
(2005) 01 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 684 of 2003

Rajesh Kumar Dubey

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 113, 118, 118(2)
Himachal Pradesh Tenancy and Land Reforms Rules, 1975 — Rule 38A, 38A(2)
Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 — Section 8(3)

Citation : (2005) 1 ShimLC 383

Hon'ble Judges : M.R. Verma, J;A.K. Goel, J

Bench : Division Bench

Advocate : S.S. Mittal and Arvind Sharma, for the Appellant; M.S. Chandel, General and D.C. Pathik, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—The Petitioner who is non-agriculturist, applied u/s 118 of the H.P. Tenancy and Land Reforms Act, 1972 (hereafter referred to as "the Act") for grant of permission to purchase land Khasra No. 930/15, measuring 130.90 sq. mtrs., situate in Mohal Shubh Khera, in Tehsil Paonta Sahib, for construction of a residential house. After due enquiries as per the provisions of Rule 38A of the H.P. Tenancy and Land Reforms Rules, 1975 (hereafter referred to as "the Rules"), Respondent No. 2, vide Annexure P-3, recommended the grant of requisite permission in favour of the Petitioner. However, Respondent No. 1 refused the requisite permission and its decision was conveyed to the Petitioner vide Annexure P-4 without disclosing any reason for such refusal. Aggrieved by the refusal of Respondent No. 1 to grant permission to him for purchase of the land for constructing a residential house, the Petitioner has preferred the present petition praying for quashing the refusal to grant the requisite permission in his favour and to direct the Respondents to accord the requisite permission to the Petitioner to purchase the land in question.

2. The Respondents resisted the claim by filing reply wherein the refusal to grant permission for purchase of land in favour of the Petitioner has been justified on the grounds that the Petitioner is not a bona fide Himachali and is not serving in any Government or semi-Government Sector and the recommendation of Respondent No. 2 is not binding on Respondent No. 1. It has also been claimed that Respondent No. 1 was not bound to disclose the reasons for refusal to accord the requisite permission to the Petitioner. Hence the claim of the Petitioner has been denied.

3. We have heard the learned Counsel for the Petitioner and the learned Advocate General for the Respondents and have perused the material placed on the record.

4. The relevant part of Section 118 of the Act reads as follows:

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

Explanation *****

(a) *****

(b) *****

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

(a) to (g) *****

(h) a non-agriculturist with the permission of the State Government for the purposes that may be prescribed.

5. It is crystal clear on a bare reading of the aforesaid provisions that despite bar on acquiring land by a non-agriculturist in Himachal Pradesh by way of transfer, there are exceptions to the general rule and purchase of land by a non-agriculturist for a prescribed purpose with the permission of the State Government in one of such exceptions. Thus, with the permission of the State Government, a non-agriculturist can purchase land in Himachal Pradesh for the prescribed purpose.

6. Rule 38A of the Rules as amended by the Amendment Rules of 1998 prescribes the purpose(s) for which land can be purchased by a non- agriculturist with the permission of the Government and the relevant portions thereof, reads as under:

38A. Purpose for which land is transferable u/s 118(2)(h).

(1) Where a non-agriculturist intends to acquire land in his name by way of sale, gift, will, exchange, lease or mortgage with possession, he shall apply for permission under Clause (h) of Sub-section (2) of Section 118 of the Act, in Form LR-XIV duly supported with the documents specified, to the Collector in whose jurisdiction the land is situated;

(a) On receipt of the application, complete in all respects under sub- rule (1), the Collector shall, after calling for the information from the revenue staff in Form LR-XV and holding such enquiry as he may deem fit, verify the title of the land in question and if he is of the opinion that the application should be accepted, he shall recommend application within a period of 30 days from the date of its receipt by him to the State Government for its consideration;

(b) On receipt of the recommendations made by the Collector under Clause (a) of this sub-rule, the State Government shall consider the application and allow or reject the application;

(c) The applicant shall be informed of every order passed by the State Government under Clause (b) of this sub-rule; and

(d) *****

(3) The permission under Sub-rule 2 of this Rule shall for any one or more of the following purposes in the following scales:

(a) for agriculture or horticulture purpose or for both: an area not exceeding 4 acres.

(b) for building a residential house: 500 square meters.

(c) for construction of a shop: 300 square meters.

(d) for industrial unit: such area as may be certified by the Department of Industries of the State Government.

(e) for charitable religious or public utility service: Such area as certified by the Collector of the District.

(f) For construction of a Hotel, Restaurant, Cafeteria or any such other premises: Such area as may be certified by the Department of Tourism of the State Government.

(g) for construction of houses and flats: an area not exceeding 15 sq. mts.

(h) for setting up of hydel projects: area as recommended and approved by the M.P.P. and Power Department of the State.

7. It is clear on a bare reading of the aforesaid rule that one of the prescribed purposes for purchase of land by a non-agriculturist with the permission of the State Government is for building a residential house and the maximum limit of land which can be so purchased is 500 square meters. The Act or the Rules,

however, do not spell out any ground(s) for rejection of the application for grant of permission nor provide that the non-agriculturist in whose favour permission to purchase land in Himachal Pradesh may be granted must be a bona fide Himachali. The refusal to grant requisite permission can be justified only on the basis of logical and legal ground such as the provisions meant for prevention of fragmentation of holdings as contained in the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 and the Rules made thereunder; Section 113 of the H.P. Tenancy and Land Reforms Act, Section 8(3) of the H.P. Village Common Lands Vesting and Utilisation Act, 1974 read with Clause (9)(d) of the Himachal Pradesh Village Common Lands Vesting and Utilisation Scheme, 1975 and the Nautor Rules which prohibit transfer of land by the owner in certain circumstances. The permission can also be refused if the land, sought to be purchased, is a common path, a place of worship, cremation ground, or has a water source, or thick growth of trees or exceeds the prescribed limit or is sought to be purchased for a purpose other than the prescribed purpose or is required to be acquired by the State Government for a public purpose or the transfer will render the transferee a landless person.

8. It is evident from a perusal of Annexure P-3 that there was none of the aforesaid impediments in the grant of the requisite permission which has been refused on the ground that the Petitioner is not a bona fide Himachali. The Act and the Rules do not provide that the grant can be refused to a person if he is not a bona fide Himachali and, thus, the grant of permission could not have been refused by Respondent No. 1 on such ground.

9. It was contended by the learned Advocate General that as a matter of practice the permission to purchase land by a non-agriculturist in Himachal Pradesh is not granted to a person who is not a bona fide Himachali. Primarily nothing could have been made a ground to refuse the requisite permission which is not specifically provided in law or the Rules. Secondly, there is no material on record to show that the alleged practice has been constantly and without any departure followed by the State Government in each and every case of a person who is not a bona fide Himachali.

10. It may also be pointed out here that non-disclosure of the reasons for refusal to grant the requisite permission in favour of the Petitioner is unjustifiable. Sub-rule (2)(c) of Rule 38A requires that the applicant shall be informed of every order passed by the State Government allowing or rejecting the application. It is so because the applicant has been given a right to apply for review of the order under Sub-rule (2)(d). Thus, it is implicit in the expression that "the applicant should be made aware of every order passed by the State Government allowing or rejecting the application" that the applicant must be made aware of the order allowing or rejecting the application along with the reasons there for so that the applicant is well informed to enable him to take further course of action in the matter. Even otherwise, in a matter as in hand, transparency in the functioning of the Government must be the rule.

11. For the reasons and conclusions herein above, the rejection of the application of the Petitioner seeking permission to purchase the land in question for the purpose of construction of a residential house is not in conformity with the relevant provisions of the law and is thus liable to be quashed.

12. As a result, this petition is allowed and the order as conveyed vide Annexure P-4 to the Petitioner is quashed and the Respondent No. 1 is directed to grant requisite permission to the Petitioner subject to the Rules. No order as to costs.