

(1990) 08 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 320 of 1990

Parshotam and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 14-08-1990

Acts Referred:

Government Grants Act, 1895 — Section 3

Citation : (1990) 2 ShimLC 206

Hon'ble Judges : P.C.B. Menon, C.J.; Davinder Gupta, J

Bench : Division Bench

Advocate : A.K. Sood, for the Appellant; Chhabil Dass, General, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, C.J.—Petitioners No. 1 to 3 are the legal heirs of one Bachan Singh, who was allotted a plot of land 5 bighas in extent as per a scheme framed under the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974. On allotment of the land, Bachan Singh was also issued a certificate showing him the absolute owner of the land allotted to him subject to the condition that he will not alienate the land for a period of 10 years from the date on which he takes possession of the land. Bachan Singh took possession of the land on April 24, 1979. After his death, Petitioners Nos. 1 to 3, his legal heirs, are, in possession of the land. They had after the period of 10 years agreed to sell the land to Petitioners Nos. 4 and 5 and a sale-deed dated April 23, 1990 was presented for registration before the second Respondent, Sub-Registrar. The Sub-Registrar has declined to register the document on the ground that as per the notification issued by the Governor, Himachal Pradesh, dated December 9, 1987, the period of embargo against alienation has been extended from 10 years to 20 years.

2. This notification will not apply to a concluded transaction Bachan Singh had obtained allotment of land subject only to the condition that no alienation will be

made for a period of 10 years from the date on which he took possession of the land. The alteration effected by the notification issued by the Governor can only apply to transactions subsequent to the date of the said notification. Section 3 of the Government Grants Act, 1895, enacts:

All provisions, restrictions, condition and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

3. In *Chairman, Ramappa Gundappa Sahakari Samyakta Besava Sangha Ltd. Vs. State of Mysore and Others*, the Supreme Court stated at page 858:

...Certainly, if an indefeasible right in property has been vested in the Petitioners, as the High Court thinks, there may be something to be said in favour of its ultimate finding, but we have no doubt whatever that the land belonged to Government, that it was free to give leases or rights to cultivate to whomsoever it chose, that its policies could change from time to time in accordance with its, own social objectives and that any order modifying, or nullifying the earlier policy decision, by a subsequent resolution cannot be depravatory of anyone's rights...

4. In the present case, the land after assignment to the Petitioners' predecessor Bachan Singh ceased to be the land belonging to the Government. The bar against alienation for a period of 10 years was a covenant running with the land and any subsequent change in the policy of the Government cannot affect the concluded transactions. We, therefore, direct the second Respondent to register the document dated April 23, 1990, if presented before him within one month from today, subject to other objection(s), if any, in regard to its registration.

5. The writ petition is allowed to the above extent. Parties will suffer their respective costs.