cancel such grant, if the same is contrary to law governing it. There is no iota of evidence to show that the Appellant was eligible for such grant. Nor anything has been pointed out by Shri Kanwar in this behalf from the case file. As such on the materials on the file of this case, I find that the suit has rightly been dismissed by the lower appellate Court. I see no reason to differ with the same. Moreover, there is no question of law much less substantial question of law involved in this appeal which call for interference in the facts of this case.

14. No other point has been urged by any of the parties in the present appeal.

15. As a result of the above discussion, the appeal is devoid of any merit and deserves dismissal and it is dismissed accordingly. Parties are left to bear their own costs.