
(2003) 11 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 173 of 2002

Maninder Veer Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 — Section 4
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(2), 5

Citation : (2003) 3 ShimLC 189

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : N.S. Chandel, for the Appellant; H.K.S. Thakur, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—On a vigilance enquiry against employee of Nagar Palika, Dalhousie, it was found that Maninder Veer Singh had constructed a eight storeyed hotel within the municipal limits of Dalhousie Nagar Palika by forging the records in conspiracy with Kuldeep Raj Mahajan, Secretary of the Nagar Palika and said Kuldeep Raj Mahajan had mis-used his powers thereby giving undue benefit to Maninder Veer Singh because construction of more than three storeyed building is not permissible within the municipal limits of Nagar Palika Dalhousie. On the basis of these findings, the vigilance Department registered a case under Sections 467, 468, 471, 120B IPC and Section 13(2) of the Prevention of Corruption Act, 1988 and investigation follows. During investigation, it was found that one half share in Khasra No. 416/147 Khewat Khatauni No. 49/112 situate in Dalhousie was purchased by Maninder Veer Singh and Jatinder Veer Singh for Rs. 40,000 from Promila Kumar through her Mukhtiar Malkiat Singh vide Vasika No. 19 dated 11.6.1981 and the other half of the aforesaid land was purchased by Sadhu Singh for Rs. 40,000 from the said

owner through her said Mukhtiar. Mutations on the basis of the aforesaid sales were attested on 31.7.1981 vide mutation Nos. 935 and 936. At the time of purchase Hotel Guncha Sidharata existed on the land in question. On perusal of the records, the investigating agency found that the aforesaid Vasika Nos. 19 and 20 were wrongly registered by Parkash Chand, Sub-Registrar, Dalhousie contrary to the provisions of H.P. Tenancy and Land Reference Act, 1972 (hereafter referred to as 'the Act') which came into force on 21.2.1974 because in view of the provisions of Section 118 of the said Act, a non-agriculturist cannot purchase land in Himachal Pradesh except in a few exceptional circumstances. The aforesaid Vasikas were not accompanied by a certificate to the effect that the purchasers were agriculturists. The evaluation of a kothi, mentioned in the vasika and known as "Hard Stone", was not got assessed from the Public Works Department and less stamp duty was paid and thereby loss was caused to the State. In 1991 Maninder Veer Singh got a building plan approved from the Nagar Parishad Dalhousie and thereafter Hotel Guncha Sidharatha was constructed on the land but the construction was not in accordance with the sanctioned plan and was illegal because the hotel consisted of eight storeys. Nagar Parishad Dalhousie entered into correspondence with Maninder Veer Singh and Jatinder Veer Singh and Sadhu Singh about this illegal construction but they ignored such correspondence and got the illegal construction compounded from the Financial Commissioner-cum-Secretary (UD) to the Government of Himachal Pradesh on token composition fee of Rs. 40,000. Thereafter the hotel was registered with District Tourism Officer, Chamba, Malkiat Singh Mukhtiar had died on 14.11.1985. Investigation revealed that Kuldeep Raj Mahajan, who is the named accused in the FIR, on the basis of the vigilance enquiry was found not to have committed any offence. However, a chargesheet under Sections 420, 467, 468, 471, 120B IPC and Section 13(2) of the Prevention of Corruption Act, 1988 was submitted to the learned Special Judge, Chamba against accused Parkash Chand, Maninder Veer Singh, Jatinder Veer Singh and Sadhu Singh.

2. On the basis of the material collected by the Investigating Agency, the learned Special Judge vide order dated 17.7.2002 held that there are grounds for presuming that the accused had committed the offences complained against and accordingly directed framing of the charge against them. Being aggrieved, the accused have preferred the present petition.

3. I have heard the learned Counsel for the accused and the learned Deputy Advocate General for the State and have also gone through the records.

4. The precise allegations against the accused are that they entered into a conspiracy and violated the provisions of Section 118 of the Act to ensure that the accused who had purchased the land in question are given undue advantage contrary to the law and that the property purchased by them was shown to have been purchased at a very low amount with a view to avoid paying of the requisite stamp duty and accused Parkash Chand in doing so had mis-used his official position. Thus, the whole controversy revolves around the question as to whether

by acting in violation of the provisions of Section 118 of the Act and by fixing the lesser value of the property in question the accused are prima-facie shown to have committed the offences alleged to have been committed by them.

5. Section 118 of the Act as amended and as in force at the time of filing of the chargesheet reads as under :

118. Transfer of land to non-agriculturists barred.?(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including sales in execution of a decree of a civil Court or for recovery of arrears of land revenue), by way of sale, gift, exchange, lease, mortgage with possession or creation of a tenancy shall be valid in favour of a person who is not an agriculturist.

(2) Nothing in Sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of:

- (a) a landless labourer; or
- (b) a landless person belonging to a scheduled caste or a scheduled tribe; or
- (c) a village artisan; or
- (d) a landless person carrying on an allied pursuit; or
- (e) the State Government; or
- (f) a co-operative society or a bank; or
- (g) a person who has become non-agriculturist on account of the acquisition of his land for any public purpose under the Land Acquisition Act, 1894; or (1 of 1894).
- (h) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop from the Himachal Pradesh State Housing Board established under the Himachal Pradesh Housing Board Act, 1972 (10 of 1972), or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 (12 of 1977), or from any other statutory corporation set up under any State or Central enactment; or
- (i) a non-agriculturist with the permission of State Government for the purpose that may be prescribed:

Provided that a person who is a non-agriculturist but purchases land with the permission of the State Government under Clause (i) of this sub-section shall, irrespective of such permission, continue to be a non-agriculturist for the purposes of this Act:

Provided further that a non-agriculturist in whose case permission to purchase

land is granted by the State Government, shall put the land to such use for which the permission has been granted, within a period of two years or a further such period, not exceeding one year, as may be granted by the State Government to be counted from the day on which the deed covering the sale of the land is registered and if he fails to do so, the land so purchased by him shall vest in the State Government free from all encumbrances.

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 shall register any document pertaining to a transfer of land, which is in contravention to Sub-section (1) and such transfer shall be void abinitio and the land involved in such transfer, if made in contravention of Sub-section (1), shall, together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances: (16 of 1908).

Provided that the Registrar or the sub-Registrar may register any transfer:

- (i) where the lease is made in relation to a part or whole of a building; or
- (ii) where the mortgage is made for procuring the loans for construction or improvements over the land either from the Government or from any other financial institution constituted or established under any law for the time being in force or recognized by the State Government.

(4) It shall be lawful for the State Government to make use of the land which is vested or may be vested in it under Sub-section (2) or Sub-section (3) for such purposes as it may deem fit to do so.

Explanation.—For the purpose of this section, the expression "land" shall include:

- (i) land, the classification of which has changed or has been caused to be changed to "Gair Mumkin", "Gair Mumkin Makan" or any other Gair-mumkin land by whatever name called, during the past five year countable from the date of entry in the revenue records to this effect;
- (ii) land recorded as "Gair-mumkin", "Gair-mumkin Makan" or any other Gair-mumkin land, by whatever name called in the revenue records, except constructed area which is not subservient to agriculture; and
- (iii) land which is a site of a building in a town or a village and is occupied or let out not for agricultural purposes or purposes subservient to agriculture" Extract of Section 5 of Act No. 6 of 1988.

5. Savings.—Notwithstanding anything contained in this Act, any transfer of land, situate within the territorial jurisdiction of a municipal corporation, municipal committees or a notified area committee, for any of the purposes, i.e. for the construction of a dwelling house, a shop or a commercial establishment or office or industrial unit, made before the day on which the Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 is published in the Official Gazette after its assent, shall be deemed always to have been made in accordance with the law as if Sub-section (2) of Section 118 of the principal Act had not been

amended by Section 4 of this Act."

6. The aforesaid section no doubt mandates that any transfer of land in Himachal Pradesh in favour of a non-agriculturist will be invalid and the Registrar/Sub-Registrar under the Indian Registration Act shall not register a document pertaining to be a transfer of land except where the case is covered under Sub-section (2). The Act, however, does not expressly provide any punishment for violation of the provisions of the aforesaid Section, therefore, any violation of the mandate of the aforesaid provisions by the purchaser will render the transfer as invalid and will render the Registrar or Sub-Registrar who registered such deed at the most liable to departmental action unless it is shown that the violation of these provisions was intentional, with a view to give undue advantage to a party and to cause undue loss to the State by mis-use of official position or that the transfer has been brought about by fabricating documents to show that the purchaser is an agriculturist or that the value for the purpose of stamp duty was intentionally shown much less than the prevalent price of such property at the relevant time with a view to avoid payment of due stamp duty.

7. In so far as the allegation of under valuation of the property is concerned, there is not even an iota of evidence on the record to show that at the relevant time market value of the land in question was more than the one on which the stamp duty has been paid. In the absence of such evidence it cannot be said that the value of the land, as mentioned in the sale deeds, was not the market value of the land/Kothi in question at the relevant time. It is, thus, not even prima-facie made out that the value of the property purchased by the accused other than accused Parkash Chand was more at the relevant time than what has been mentioned in the sale deeds which were executed way back in the year 1981.

8. Regarding allegations that accused Parkash Chand as the then Sub Registrar registered the sale deeds contrary to the provisions of Section 118 of the Act it may be pointed out that the aforesaid Section 118 was substituted for old Section 118 of the Act by Section 4 of Act No. 6 of 1988 published in the RHP Extraordinary dated 14.4.1988. Substitution by way of amendment added Sub-section (3) to old Section 118 of the Act which debars the Registrar or the Sub Registrar appointed under the Indian Registration Act from registering a document which purports to be a transfer of land to a non-agriculturist.

9. Before the aforesaid amendment, Section 118 read as under :

118. Transfer of land to non-agriculturists barred.?(1) Save as provided in this Chapter, no transfer (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue) by way of sale, gift, exchange, lease or mortgage with possession shall be valid in favour of a person who is not an agriculturist.

(2) Nothing in Sub-section (1) shall be deemed to prohibit the transfer of any land by an agriculturist in favour of:

- (a) landless labourers; or
- (b) landless persons belonging to scheduled castes and scheduled tribes; or
- (c) village artisans; or
- (d) landless persons carrying on an allied pursuit; or
- (e) State Government; or
- (f) Co-operative Societies and [a Bank].
- [(g) a non-agriculturist within the limits of municipal Corporations, municipal committees, notified area committees for any one of the purposes, i.e., for construction of a dwelling house, a shop or commercial establishment or office or industrial unit subject to the condition that transfer of land for such purposes shall not exceed:
 - (i) in case of a dwelling house - 500 square metres;
 - (ii) in case of a shop, commercial establishment or office - 300 square metres;
 - (iii) in case of an industrial unit such area as may be certified by the Department of Industries of the State Government;
- (h) a non-agriculturist with the permission of the State Government for the purposes to be prescribed.]

It is evident on a bare reading of the aforesaid provisions which were in force at the time when the Vasikas No. 19 and 20 were executed and registered that no duty was cast upon the Registrar or the Sub-Registrar not to register documents pertaining to the transfers invalidated by the provisions of Sub-section (1) (supra). Thus, Parkash Chand accused cannot be said to have violated the provisions of Section 118 of the Act as they were in force at the relevant time and accusation against him is mis-conceived and based on the mis-application of the present Section 118 to the time when the Vasikas were registered.

10. It is also evident from the aforesaid provisions that a non-agriculturist is not debarred from purchasing land within the limits of Municipal Corporation, Committees, Notified Area Committees. The land purchased by the accused other than Parkash Chand is admittedly within the local limits of Municipal Committee Dalhousie and was purchased for establishing a commercial establishment. Thus, they could not be said guilty of the violation of the provisions of old Section 118 of the Act as in force at the relevant time. At the most if there is anything contrary to the provisions of Section 118 of the Act in the sale transaction, the transaction itself will be rendered invalid without entailing any criminal liability.

11. There is no allegation that any document has been prepared by the accused persons falsely or by intentionally concealing any material fact. Thus, prima-facie the accusations regarding forgery and using a forged document as genuine are also unfounded.

12. It is admitted case of the State that the construction of hotel on the land in question was started after approval of the Committee. There is no dispute that the construction raised was not in accordance with the sanctioned plan but the deviations were compounded by the State through its secretary. It is not the case that initial approval for construction by the Committee or subsequent composition by the Financial Commissioner-cum-Secretary (UD) to the Government of Himachal Pradesh was mala fide, illegal, without authority and amounted to an offence(s) committed by the concerned employee of the Committee or the Financial Commissioner-cum-Secretary (UD) to the Government of Himachal Pradesh.

13. The above discussion leads me to the conclusion that on the basis of the material on record commission of any offence by the accused persons is not made out and there does not exist reasonable grounds to proceed against the accused persons. Therefore, the impugned order is liable to be set aside.

14. As a result, this petition is allowed, the impugned order is set aside and the accused are discharged.