

(2019) 09 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 975 Of 2019

Preeti	Vs	APPELLANT
State Of Himachal Pradesh And Others		RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Himachal Pradesh Tenancy And Land Reforms Act, 1972 — Section 2(7), 2(7)(a), 2(8), 118(1), 118(2), 118(1)(2)(b), 118(2)(b)
Registration Act, 1908 — Section 71, 72, 72(1)

Citation : (2019) 09 SHI CK 0009

Hon'ble Judges : V. Ramasubramanian, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Ajay Sharma, Ajay Thakur, Ashok Sharma, J.K. Verma, K. Sharma, Ritta Goswami, Ashwani K. Sharma, Nand Lal Thakur

Final Decision : Allowed

Judgement

V. Ramasubramanian, CJ

1. Challenging an order passed by the Tehsildar Kandaghat holding that the petitioner is not entitled to purchase a land in view of the prohibition contained in Section 118 (2) (b) of Himachal Pradesh Tenancy and Land Reforms Act, 1972, the petitioner has come up with the above writ petition.

2. Heard Mr. Ajay Sharma, learned Senior Counsel for the petitioner and Mr. Adarsh K. Sharma, learned Additional Advocate General for respondents No. 1 and 2.

3. The petitioner herein entered into an agreement for the purchase of a residential flat in village Sirinagar, Tehsil Kandaghat and submitted an application on 09.04.2019 to the Sub-Registrar seeking permission, claiming that she is a bonafide Himachali belonging to the Scheduled Caste. She enclosed a copy of the agreement of sale dated 26.03.2019. The flat intended to be purchased allegedly consisted of three rooms, kitchen, toilet, bathroom and a balcony approximately

measuring a carpet area about 72.30 square meters with a parking space for one vehicle.

4. After conducting an inquiry, the third respondent held that though the petitioner is a bonafide Himachali belonging to the Scheduled Caste, she did not qualify as a "landless person" in terms of the definition of the expression under Section 2 (8) of the Act. Therefore, by the proceedings dated 22. 04.2019, the third respondent informed the petitioner that she is not entitled to purchase the property, without getting permission of the competent Authority. Aggrieved by the said order, the petitioner has come up with the above writ petition.

5. The controversy that arises in this writ petition lies in a very narrow compass. The fact that the petitioner is a bonafide Himachali and that she belongs to the Scheduled Caste are not disputed. The only ground on which the third respondent has rejected the request of the petitioner is that she does not fall within the definition of the word "landless person".

6. Section 118 (1) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 prohibits the transfer of any land by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner, if such transfer is in favour of a person who is not an agriculturist. But sub-Section (2) of Section 118 carves out certain exceptions. One of the exceptions is to be found in Clause (b) of sub-Section (2) of Section 118. As per Clause (b) of sub-Section (2), nothing contained in sub-Section (1) of Section 118 shall be deemed to prohibit the transfer of land by any person in favour of "a landless person belonging to a Scheduled Caste or a Scheduled Tribe".

7. Since there is no dispute about the fact that the petitioner is a Scheduled Caste and since the dispute revolves only around the question whether the petitioner is landless, the definition of the expression "landless person" found in Section 2 (8) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, assumes significance. It reads as follows:

"2. Definitions.

xxx xxx xxx

(8) "landless person" means a person who, holding 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."

8. To fall within the definition of the expression "landless person", one should satisfy four conditions, namely: (i) he must not hold any land for agricultural purposes, whether as owner or as tenant; (ii) he must earn his livelihood principally by manual labour on land; (iii) he must intend to take the profession of agriculture; and (iv) he must be capable of cultivating the land personally.

9. Neither the impugned proceedings nor the reply filed by the respondents

disclose in any manner as to whether the petitioner does not satisfy any one or more of the aforesaid conditions. The impugned proceedings simply state that the petitioner is not a landless person within the meaning of the Act. It is not even known whether any kind of inquiry was conducted by the respondents for finding out whether the petitioner fulfills any one or more of the conditions stipulated in Section 2 (8). A very bald statement expressed in the form of an opinion without any basis is not sufficient to defeat the rights of a person who claims to fall under one of the exempted categories.

10. Both in the impugned proceedings as well as in the reply, the respondents have completely omitted to take note of one important fact. While the respondents have focused attention on the definition of the expression "landless person", they have completely lost sight of the definition of the word "land" appearing in Section 2 (7), which reads as follows:

"2. Definitions.

xxx xxx xxx

(8) "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) ghasnies,
- (d) banjar land, and
- (e) private forests."

11. The main part of the definition of the word "land" excludes a land which is not occupied as the site of any building in a town or village. It is only the inclusive part of the definition found in Clause (a) of sub-Section (7) of Section 2 that the sites of buildings and other structures on land are included within the definition. But it is only those sites of buildings and other structures located on land occupied or let out for agricultural purposes or for purposes subservient to agriculture that are included in Clause (a) of sub-Section (7) of Section 2. This is made clear by the use of the word "such" in Clause (a) of sub-Section (7) of Section 2. At the cost of repetition, Section 2 (7) (a) is reproduced again:

"the sites of buildings and other structures on such land."

12. As can be seen from the Preamble to the Act, the aforesaid Act is intended to unify, amend and consolidate the laws relating to tenancies of agricultural lands. One cannot lose sight of the object and purposes of the Act. What is sought to be purchased by the petitioner herein, even according to the reply filed by respondents No. 1 and 2, is only a small flat measuring approximately a carpet area of 72.30 sq. mtrs. comprising of three rooms, a kitchen, a toilet, a

bathroom and a balcony with parking space for one vehicle in a building which appears to be already in existence.

13. Even according to the reply-affidavit filed by the respondents, the petitioner's father was working as a Sweeper in a Government Polytechnic during the period 1985 to 2017. Unfortunately, instead of showing sympathy on such a person from the lower strata of society, the respondents have taken advantage of this fact to say that the petitioner is not earning her livelihood principally from agriculture, as required by Section 2 (8). But such an interpretation, as we have pointed out earlier, omits to take note of the definition of the word "land" in Section 2 (7).

14. The learned Additional Advocate General appearing for the respondents sought to raise a preliminary objection to the maintainability of the writ petition on the basis of Section 72 of the Registration Act, 1908. It is his contention that whenever the Sub-Registrar refuses to register a document under Section 71, a person aggrieved is entitled to file an Appeal under Section 72 (1) and that therefore the petitioner ought to have availed the alternative remedy of Appeal before invoking the writ jurisdiction of this Court.

15. But we do not think that the above objection can be sustained. The refusal of the third respondent to register the document of the petitioner, was not on any factual ground but on the ground of a legal impediment. In fact, though the impugned order was passed by the third respondent (the then Sub-Registrar), the reply to the above writ petition has been filed by respondents No. 1 and 2. Once a reply has been filed on behalf of the Secretary (Revenue) to the Government, the objection that an Appeal ought to have been filed to the Registrar under Section 72 (1) of the Registration Act, 1908 is nothing but an eye wash. Therefore, this contention deserves to be rejected.

16. In view of the above, we are of the considered view that the impugned order passed (i) without any basis to hold that the petitioner does not satisfy any one or more of the four conditions stipulated in Sections 2 (8); and (ii) without an application of mind to the definition of the word "land" in Section 2 (7), is vitiated.

17. Hence, the writ petition is allowed and the impugned order is set aside directing the respondents to allow the registration of the flat purchased by the petitioner.

18. Pending miscellaneous applications, if any, are also disposed of accordingly.