

**(1993) 04 SHI CK 0007**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 577 of 1985**

Shri Jatinder Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

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**Date of Decision :** 26-04-1993

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 10, 18, 20, 20(2), 20(3)  
Himachal Pradesh Ceiling on Land Holdings Rules, 1973 — Rule 18  
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 66  
Transfer of Property Act, 1882 — Section 54

**Citation :** (1993) 2 ShimLC 17

**Hon'ble Judges :** L.S. Panta, J;Devinder Gupta, J

**Bench :** Division Bench

**Advocate :** Pritpal Grewal and Om Prakash, for the Appellant; C.L. Sharma, A.A.G., for the Respondent

**Final Decision :** Allowed

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## Judgement

Devinder Gupta, J.—Petitioner has filed the instant writ petition under Article 226 read with Article 227 of the Constitution of India praying for quashing of order Annexure-PD passed on 15th March, 1982 by Respondent No. 3, the Collector, Shimla Sub-Division, order Annexure-PE passed by the Additional Divisional Commissioner, Shimla Division on 24th January, 1984 and order Annexure-PG passed on 22nd July, 1985 by Respondent No. 2, the Financial Commissioner (Appeals), Himachal Pradesh.

2. Petitioner being a land-owner held and possessed 327 bighas 12 biswas of land situate in village Bagain, Tehsil Suni, District Shimla. On coming into force of the H.P. Ceiling on Land Holdings Act, 1972 (Act No. 19 of 1973), (hereinafter referred to as the "Act"), a draft statement was served by Respondent No. 3 on the Petitioner u/s 10 of the Act, after having obtained the requisite information from the field staff under Sub-section (2) of Section 9 of the Act, showing

therein, amongst Ors. , the particulars of the total land held by the Petitioner, the land which according to Collector was liable to be declared surplus and the land which was to be exempted from the operation of the Ceiling Act. On show cause notice having been served, objections were preferred by the Petitioner stating therein that he was not covered under the provisions of the Act since his holding as on the "appointed day" was within the permissible limit. Some of the lands which the Collector had shown to be belonging to him were in fact sold by him to various persons much prior to the appointed day. After receipt of the objections, at the time of finalisation of this statement, again show cause notice was served, but the Petitioner could not put in appearance. The third Respondent proceeded to dispose of the case by making some slight modifications to the draft statement declaring 166 bighas 15 biswas of land as surplus. 233 bighas 17 biswas of land was held to have been sold after the appointed day and as such the same was included in the Petitioner's holding

3. The order passed by Respondent No. 3 on 12th March, 1975 was challenged by the Petitioner in revision before Financial Commissioner, who, on 6th October, 1975 set aside the order and remanded the case to the Collector for fresh decision, in accordance with law. Respondent No. 3 took notice of the three sale transactions effected by the Petitioner with respect of 185-3 Bighas of land, but held that the transfers had been effected after the appointed day, therefore, this land was required to be considered as a part of the Petitioner's holding for determining the surplus area since, according to him, transactions were not bonafide. On 26th June, 1976, the Collector passed an order declaring 141-16 Bighas of land as surplus Against this order, an appeal was preferred by the Petitioner to the Divisional Commissioner, who through order Annexure-PE dated 22nd August, 1978 set aside the Collector's order and remanded the same for a fresh decision, in the light of the observations made by him in his order. The Divisional Commissioner noticed in the order that the Petitioner's evidence, that sales had been made much prior to the appointed day, had remained unrebutted and even if the Respondents stand is to be noticed that the transfers had in fact been effected after the appointed day, the same would not become automatically malafide since the Collector was required to discuss the entire evidence led by the Petitioner and then hold as to whether the transfers were bonafide or had been made prior to the appointed day.

4. Respondent No. 3 after remand proceeded to dispose of the matter afresh after discussing the entire evidence through order Annexure-PD dated 15th March, 1982. A finding was recorded that sales were not bonafide and, in fact, had been made after the appointed day with a view to get rid of the rigours of the Act. 166-15 Bighas of land was declared as surplus by holding the sales to be mala fide Petitioner carried the matter in appeal, which ultimately was dismissed by Additional Commissioner, Shimla Division on 24th January, 1984 through order Annexure-PE, who held that the entire transactions of sale made by the Petitioner after the appointed day, were not bonafide and had, for the purposes of the Act, to be taken as part of Petitioner's holding. Still feeling aggrieved, the

Petitioner approached the Financial Commissioner by filing revision petition u/s 20 of the Act, who proceeded to dispose of the same on 22nd July, 1985 through order Annexure-PG by observing that the decision made by the Collector u/s 7 of the Act, determining whether transfer is bonafide or not, is final and cannot be challenged in revision. These three orders Annexures-PD, PE and PG are under challenge in this writ petition.

5. The grounds for challenging the orders are that the Financial Commissioner failed to exercise the jurisdiction vested in him by law in not deciding the revision petition on merits. The impugned orders have also been challenged on its merit by urging that, in fact, transfers were made prior to the "appointed day", somewhere in the year 1970, in order to pay off various loans obtained from the Government, which fact has not been considered in consonance with the provisions of law. Since the transactions had been made prior to the appointed day, Collector had no jurisdiction to make any determination, as to whether the same were bonafide or malafide. It has further been averred in the petition that in case the area, which is the subject matter of transfers is excluded, on the appointed day the Petitioner did not hold any land, which could be declared as surplus under the provisions of the Act.

6. Respondents have contested the writ petition and have filed their reply on the affidavit of Shri P.B. Sharma, Deputy Secretary (Revenue) to the Govt. of Himachal Pradesh, wherein it has been alleged that sales, as per entries in revenue records were made after the "appointed day" and any action taken by the Petitioner prior to the date of attestation of mutation are not relevant on the point. According to the allegations, oral transactions of sale after 7th December, 1970 cannot be held to be valid since provisions of Section 54 of the Transfer of Property Act, which were not applicable earlier were made applicable to Himachal Pradesh on and from the said date. Therefore, sales not being valid in law, no notice can be taken of the same and the Collector had rightly taken into consideration the entire evidence and passed the order, in consonance with law.

7. On 20th April, 1993, arguments were heard in part and today we have heard the learned Counsel for the parties and also perused the entire record made available by the learned Counsel for the Respondents.

8. The Financial Commissioner disposed of the revision by holding that since decision of the Collector determining whether transfer is bonafide or not has been made final under Sub-section (2) of Section 7 of the Act, it was not permissible for the Petitioner to have challenged the same by filing appeal and revision. We may at the very outset observe that the view which the Financial Commissioner took, in holding so, is not in consonance with the provisions of law. The general power of appeal, review and revision is contained in Section 20 of the Act and is in the following words:

20. Appeal review and revision.-

(1) Any person aggrieved by any decision or order of the Collector may within

sixty days from the date of the decision or order prefer an appeal to the Commissioner:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Commissioner made under Sub-section (1) may, within ninety days from the date of the order, file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.

(3) Notwithstanding anything contained in the foregoing subsection, the Financial Commissioner may at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

9. A right has been conferred on any aggrieved person to challenge "any decision" or "order" of the Collector by preferring an appeal to the Commissioner. Remedy of preferring revision petition against the order of Commissioner, passed in appeal, is provided for in Sub-section (2) of Section 20. It is the order of Financial Commissioner which has been made final. Sub-section (3) of Section 20 which reserves with the Financial Commissioner suo motu power of revision, starts with an on- obstante clause saying that notwithstanding anything contained in the foregoing Sub-section, the Financial Commissioner may at any time call for the record of any proceedings or order of any authority, subordinate to him, for the purpose of satisfying himself as to the "legality" or "propriety" of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

10. Section 18 of the Act excludes the jurisdiction of a Civil Court to settle, decide or deal with any matter, which is under the Act, required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector. Any order passed by the Financial Commissioner, Commissioner or Collector is precluded from being questioned in any Court of law.

11. Sub-section (1) of Section 7 says that no transfer by a person holding land in excess of permissible area except a "bonafide transfer", made after the appointed day, shall affect the right of the State Government to the surplus area to which it would be entitled but for such transfers. Certain transactions made compulsorily have been exempted. It is the Collector, who has been conferred with the power to determine whether a transfer is bonafide or not. The Act nowhere prescribes the procedure which is to be followed by the Collector in making determination, as and when question arises before him, as to whether transaction made after the appointed day is bonafide or not. However, Rule 18 of the H.P. Ceiling on Land Holdings Rules, 1973 says that in all proceedings, under

the Act and these Rules, the Collector or any other Revenue Officer shall observe the procedure as prescribed for Revenue Officers in the tenancy laws for the time being in force in Himachal Pradesh. Section 66 of the H.P. Tenancy and Land Reforms Act, 1972 empowers the State Govt, to make rules for regulating the procedure of Revenue Officers under this Act. We are told that rules have been framed, which are applicable to the Collector while making inquiry on the question of bonafide or otherwise of the transaction. The rules enjoin upon the Collector to follow the procedure, which is almost similar to the one applicable for deciding a Civil Suit by a Civil Court.

12. Sub-section (2) of Section 7 says that Collector shall determine whether the transfer is bonafide or not and his decision shall be final; provided that the burden of proving the transfer to be bonafide one shall be on the transferor.

13. In case Section 18 has created a bar for challenging the decision, in any Civil Court, made by the Collector, we fail to understand that when Section 20, which is the general provisions for challenging "any decision" or "order" of the Collector by preferring an appeal before Commissioner and to challenge the said order passed in appeal by preferring revision under Sub-section (2) of Section 20 to the Financial Commissioner and notwithstanding these provisions, Financial Commissioner is empowered to exercise suo motu powers of revision by summoning the records of any proceedings at any time, in order to satisfy himself as to the legality and propriety of the orders, that how the Financial Commissioner is debarred to go into the question about legality and propriety of an order passed by the Collector u/s 7 of the Act. In fact, what we find is that in case, the order of Collector is not challenged by preferring an appeal or revision, the same attains finality, otherwise the order passed u/s 7 will become final only subject to the right of a person to file appeal or revision to the appellate authority. The Financial Commissioner accordingly was not right in not adjudicating upon the contention of the Petitioner that transactions in question had been prior to the appointed day and the land involved therein was not liable to be included in his holding.

14. Normally, we would have quashed the order Annexure-PG and directed the Financial Commissioner to decide the matter afresh, but since the entire material is before us, we propose to dispose of the writ petition on its merits.

15. Statement of Keshav Dutt (RW-1) is clear and categorical, wherein it was stated by him that bargain was struck somewhere in the year 1966-87 for sale of the property, namely, 8 bighas 13 biswas land for a consideration of Rs. 2,500 which amount stood already paid in the year 1966 and he had been duly put in possession of the property. The property was sold by the Petitioner to him since his father had suffered an attack of paralysis and he had to re-pay considerable Govt. loan. This Statement has remained un rebutted. The mutation with respect to this land, according to this witness, was entered subsequently. It was an oral sale. He further deposed that he was in occupation of the property.

16. The Petitioner, while appearing as RW-4, also endorsed the statement of RW-1. RW-2, Joginder Lal, WASAL BAQI NAWIS of sub tehsil Suni with the help of the official record stated that Petitioner and his father had procured Tacavi loan to the tune of Rs. 5,000/-. Loan of Rs. 2,000 was taken in 1962 which was re-payable by 1972 and Anr. loan of Rs. 3,000/- was procured in 1967, which was re-payable by 1975. Loan of Rs. 2,000 was cleared on 29th August, 1972 and the other loan of Rs. 3,000 alongwith penal interest was re-paid on 28th July, 1973. Industrial loan of Rs. 5,000 was obtained by the Petitioner's father which could not be re-paid by him for which purpose, it is stated by the witness, that the Petitioner sold his property to his two brOrs. for a consideration of Rs. 8,000. According to him, it was in Kharif, 1970 that possession was delivered; but the entries in revenue records could not be effected till 1975. According to him, amount of Rs. 8,000 had already been paid prior to the year 1970 and in Kharif, 1970, vendees were put in possession of the property. The version of this witness stands corroborated by RW-3. Parmanand, who has proved the document, Ext. RW-3/A, a writing dated 26th December, 1970 which recites that prior to the execution of the document, vendee had already been put in possession of the property, namely, an area of 159-7 Bighas in Kharif, 1970. Parmanand, KW-3 has been in the employment of Petitioner and his statement has been corroborated by RW 4 by stating that Parmanand had been duly authorised by him to deliver possession of the property and also to acknowledge the receipt of the amount for which purpose, according to him, document Ext. RW-3/A was executed. Parmanand, RW-3 also, in lieu of the amount which the Petitioner owed by way of past wages including those of his wife, sold property prior to November, 1970, consideration of which, according to RW-3, was Rs. 10,080.

17. As noticed above, there is no rebuttal on the record to the evidence adduced by the Petitioner. Respondent No. 3 proceeded to hold that since in the revenue records entries were got effected with respect to the three sale transactions only on 24th January, 1971, 22nd July, 1972 and 14th January, 1973, respectively, the transactions will have to be held as having been made on the dates as reflected in revenue records. These observations made by the Collector cannot be accepted since in the absence of applicability of Section 54 of Transfer of Property Act, sale could be effected orally and it is the date of sale which is relevant and not date of making entry in revenue record.

18. In order to determine the date as to when the sale transaction took place, the date when the report is made to the Halqua Patwari or when the mutation is entered or attested will not be the relevant date. It is a matter of common knowledge that mutation proceedings are not judicial proceedings and does not decide the question of title or dispute about proprietorship. These are only proceedings which are required to be conducted for fiscal purposes, namely, to find out the person, who would be liable to pay land revenue. These proceedings are conducted under the H.P. Land Revenue Act and does not decide or determine title. Reference in this behalf be made to a decision of Privy Council in

Thakur Nirman Singh and Ors. v. Thakur Lal Rudra Partab Narain Singh and Ors. AIR 1926 PC 100 . At page 103 of the report, it has been held by the Judicial Committee that mutation proceedings are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid and are not proceedings for deciding the title or proprietary rights. This decision has been reiterated by the apex Court in Chhote Khan, deceased, Represented by his Son, Harmat and Others Vs. Mal Khan and Others,

19. Erroneous approach on the part of the Collector that since in the revenue record entries were affected subsequently in the year 1971-72, the same should be taken as the date for determining the date of sale, has resulted in passing the impugned orders. Sale is a contract by which a person agrees to transfer and convey all his rights, title and interest in favour of Anr. person for consideration agreed or paid. In the instant case, it is proved that rights, title and interests were conveyed much prior to the appointed date and even before 7th December, 1970 when provisions of Section 54 of the Transfer of Property Act became applicable. It was prior to these dates that the sale considerations were realised by the Petitioner.

20. It is not disputed that prior to 7th December, 1970, provisions of Section 54 of the Transfer of Property Act were not applicable to Himachal Pradesh and it was not necessary to comply with the requirement of Section 54 of the Transfer of Property Act in order to have a valid sale. It could be by an oral transaction. But it is necessary in all such cases where the provisions of Section 54 of the Transfer of Property Act are not applicable that where oral sale is pleaded in order to recognise the same, there must be convincing evidence that the entire sale consideration had been paid by the purchaser to the vendor or the possession of the property in question is made over from one to the other. The sale would be complete when the vendor transferred the ownership and accepted the price.

21. Since we have come to the conclusion that all the three transactions of sale were concluded much prior to the appointed day. Collector had neither any authority, nor jurisdiction to go into the question as to whether such transactions were bona fide or not. It is only in those cases where transfers are made or proved to have been made after the appointed date that the Collector gets jurisdiction to go into the question of the bona fides or otherwise of such transfers. It is not disputed that incase the area which is subject-matter of three sale transactions is excluded, no part of the Petitioner's holding would become liable for being declared as surplus.

22. In view of the aforementioned conclusions, we have no hesitation in allowing the writ petition and quashing the impugned orders Annexures- PD, PE and PG which are hereby quashed and set aside. Parties are left to bear their respective

costs.