

(1992) 07 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 137 of 1991

Parkash Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 15-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 91, Order 21 Rule 92, Order 21 Rule 94
Himachal Pradesh General Clauses Act, 1968 — Section 3
Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 — Section 1(3), 4, 4(3), 6
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118, 118(1), 118(2), 118(3), 118(4)

Citation : (1993) 2 ShimLC 88

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; H.L. Karwa, Assistant A.G. and K.D. Sood, for the Respondent

Judgement

Devinder Gupta, J.—A short question, which arises for determination in this civil revision, is with regard to the locus-standi of Respondent No. 1 to move an application praying for cancellation of the sale certificate issued in Petitioner's favour. Answer to the question posed is dependant upon the true interpretation to the provisions of Sub-section (3) of Section 1 of the Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987, (Act No. 6 of 1988) (hereinafter to be called as "the amendment Act").

2. Respondent No. 2-bank on 17th August, 1984, was granted a money decree against judgment-debtors-Respondents No. 3 and 4. On the decree having remained unsatisfied, the decretal amount was sought to be recovered by filing execution petition. 12 biswas of land situate in village Rampurghat in Tehsil Paonta Sahib, District Sirmaur, belonging to the judgment-debtors, over which some construction was also standing, was attached on the basis of warrants of attachment issued by Sub-Judge First Class, Paonta Sahib and ultimately the

attached property was put to sale by public auction, which took place on 12th February, 1988. The Petitioner was declared to be the highest bidder. 1/4th of the bid money was deposited on the spot and the remaining amount was deposited on 23rd February, 1988. Since no application was made under Rules 89, 90 and 91 of Order 21 CPC (hereinafter referred to as "the Code") the sale was confirmed on 11th March, 1988 and by virtue of provisions of Order 21, Rule 92 of the Code, the same became absolute. The sale certificate was granted to the Petitioner on 8 th April, 1988 as per the requirement of Order 21, Rule 94 of the Code.

3. According to the Petitioner, the property was purchased by him with an intention to establish a poultry farm being an industry for which purpose the Director of Industries, Himachal Pradesh, on having been approached issued the requisite essentiality certificate and as per the law, there was no prohibition in the purchase of the property.

4. On 29th June, 1990, Respondent No. 1 through Collector, Paonta Sahib, moved an application in the executing Court praying for cancellation of the sale certificate. The ground seeking cancellation as made out in the application is that the sale in favour of the Petitioner is in contravention of Sub-section (1) of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) (hereinafter referred to as the "principal Act"), as amended by the amendment Act. The application was opposed by the Petitioner who filed his reply dated 9th October, 1990, which was supplemented with an additional reply dated 1st March, 1991. Number of grounds were put forward to oppose the application and one of such objection was that the provisions of the amendment Act could not be applied in the case, since the Petitioner had already acquired a valid title prior to the coming into force of the amendment Act.

5. The executing Court through the impugned order passed on 27th May, 1991 held the sale to be in contravention of the provisions of Sub-section (1) of Section 118 of the principal Act and accordingly ordered the cancellation of the sale certificate.

6. The principal Act was passed by the Himachal Pradesh Legislative Assembly on 22nd December, 1972, with an object to unify, amend and consolidate the laws relating to tenancies of agricultural lands and to provide for certain measures of land reforms in Himachal Pradesh. Section 118 which bars the transfer of land to a non-agriculturist is contained in Chapter XI, providing for control on transfer of lands. Validity of Section 118 of the principal Act, as it stood prior to its amendment, was upheld by this Court in *Smt. Sudershana Devi v. Union of India* ILR 1978 H.P. 355.

7. The amendment Act received the assent of the President on 25th March, 1988 and was duly published in the Himachal Pradesh Extraordinary Gazette on 14th April, 1988. By virtue of Section 4 of the amendment Act, Section 118 of the principal Act was amended, Section 118, as it stands today, makes certain

transfers of land, including sales in execution of a civil Court, other than the one which are saved under Sub-section (2) thereof, in favour of a non-agriculturist to be invalid. Sub-section (3) of Section 118, as substituted by the amendment Act, provides for the consequences of such an invalid transfer. It provides that transfer of land in contravention of Sub-section (1) shall be void ab initio and the land involved in such transfer together with structures, buildings, or other attachment etc. shall vest in the State Government free from all encumbrances. Sub-section (3) of Section 118 reads as under:

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 (16 of 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 ab initio 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.

8. Section 118 in the principal Act, as it stood prior to its amendment, did not contain a similar provision. It is only by way of amendment Act that such a provision has been inserted providing for the vesting of the land in the State Government free from all encumbrances and making the transfer in contravention of Sub-section (1) to be void ab initio.

9. It is contended by Mr. Goel that as on the date when the sale was confirmed and became absolute, Sub-section (3) was not on the statute book and accordingly no right can be deemed to have vested in the State Government so as to enable it to apply and pray for cancelling the sale certificate. In other words, the locus standi of the State Government to move an application for cancellation of the sale certificate has been challenged.

10. Mr. Karwa, appearing for the State has by making reference to Sub-section (3) of Section 1 of the amendment Act has contended that Section 118, as amended, has retrospective effect since it is provided that the amendment Act shall be deemed to have come into force from the date of commencement of the principal Act.

11. No doubt, the State Legislature has plenary power of legislation within the field of legislation committed to it and subject to certain constitutional restrictions; it can legislate prospectively as well as retrospectively but one of the cardinal principles of construction is that every statute is prima facie prospective, unless it is expressly or by necessary implication made to have retrospective operation. This rule in general is applicable where the object of the statute is to affect vested rights or impose new burden or to impair the existing obligation. See: Arjan Singh and Another Vs. The State of Punjab and Others, ; Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, .

12. Section 118, as substituted by the amendment Act, has some vital effect on some of the rights, since Sub-section (3) thereof, as quoted above, provides for making the offending transfer void ab initio and for vesting of the property so

transferred in the State Government, for which no provision was made in the principal Act. As a logical corollary of the general rule of interpretation, noted above, retrospective operation is not taken to be intended unless that intention is manifest by express words or necessary implication. It has been held in Arjan Singh's case (supra), that there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. Applying this rule. It is necessary to find out from the enactment itself as to whether there is any retrospectively provided expressly or by necessary implication.

13. Section 3 of the Himachal Pradesh General Clauses Act, 1968 (Act No. 16 of 1969), says that where any Himachal Pradesh Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which the assent thereto of the Governor or the President of India, as the case may require, is first published in the official Gazette. The President of India gave his assent to the amendment Act on 25th March, 1988 and the same was published in the Gazette on 14th April, 1988.

14. Sub-section (3) of Section 1 of the amendment Act provides for the dates of commencement and reads as under:

(3) It shall be deemed to have come into force from the date of commencement of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974) but Section 3 and Section 4, in so far as it amends Clause (g) and the second proviso to Clause (i) of Sub-section (2), Sub-section (3) and Sub-section (4) of Section 118 of the said Act, shall come into force at once.

15. By enacting this clause, the legislature intended that the entire amendment Act, barring certain provisions referred to therein shall be deemed to have come into force from the date of the commencement of the principal Act. As such except for the provisions referred to in Sub-section (3) of Section 1 of the amendment Act. the amendment Act as a whole has expressly been given retrospective operation from the date of commencement of the principal Act, namely, 1st February, 1974. For the present, the question pertains to Sub-section (3) of Section 4 of the amendment Act. Expressly the legislature has in Sub-section (3) of Section 1 of the amendment Act provided that the said Sub-section (3) of Section 4 of the amendment Act shall come into force at once. As such, it shall be deemed to have come into force on 14th April, 1988.

16. Section 118, as it stands in the principal Act, has been substituted and replaced with considerable amendments therein in place of the earlier provisions by the amendment Act.

17. On the question of substitution of one provision by deleting Anr. , the Supreme Court in Bhagat Ram Sharma Vs. Union of India (UOI) and Others, has said as under:

It is a matter of legislative practice to provide while enacting an amending law,

that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between "repeal" and an "amendment". In Sutherland's Statutory Construction, 3rd Edn. Vol. 1 at p. 477, the learned author makes the following statement of law:

The distinction between repeal and amendment as these terms are used by the Courts is arbitrary. Naturally the use of these terms by the Court is based largely on how the Legislature have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitled the Act as an amendment... When a provision is withdrawn from a section, the Legislatures call the Act an amendment particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it. Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind-addition as opposed to withdrawal or only in degree-abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree-addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal-the abrogation of an existing statutory provision-and have therefore applied the term "implied repeal" and the rules of construction applicable to repeals to such amendments.

18. In the latter part of the same judgment, the following principle of construction stated in Halsbury's Laws of England, 3rd Eda Vol. 36 p. 474 has been approved:

Where an Act passed after 1850 repeals wholly or partially any former enactment and substitutes provision for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into operation.

And observed:

We do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and Anr. of a fresh enactment even if it Implies two steps. Indeed, the natural meaning of the word "substitution" is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to ave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words "shall be substituted".

19. Yet, in Anr. case, the V.K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhagwanji Bhatia and Others, while considering the question, when the

legislature has in clear terms stated certain provisions to apply with retrospective effect, will the other provisions can be said to apply prospectively, it was held as under:

Where the statute thus, on its face, clearly indicates retrospective effect, where intended, there can be no justification to read retrospectively into the amendment made by Clause (a) of Section 6 of the amending Act which does not contain any words to that effect.

The legislature in the instant case intended the entire amendment Act to have retrospective effect, barring certain provisions, for which in clear terms it was stated that the same shall come into force at once. By necessary implication retrospective operation cannot be given to those provisions, which according to the amendment Act have prospective operation.

20. Sub-section (3) of Section 118 providing for the vesting of the land in the State Government where transfer of land is found to be in contravention of Sub-section (1) of Section 118 is one of such provisions which by virtue of Sub-section (3) of Section 1, the State legislature expressly provided to come into force at once, namely, 14th April, 1988. The said provision was neither in the statute book, so as to apply to the transaction already completed before 14th April, 1988, nor will it have the effect of the property vesting in the State Government, even if a transfer of any property was invalid as a result of contravention of the provisions of Sub-section (1) of Section 118, as it stood prior to the amendment. Consequently, it has to be held that Respondent No. 1, as on the date when the sale became absolute and when the sale certificate was issued had no right, title or interest and accordingly cannot be said to be having any locus standi to make a prayer for cancellation of sale certificate on the ground that the sale though in contravention of Sub-section (1) of Section 118, the property has vested in the State Government.

21. The question posed accordingly has to be answered in the negative, namely, Respondent No. 1 had no locus standi to pray for the cancellation of the sale certificate issued in favour of the Petitioner.

22. As a result, the petition is allowed. The impugned order passed by Sub-Judge First Class (I), Paonta Sahib dated 27th May, 1991 is set aside and the application moved by Respondent No. 1 is dismissed.

23. The parties are left to bear their respective costs.