
(1976) 08 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Revision Petition No. 3 of 1976

Shri Hardwari Lal	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 19-08-1976

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 20, 7, 7(2)

Citation : (1978) ShimLC 318

Hon'ble Judges : P.K. Mattoo, J

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant; Yudhvir Singh, A.D.A., for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mattoo, J.—This is a revision petition u/s 20 of the H.P. Ceiling on Land Holdings Act, 1972, hereinafter called the Act, against the order of the Commissioner dated 17-9-1975 whereby he partly accepted the appeal of the Petitioner against the order of Collector Una dated 21-2-1975.

2. The main grounds on account of which interference in revision has been sought are that the land categorised as Ghair-Mumkin Kharkana and Abadi has been included in the holding of the Petitioner for the purposes of ceiling and that additional 6 acres should have been given to the 5th son of the Petitioner and the transfer of 40 kanals and 4 marlas of land, which the Petitioner had transferred through the registered deeds had not been treated as the bona fied transfer and that the Petitioner should be given a fresh opportunity to select the permissible area to be kept by him.

3. I have heard the learned Counsel for the Petitioner as also the learned Counsel for the State. The learned Counsel for the State has vehemently opposed the claim of the Petitioner and has argued that no material irregularity and illegality is involved in the case and as such revision does not lie.

4. In so far as the Ghair-mumkin, Kharkana, and Abadi lands are concerned, the mere fact that a piece of land is described in the revenue records under a particular nomenclature is not the absolute criteria for the determination of its nature. It has already been held in *Major-General Jai Singh v. State of Himachal Pradesh*, Revision Petition No. 180/75, that if land is entered in the revenue records as Ghair-mumkin or under any other ambivalent classification but is actually occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, it shall be treated as land.

5. The learned Collector, after due enquiry has come to the conclusion that certain land recorded as Ghair-mumkin, Kharkana, and Abadi and ban should be included in the land holding of the Petitioner for the purposes of determination of the ceiling. This finding of the Collector in respect of Ghair-mumkin, Kharkana, Abadi and ban has been upheld by the learned Commissioner. I see no reason to interfere with these concurrent findings.

6. It is on record that the 5th child was born after the appointed day. It has already been held in *Rajkumar Rajindar Singh v. Union of India and Ors.*, C.W.P. No. 4 of 1974, that the ceiling is imposed from the "appointed day" a fixed point of time. The birth of the 5th child after the appointed day will, therefore, not entitle the Petitioner to any further relief.

7. The Collector has not accepted 40 kanals and 4 marlas of land transferred after the appointed day as the bona fide transfer. The learned Collector came to this conclusion after due enquiry. The Commissioner has also not found any fault with this finding of the Collector. According to Sub-section (2) of Section 7 of the Act, the Collector shall determine whether a transfer is bona fide or not and his decision on this issue shall be final. The burden of proving the transfer to be bona fide has been placed on the transferer. In the present case the Collector after due enquiry has not accepted the impugned transfer as a bona fide transfer for purpose of the Act. In view of the provision of Section 7 referred to above, I see no cogent reason to interfere with the findings of the learned Collector in this behalf.

8. The Petitioner has made a request for the grant of a fresh opportunity to select his permissible area. This is too late a stage to entertain such a plea. Acceptance of such a request at the revisional stage will have the effect of defeating the provisions of the Act regarding the implementation of the ceiling on land holdings and acquisition and disposal of surplus areas as envisaged in the Act. It is, therefore, not feasible to entertain this plea.

9. Keeping in view what has been mentioned above, I am of the opinion that there is no force in the revision petition, which is accordingly dismissed.

10. Orders to be communicated.