

(1993) 03 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : Revision Petition No. 122 of 1992

Sant Ram

APPELLANT

Vs

Jash Ram and Another

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954 — Section 17

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 104(3), 104(4)

Citation : (1993) 2 ShimLC 497

Hon'ble Judges : S.S. Sidhu, I.A.S.

Bench : Single Bench

Advocate : Om Prakash Modgil, for the Appellant; P.C. Sood and Revinder Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sidhu, I.A.S.

1. This is a reference made by the Commissioner, Shimla Division, vide his order dated 25-2-1992, passed in Revision No. 220/89.

2. The facts of the case briefly stated are that the Assistant Collector, II Grade, Kandaghat, attested mutation No. 253 on 15-6-1976 vide which he conferred the proprietary rights in respect of land comprised in Khasra No. 35/2, measuring 1-2 bighas, situated in village Kalhog, Tehsil Kandaghat, in favour of Shri Sant Ram, Petitioner. This mutation on the report of the Field staff and Tehsildar was again reviewed and while reviewing the mutation on 22-5-1982, it was again sanctioned in favour of Shri Sant Ram. Later on, Shri Jash Ram, Respondent No. 1, moved an application on 22-2-1987 before the Assistant Collector, II Grade, stating therein that mutation No. 253 dated 22-5-1982 had wrongly been attested. He prayed for review of the said mutation on the grounds that no tenants were inducted by the owners and no rent is being paid by them. After making necessary inquiry, the Assistant Collector, II Grade, sought permission from the Collector for reviewing of the order passed on the mutation. The

learned Collector accorded the permission to review mutation No. 253 vide his order dated 23-11-1987. Thereafter, the Assistant Collector, II Grade, reviewed the mutation and reversed the order made in favour of Shri Sant Ram. Thus the ownership of the land was reverted to Shri Jash Ram. Aggrieved by this order, Shri Sant Ram filed an appeal before the Sub-Divisional Collector, who after hearing the case, dismissed the appeal vide his order dated 30-9-1989. Feeling dissatisfied with the order of the Sub-Divisional Collector, Shri Sant Ram filed a revision petition u/s 17 of Himachal Pradesh Land Revenue Act before the Commissioner, Shimla Division, who has referred this case to us. The learned Commissioner in his order dated 25-2-1992 has recommended that orders of the Assistant Collector, II Grade and Sub-Divisional Collector, be set aside and the case be remanded to the Assistant Collector, Ist Grade, to decide the case in accordance with the provisions contained in the Himachal Pradesh Tenancy and Land Reforms Act and Rules made therein.

3. We have gone through the record of the case and have also heard the arguments advanced by Shri Om Parkash Modgil, Advocate, learned Counsel for the Petitioner and Shri P.C. Sood, Advocate, learned Counsel for the Respondent No. 1 and also Shri Ravinder Sharma, District Attorney, who appeared on behalf of the State. The perusal of record reveals that it was a case for conferment of the proprietary rights upon the tenant u/s 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter called the Act). It is a settled law that the conferment of proprietary rights upon the non-occupancy tenants is automatic after the enforcement of the aforesaid Act u/s 104(3) of the Act, all rights, title and interest are to vest with the tenant free from all encumbrances. Since Shri Sant Ram was recorded as tenant, the learned Assistant Collector, II Grade, rightly attested the mutation in his favour. This mutation was attested in the presence of landowner, though Shri Sant Ram was not present on 15-6-1976 when initially this mutation No. 253 was sanctioned in his favour. If the Respondent had any grievance, he should have agitated the matter before the Land Reforms Officer, exercising the powers of Assistant Collector Ist Grade. u/s 104(4) of the Act, it has been clearly stated that whenever a dispute arises whether a person cultivating the land of a landowner, is a tenant or not, the burden of proving that such a person is not a tenant of the landowner shall be on the latter. Thus it was not for Shri Sant Ram to prove that he was tenant of the landowner but for Shri Jash Ram to prove that Shri Sant Ram was not his tenant. Order passed on 15-6-1976 on mutation No. 253 was not challenged before the Court of competent jurisdiction. Thus it had become final. Actually, the Assistant Collector, II Grade should have not entertained any application for review of the order dated 15-6-1976 as the said order was in accordance with the provisions contained in the Act. Thus there does not appear to be any need to refer the case to Land Reforms Officer at this stage. In view of this position, original order dated 15-6-1976 passed on mutation No. 253 pertaining to village Kahlog, conferring the proprietary rights upon Shri Sant Ram, Petitioner is upheld. As such, the revision petition is accepted.

4. Order be communicated.