

(1979) 05 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : M.S.A. No. 30 of 1969

Shri Shankar Singh and Others

APPELLANT

Vs

Smt. Santi and Others

RESPONDENT

Date of Decision : 09-05-1979

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 11, 11(1), 11(2)

Citation : (1979) ShimLC 248

Hon'ble Judges : T.U. Mehta, C.J; T.R. Handa, J

Bench : Division Bench

Advocate : P. Malhotra, for the Appellant; A.K. Goel, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—This miscellaneous second appeal arises out of the application made by the Respondent Smt. Santi for acquiring the interest of the land-owner in the disputed land u/s 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereinafter referred to as the Act). It is not in dispute that the Respondent Petitioner Smt. Santi was the tenant of the land in question.

2. The original land-owner of the land was one Ram Devi. This Ram Devi had two sons Sukh Ram and Bhagat Ram. Sukh Ram and Bhagat Ram gifted this land in favour of Ram Devi and Ram Devi in her turn willed away this land by will dated 10th April 1961 and bequeathed the same in favour of her two grand-sons Sada Ram and Shankar Singh who are respectively the sons of her two sons Sukh Ram and Bhagat Ram. When this application u/s 11 of the Act was made by Respondent Santi, the two minors Sada Ram and Shankar Singh were owners by virtue of the above referred bequest made by Ram Devi as per her will of 1961. The question which, therefore, arose before the Compensation Officer was whether in view of the provisions contained in Sub-section (2) of Section 11 of the Act the application made by Santi was maintainable or not. Section 11(1)

provides that on an application made to the Compensation Officer at any time after the commencement of the Act a tenant shall be entitled to acquire on payment of compensation the right, title and interest of the land-owner in the land of tenancy held by him under the land-owner. But Sub-section (2) works as a proviso. This Sub-section (2) is as under:

(2) Nothing contained in Sub-section (1) shall apply to a landlord if he has no other means of livelihood and is a minor, widow or a person suffering from physical or mental disability incapable of earning his livelihood. In case of a minor, Sub-section (1) shall not apply during his minority and in other cases for his lifetime.

Since Sada Ram and Shankar Singh were minors when this application was made by Smt. Santi, a contention was raised that Sub-section (2) of Section 11 applies and, therefore, the application made by Santi u/s 11 of the Act was not maintainable.

3. From the order of the Compensation Officer it appears that the present Appellants tried to delay the proceedings before the Compensation Officer. The two minors Sada Ram and Shankar Singh were first represented by a guardian ad litem appointed by the court, but that guardian ad litem was removed and subsequently Sada Ram's father Sukh Ram was appointed guardian ad litem for both the minors. But it appears that even he subsequently did not appear on the last date of hearing with the result that the Compensation Officer proceeded to decide the case on merits. Though the Compensation officer has not recorded his finding very clearly, it appears from his order that he was of the view that the two sons of Ram Devi named Sukh Ram and Bhagat Ram had gifted away the property in favour of Ram Devi with a view to circumvent the provisions of the Act, and it was as a result of this plan of theirs that Ram Devi ultimately willed away the disputed land in favour of the minors. This aspect of the matter is of much significance at this stage as will be subsequently seen. The point to be noted, however, is that the Compensation Officer allowed the application of Santi u/s 11 of the Act.

4. Being aggrieved by this order of the Compensation Officer an appeal was preferred before the concerned District Judge, but even the District Judge dismissed this appeal with the result that this second appeal is preferred by the land-owners.

5. By now, the two minors who are the landlords have become major. This is quite obvious and apparent because when Ram Devi had willed away the property by the will dated 10th April, 1961 both of them were in existence, and even if it is believed that they were born on the date on which the will was made it is apparent that today, that is, on 9th May, 1979, both the minors have become major. It is in view of this important fact that the contentions raised on behalf of the Appellants are required to be determined.

6. It was contended by the learned Advocate of the Appellant that since

Respondent Santi could not have preferred any application u/s 11 of the Act during the course of the minority of the landlords, the only course for this Court is to allow this appeal and dismiss Santi's application u/s 11 even if it is found that during the pendency of these proceedings the minors have attained majority. It was further contended that the Compensation Officer was not justified in disposing of the matter when Sukh Ram, the guardian ad litem of the minors, did not appear before him on the last date of hearing with a view to proceed with the case, and on that ground also this appeal should be allowed.

7. We are unable to agree with any of the contentions raised on behalf of the Appellants. The real question to be considered is that what would be the legal position with regard to the application filed u/s 11 of the Act if during the course of the pendency of the proceedings the minor landlord whose case is covered by Sub-section (2) of Section 11 of the Act becomes major.

8. For determining this point, if a reference is again made to the provisions contained in Sub-section (2) of Section 11, it will be found that in case of a minor who is proved to have no other means of livelihood, the provision" of Sub-section (1) under which a tenant can acquire the interest of the landowner shall not apply "during his minority." It follows, therefore, that the moment the minority of the land-owner ceases, the provisions would apply. Therefore, if during the course of the pending proceedings the minor landowner attains majority, provisions of Sub-section (1) would automatically apply and it would not be necessary to dismiss the application of the tenant under Sub-section (1) of Section 11 on the ground that that application could not have been originally made, because the land-owner was at that time a minor having no other means of livelihood.

9. This being the position, the question whether the Compensation Officer should have proceeded with the case when the guardian ad litem of the minors did not appear is also of no consequence.

10. We may note it here that the view which we are taking about the legal consequence of minor attaining majority during the pendency of the proceedings has been already taken by a single Judge of this Court in *Shaku v. Hemanand*, reported in 1971 HLR 351, Mr. Justice Lal, who was confronted with such a point, has in that case observed as under:

A perusal of Section 11(2) of the Abolition Act will show that a minor can only get benefit under Clause (2) of Section 11 during his minority and not beyond it. In other words, if the minor becomes major during the pendency of the proceeding he can no longer avail himself of the protection afforded by Clause (2) of Section 11 of the Abolition Act. It cannot be denied that subsequent events which affect the rights and liabilities of parties in a proceeding are taken into consideration while determining the points of controversy which arises during such proceedings. In other words, if Hemanand has become major the tenants can certainly be permitted to take up the plea that any liability of the minor land-

owners regarding his means of livelihood will no longer stand in their way for acquisition of property rights. In the scheme of the Abolition Act, it is nowhere prohibited that subsequent attainment of majority by a minor land-owner would nonetheless afford him the protection of Clause (2) of Section 11 of the Act.

We approve of these observations.

11. The result, therefore, is that this appeal fails, and the same is dismissed with costs.