
(2015) 05 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : LPA No. 109 of 2007

Rajinder and Others

APPELLANT

Vs

Gokal Chand and Others

RESPONDENT

Date of Decision : 02-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 20
Himachal Pradesh Agricultural Credit Operation and Miscellaneous Provisions (Banks)
Act, 1972 — Section 11

Citation : (2015) 05 SHI CK 0039

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Sanjeev Kuthiala, for the Appellant; G.D. Verma, Senior Advocate
and B.C. Verma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.

CMP No. 2973 of 2015.

1. The respondents were writ petitioners and have preferred this application for amendment of the prayer clause in the writ petition by claiming the following additional relief:

"ii) A That the order as passed by the Deputy Commissioner, vide Annexure P-3 may kindly be cancelled to the extent whereby sale transaction in favour of the respondents Lachhman Dass and Roop Lal has been upheld, the same being illegal and void for the reasons as explained above. Similarly, order Annexure P-4 dated 20.11.2000 passed by the Deputy Commissioner, may be set-aside and quashed."

2. It is averred that though in the grounds of the writ petition, particularly in para 12(ii) thereof, the applicant had submitted that the Deputy Commissioner in absence of any provision for review could not have reviewed his order and

therefore, the order passed by him was without jurisdiction and illegal. But due to inadvertence, specific prayer for quashing the same could not be made necessitating filing of the present application.

3. The appellants, who are the writ respondents have filed their reply wherein preliminary objection has been taken to the effect that the applicant cannot be permitted to fill in the lacunae of his case. The application should be bonafide one and should not cause injustice to the other party. The same should be necessary for determining the real question in controversy and since the proposed amendment does not qualify any of the aforesaid conditions, therefore, the same should be dismissed. It is further contended that the application is misconceived as the amendment is now sought at the LPA stage and ought to have been moved before the learned writ court.

We have heard the learned counsel for the parties and have gone through the records of the case.

4. No doubt, the amendment has been sought when the matter is in appeal, but the proposed amendment is only formal since it only seeks to add an additional prayer in the relief clause, for which the foundations have already been laid not only in the writ petition but also in the grounds taken therein. It is trite that amendment can be allowed at any stage of the proceedings. Therefore, we see no reason why the amendment should not be allowed as no prejudice will be caused to the non-applicant(s) by amending only the relief clause.

5. Accordingly, the present application is allowed and the amended writ petition is ordered to be taken on record. The learned counsel for the non-applicants (appellants herein) states that they do not intend to file reply(s) to the amended petition. The application stands disposed of.

LPA No. 109 of 2007:

6. With the consent of the learned counsel for the parties, the appeal is taken up for hearing.

7. This Letters Patent Appeal is directed against the judgment passed by the writ Court in CWP No. 523 of 2006 on 6.8.2007 whereby after setting aside the order passed by the Deputy Commissioner as affirmed by the Financial Commissioner (Appeals), the writ petition filed by respondent No. 1 was allowed and the sale of property made in favour of the appellants by proforma respondent Lakhu was declared null and void and the State Government was directed to resume the land.

8. In brief, the facts of the case are that one Lakhu alias Amru was granted Nautor of land measuring 3-12-16 bighas on 13.11.1980 under the Himachal Pradesh Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme, 1975 (for short "Scheme"). Though, mutation to this effect was also entered in the revenue record on 13.11.1980, however, formal sanction came to be granted only on 31.3.1981. Lakhu thereafter vide sale deed dated 29.11.1995

sold a portion of this land measuring 0-7-5 bighas in favour of appellant No. 1 Rajinder. Another sale was effected on 30.5.1996 in favour of other appellant Lachhman Dass, who died and his legal representatives have been brought on record and are now appellants No. 3 to 7 and lastly a sale deed was executed on 8.7.1996 in favour of Roop Lal, appellant No. 2.

9. Aggrieved by the grant of Nautor as also the alienation made by Lakhu, the respondent No. 1 claiming himself to be an estate right holder of the mouza concerned, preferred a petition under Section 11 of the Scheme, whereby he not only challenged the grant of Nautor made in favour of Lakhu but also challenged the aforesaid sale deeds made by him in favour of the appellants as being in violation of Clause 11 of the Scheme which imposed an embargo on alienation for a period of 20 years from the grant.

10. Vide order dated 26.6.2000 the Deputy Commissioner held the sale deeds dated 30.5.1996 and 8.7.1996 to be valid but the sale deed dated 29.11.1995 was declared to be null and void being hit by Clause 11 of the Scheme after holding that the restriction period prescribed therein was not 20 years but was 15 years and accordingly the subject matter of the sale deed was ordered to be resumed by the State Government.

11. However, against the aforesaid order, the appellant No. 1 filed review petition before the Deputy Commissioner on 7.8.2000 and the same was allowed vide order dated 20.11.2000 by holding that the period prescribed under Clause 11 of the Scheme would be reckoned from the date of mutation i.e. 13.11.1980 and not from the date of sanction made in favour of Lakhu i.e. 31.3.1981.

12. Aggrieved by the order passed by the Deputy Commissioner, the respondent No. 1 herein, preferred a revision petition under Clause 9-A of the Scheme, which was dismissed by the Financial Commissioner (Appeals) vide order dated 12.3.2003.

13. The respondent No. 1 thereafter approached this court by filing a writ petition by claiming therein the following reliefs:--

"i) Total record of the case may kindly be called for and produced by the respondents No. 1 to 3.

ii) That the order of Nautor grant as made in favour of respondent No. 4 as made by Tehsildar Sadar Mandi on dated 31.3.1981 may kindly be ordered to be set-aside and quashed because he has committed breach of the terms and conditions of the grant of land in his favour and consequently sale transactions as detailed above, in favour of Sarv Shri Rajinder, Roop Lal and Late Shri Lachhman Dass, may kindly be ordered to be cancelled.

ii)A That the order as passed by the Deputy Commissioner, vide Annexure P-3 may kindly be cancelled to the extent whereby sale transaction in favour of the respondents Lachhman Dass and Roop Lal has been upheld, the same being illegal and void for the reasons as explained above. Similarly, order Annexure P-4

dated 20.11.2000 passed by the Deputy Commissioner, may be set-aside and quashed.

iii) That appropriate orders and directions may be issued to the respondents No. 1 to 3 to resume land in question in favour of State of Himachal Pradesh because respondent No. 4 has committed breach of the terms and conditions of the grant as made in his favour."

14. The official respondents filed their reply wherein it was alleged that writ petition was not maintainable as the petitioner had not exhausted the remedy under the Act. However, it was conceded that the time restriction for transfer was 20 years and not 15 years.

15. The appellants also contested the writ petition by claiming that restriction for transfer of property was only for 15 years and it is only after the stipulated period that the transfers were effected in their favour.

16. The learned writ court allowed the writ petition on the ground that the sales had been made within 20 years of the prohibited period of grant and the official respondents were directed to resume the land, which had been sold by proforma respondent Lekhu to the appellants.

17. Aggrieved by the judgement rendered by the learned writ court, the appellants have preferred the present appeal on the ground that the learned writ court has wrongly held that restriction of transfer was 20 years while the same in fact was 15 years. It is further contended that Deputy Commissioner while exercising powers under clause 9- A had no power to cancel the grant.

We have heard the learned counsel for the parties and have gone through the records of the case.

18. Clause 9- A of Himachal Pradesh Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975 (hereinafter referred to as the Scheme) reads as under:--

"9-A Revision: If any time, it comes to the notice of the Deputy Commissioner either through an application made by any person or otherwise, that the allotment of any land under this Scheme was made to a person who was not entitled or eligible for such allotment or the allotment was wrong on any other grounds, he may call for the record of the case and after making such enquiries as he thinks proper in person or through a Revenue Officer subordinate to him and after giving an opportunity to the parties concerned, he may cancel the grant of land and make such other orders in connection therewith as he deems necessary in the circumstances of the case."

19. Clause 10 of the Scheme provides for mutation, while clause 11, which is relevant for our purpose relates to the restriction on transfer and reads thus:--

"Restriction on transfer.--The grantee shall not transfer the land granted under this scheme to any person within a period of 20 years from the date of taking

over possession of the land by him. In the event of contravention of the provisions of this para the grant shall be liable to be resumed by the State Government and no further allotment of land should be made to him thereafter. Similarly if he fails to break up the land within a period of 2 years from the date of taking over the possession the grant shall be liable to be resumed.

Provided that the land granted under this scheme shall not be subject to fragmentation by way of partition, transfer or by any other mean. The Revenue Officer shall record these conditions in the mutation orders to be passed by him. His orders shall further be recorded in the remarks column of the jamabandi in which the mutation pertaining to the land is incorporated.

Provided the allottee may transfer the land by way of mortgage without possession in favour of Primary Agricultural Cooperative Credit society, a Bank as defined in the H.P. Agricultural Credit Operations and Miscellaneous provisions (Banks) Act, 1972 (Act No. 7 of 1973) for the purpose of raising loans for development of such land, raising of crops, purchase of bullocks, seed and fertilizers etc. for bringing the land under cultivation."

20. Indisputably the land had been allotted to proforma respondent Lekhu on 31.3.1981. He sold the land to the appellants on 29.11.1995, 8.7.1996 and 30.5.1996. As per the scheme, an application is to be preferred under clause-3 and thereafter the Sub Divisional Officer (Civil) of the Sub Division and the Tehsildar of the Tehsil has to sanction the land. The Nazarana has to be paid either in lump-sum or in instalment as per clause-8 and upon payment the land is to be given to the grantee immediately after the sanction of the land. The mutation is to be attested immediately after the payment of the Nazarana by the grantee, as per clause-10 of the Scheme.

21. Once the land itself had been sanctioned on 31.3.1981, then in no event could the mutation have been attested anterior to this date i.e. 13.11.1980. If that be so, then the order passed by the Deputy Commissioner in the review petition was absolutely wrong whereby he had construed the period of 15 years (which was otherwise 20 years) from the date of mutation instead of the date of sanction.

22. That apart, the order passed by the Deputy Commissioner is factually wrong because while construing clause-11 of the Scheme, he failed to make a note of the fact that the embargo prescribed for transfer of the land under the Scheme as per notification No. Rev.2-A(3)11/77 dated 11.9.1980 was 20 years as against 15 years. Therefore, once it is concluded that the proforma respondent could not have transferred the land in favour of appellants within the period of 20 years, the Deputy Commissioner had no other option but should have cancelled the land allotted in favour of the appellants and should have thereafter recommended to the government for the resumption of the land.

23. The order passed by the Deputy Commissioner in the subsequent review petition cannot otherwise be sustained because it is well settled that power of

review is not an inherent power. Right to seek review of an order is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by the law. If there is no power of review, the order cannot be reviewed.

24. The law on the subject has been succinctly dealt with by the Hon^{ble} Supreme Court in *Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others*, AIR 2010 SC 3745 : (2010) 9 JT 382 : (2011) 1 RCR(Civil) 216 : (2010) 9 SCC 437 : (2010) 10 SCR 971 in the following terms:--

"12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: *Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another*, AIR 1965 SC 1457 : (1965) 2 SCR 328 ; and *Harbhajan Singh Vs. Karam Singh and Others*, AIR 1966 SC 641 : (1966) 1 SCR 817 .

13. In *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, AIR 1970 SC 1273 : (1971) 3 SCC 844 ; *Major Chandra Bhan Singh Vs. Latafat Ullah Khan and Others*, AIR 1978 SC 1814 : (1979) 1 SCC 321 : (1979) 1 SCR 891 : (1978) 10 UJ 878 ; *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, AIR 1987 SC 2186 : (1987) 13 ECR 944 : (1987) 32 ELT 8 : (1987) 3 JT 670 : (1987) LabIC 1901 : (1987) 2 SCALE 667 : (1987) 4 SCC 525 : (1988) 1 SCR 357 : (1988) 1 UJ 143 ; *State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others*, AIR 1998 SC 3067 : (1998) 5 JT 662 : (1998) 4 SCALE 682 : (1998) 7 SCC 162 : (1998) 1 SCR 130 Supp : (1998) AIRSCW 2975 : (1998) 7 Supreme 31 ; and *Sunita Jain Vs. Pawan Kumar Jain and Others*, (2008) 1 DMC 324 : (2008) 2 JT 19 : (2008) 2 SCALE 13 : (2008) 2 SCC 705 , this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible."

25. There is yet another reason why the subsequent order dated 20.11.2000 passed by the Deputy Commissioner in the review petition cannot be sustained. The Deputy Commissioner after pronouncing, notifying and communicating the initial order dated 26.6.2000 became functus officio and could not thereafter

revise/review/modify the said order. It is only the higher forum that could have varied the order. In observing so, we draw support from the following observations of Hon"ble Supreme Court in *State Bank of India and Others Vs. S.N. Goyal*, AIR 2008 SC 2594 : (2008) 3 CLT 795 : (2008) 117 FLR 967 : (2008) 6 JT 398 : (2008) 3 LLJ 567 : (2008) 7 SCALE 415 : (2008) 8 SCC 92 : (2008) 2 SCC(L&S) 678 : (2009) 1 SLJ 403 : (2008) AIRSCW 4355 , wherein it has been held as follows:--

"25. The learned counsel for respondent contended that the Appointing Authority became *functus officio* once he passed the order dated 18.1.1995 agreeing with the penalty proposed by the Disciplinary Authority and cannot thereafter revise/review/modify the said order. Reliance was placed on the English decision *Re : VGM Holdings Ltd.*, reported in 1941 (3) All. ER page 417 wherein it was held that once a Judge has made an order which has been passed and entered, he becomes *functus officio* and cannot thereafter vary the terms of his order and only a higher court, tribunal can vary it. What is significant is that decision does not say that the Judge becomes *functus officio* when he passes the order, but only when the order passed is "entered". The term "entering judgment" in English Law refers to the procedure in civil courts in which a judgment is formally recorded by court after it has been given.

26. It is true that once an Authority exercising quasi judicial power, takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage, an Authority becomes *functus officio* in regard to an order made by him. P. Ramanatha Aiyar's *Advance Law Lexicon* (3rd Edition, Vol.2 Pages 1946-47) gives the following illustrative definition of the term "*functus officio*" :

"Thus a Judge, when he has decided a question brought before him, is *functus officio*, and cannot review his own decision."

27. Black's Law Dictionary (Sixth Edition Page 673) gives its meaning as follows :

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of no further force or authority".

28. We may first refer to the position with reference to civil courts. Order XX of Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the Court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand writer (if the Judge is specially empowered in this behalf). The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on

which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by section 152 or on review. Thus where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes *functus officio* when he pronounces, signs and dates the judgment (subject to section 152 and power of review). The position is different with reference to quasi judicial authorities. While some quasi judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi judicial authority will become *functus officio* only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the Authority will become *functus officio*. The order dated 18.1.1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the Appointing Authority became *functus officio* when he signed the note on dated 18.1.1995."

26. In view of the aforesaid discussion, we find no infirmity, impropriety or illegality in the order passed by the learned writ court and the same is accordingly upheld. Consequently this appeal is dismissed, leaving the parties to bear their own costs.