

(1963) 09 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Misc. Second Appeal No. 11 of 1963

Nanku and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-09-1963

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 11, 13, 2(5)

Citation : AIR 1964 HP 16

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : M.L. Aukta, for the Appellant; K.C. Pandit, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.B. Capoor, J.C.

1. This second appeal by Nanku, Hira and Abhai Ram is directed against an appellate order of the learned District Judge Mahasu, Sirtnur, Bilaspur and Kinnaur Districts whereby an order made by the Compensation Officer dismissing the application u/s 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, hereinafter to be referred as the Abolition Act, filed by the appellants and pro forma respondents Nos. 2 and 3 was set aside and the said application was allowed subject to a payment of Rs. 1567.02 Np.

2. The aforesaid application related to 9 Bighas 1 Biswa of land comprised in Khasra No. 86 situated in village, Jungle Narenti, and was filed against the Union of India. The defence put forward on behalf of Union of India was that the relationship of landlord and tenant did not subsist between the parties, that the Abolition Act was not applicable to land owned by the Government, that valuable trees stood on the aforesaid land which were under the control and management of the Forest Department and proprietary rights in those trees could not be conferred on the applicants and lastly that if proprietary rights are conferred in

the land along with the trees the value of the trees should also be paid to the landlord as compensation. On behalf of respondent No. 1, Budhi Singh a Forester was examined who inter alia stated that the disputed land was Reserve Forest under the control of the Forest Department and the tenants had no right in those trees and had merely the right to cut grass growing on the said land. No oral evidence" was led on behalf of the appellants and pro forma respondents. An extract from Jamabandi was, however, filed by them. The Compensation Officer reached the conclusion that the disputed land was forest land and did not fall within the definition of land as given in the Abolition Act and accordingly dismissed the application. An appeal was preferred by the appellants and the pro forma respondents against the aforesaid decision. The learned District Judge relying upon the extract from Jamabandi held that the appellants and pro forma respondents were the tenants of the disputed land and their right therein was not confined merely to cut grass and that the disputed land was land as defined in the Abolition Act. He further held that the tenants were liable to pay compensation in respect of the trees and accordingly he allowed the application u/s 11 upon payment of Rs. 1567.02 Np. which included a sum of Rs. 1518.54 Np. as the value of the trees standing on the disputed land. Aggrieved by the aforesaid order this appeal has been preferred.

3. The contention advanced on behalf of the appellants is that the trees are part of the disputed land and that no separate compensation was payable in respect of them. According to the appellants the amount of compensation is to be computed according to the II Schedule to the Abolition Act, i.e., at a specified multiple of the land revenue payable.

4. The definition of land as given in section 2(5) of the Abolition Act reads as below:

" "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 -

- (a) the sites of buildings and other structures on such land,
- (b) orchards,
- (c) ghasuis.

It is not disputed that 109 trees stand on and grass grows in the disputed land. None of the aforesaid trees is a fruit tree and the disputed land cannot be said to be an orchard for according to the Concise Oxford Dictionary Second Edition an orchard means enclosure with fruit trees. It has next to be considered if the disputed land is a ghasni. In the extract from Jamabandi the nature of the disputed land is recorded as ghasni and normally it should be held to be a ghasni. The question for consideration is if, in view of the 100 trees which stand on the disputed land, it can be considered to be ghasni. Ghasni, in my opinion, is that land which is either wholly or dominantly and substantially occupied with

grass or in other words in the whole or a substantial portion of which grass grows. I do not think that every piece of land on which grass grows can be styled as a ghasni. It had therefore to be considered as to whether in view of the 109 trees the disputed land was dominantly forest area or ghasni. The question has, however, not been considered by the learned District Judge in the aforesaid light and perspective. He relied upon the extract from Jamabandi but the undisputed existence of 109 trees could not be ignored. This aspect of the matter need not be pursued further as respondent No. 1 has submitted to the decree passed by the learned District Judge and it has, therefore, to be held that the appellants and respondents Nos. 2 and 3 were entitled to have proprietary rights conferred in the disputed land.

5. Now I advert to the contention advanced on behalf of the appellants that trees on account of their attachment to the land were part and parcel of the land and proprietary rights in them would be automatically conferred on the conferment of the proprietary rights in the land. Prior to the coming into force of the Abolition Act, the Punjab Tenancy Act 1887 was, subject to certain modifications, applicable to Himachal Pradesh, and the tenancy law as embodied in the Abolition Act is modelled on the Punjab Tenancy Act. The definition of land as given in the aforesaid two Acts is identical except for this difference that according to the latter Act land also includes orchards and ghasnis. The question as to whether land as defined in the Punjab Tenancy Act included trees or not was considered in the case of *Nasib Singh v. Amin Chand* AIR 1942 Lab. 152 and was answered in the negative. Land has also been defined in the Punjab Alienation of Land Act 1900 as amended in 1936 and according to that definition it includes trees standing on agricultural land. The Himachal Pradesh legislature must be deemed to have been aware of the aforesaid definition and of the AIR 1942 Lah 152 case supra and the non-inclusion of non-fruit trees in the definition of land as given in the Abolition Act is not without significance. If the intent of the legislature had been that all growing trees would constitute land nothing would have been easier than to use the expression "trees standing on such land" instead of the Word "orchards".

6. Although it is not necessary to ascertain as to why the legislature did not include standing timber in land, the reason might well have been that standing timber was movable property vide S. 3 of Transfer of Property Act and Clauses (6) and (9) of S. 2 of the Indian Registration Act

7. Section 13 of the Abolition Act provides for the payment of compensation in respect of the buildings and structures on the land and it has been contended on behalf of the appellants that if the intention of the legislature had been to provide for the payment of compensation in respect of the trees a specific provision would have been made. I am, however, unable to accede to that contention. Buildings and structures are specifically included in the definition of land and it was hence that the legislature provided for the payment of compensation in respect of buildings and structures. It will not be out of place at

this stage to mention that the payment of compensation in respect of the buildings and structures is at the option of the tenant and if he does not choose to pay compensation he will not have any proprietary right in the building or structures or of their site. Standing timber is not included in the definition of land and it was, therefore, not necessary for the legislature to have made any provision for the payment of compensation in respect of such trees. The absence of a provision for the payment of compensation in respect of trees in Section 13 referred to above cannot, therefore, be a ground for holding the non-fruit trees constitute land. I, therefore, hold that the trees standing on the disputed land do not constitute land. There is not an iota of evidence on the record indicating that the aforesaid trees belong to the tenants. The uncontroverted evidence on record indicated that they were under the control and management of the Forest Department. The Union of India is the owner of the disputed land and it would also be the owner of the trees.

8. The appellants thus are not entitled to be conferred proprietary rights in the trees standing on the disputed land and ex hypothesi cannot be made to pay compensation in respect of them.

9. The appeal is thus accepted and the order of the learned District Judge is modified to this extent that the application u/s 11 of the Abolition Act is allowed to this extent that proprietary rights in the disputed land barring the 109 trees existing thereon are conferred on the appellants and pro forma respondents upon payment of a sum of Rs. 48.48nP. In the peculiar circumstances of the case the parties will bear their own costs throughout.