
(1994) 01 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1717 of 1993

Smt. Surindra Sood

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118
Registration Act, 1908 — Section 17, 2, 47, 48, 49

Citation : (1994) 2 ShimLC 48

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

Bench : Division Bench

Advocate : R.L. Sood, for the Appellant; Om Parkash, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—Petitioner has made a grievance in the instant writ petition against Respondents 2 and 3 in having failed to act in accordance with the provisions of Registration Act, 1908 (hereinafter called as "the Act").

2. It is stated that a deed of conveyance was executed by the Petitioner, transferring and conveying her right, title and interest in relation to property, namely, basement of the house known as "Triveni", Shimla, along with 1/3rd share in the land on which the aforesaid property is built, situate within Station Ward Bara Shimla, in favour of her son Ashok Sood, on 27th October, 1993. It was presented for registration before Respondent No. 3, so as to enable the said Respondent to register the same under the provisions of the Act. It is also stated that Respondent No. 3, after obtaining signature of the Petitioner on the back of first page of the deed of conveyance, apprised the Petitioner that the document would be registered in due course, after seeking approval/instructions from his superiors, namely, Respondent No. 2 and when Respondent No. 2, was approached, both Respondents 2 and 3 insisted upon the Petitioner that it would be appropriate for the Petitioner and her son to seek the requisite permission of the State Government for transfer of the property, in accordance with the

provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) (hereinafter called as the "Tenancy" Act"). Despite the Petitioner's informing them that no such permission was required, since it was neither "land" within the ambit of Section 118 of the Tenancy Act, nor the transfer was in favour of non-agriculturist, since the transferee was the vendor's son, no such permission was required, Respondents 2 and 3 failed to discharge their statutory obligation under the provisions of the Act. It is also stated in the petition that both the Respondents were apprised of the judgment of this Court in R.F.A. 88 of 1991. Nirmal Singh v. Randhir Sharma, decided on 6th July, 1993 but they instead of acting in accordance with law have failed to discharge their statutory obligation. Consequently, a direction is sought against the Respondents for registering the document, copy of which is Annexure P-I.

3. Respondents were called upon to file the reply. Reply has been filed on behalf of the Respondents on the affidavit of Mr. P.C. Pharka, Registrar (Collector), Shimla District. In the reply it is not disputed that the deed of conveyance (copy Annexure P-I) was presented for registration before Respondent No. 3 and also that a copy of the judgment in R.F.A. 88/91, was also cited by the Petitioner, but the Petitioner was informed that clarification and guidance has been sought by Respondents 2 and 3 from the Inspector General of Registration, Himachal Pradesh and from the Government of Himachal Pradesh (Revenue Department) and final decision with regard to that was still awaited. It is not averred that for this reason the document has not been registered.

4. The contents of the reply makes the position clear and leaves no manner of doubt that both Respondents 2 and 3 have not only failed to discharge their statutory obligation enjoined upon them under the provisions of the Act but also failed to take an independent decision in the matter. The Act enjoins upon a duty upon the Sub-Registrar or Registrar appointed under the Act to exercise statutory obligation to register document when presented for registration, on satisfaction of certain conditions. Section 52 of the Act enumerates the duties of registering officers, when the document is presented for registration. Every document is required to be endorsed with the day, hour and place of presentation alongwith signatures of the person presenting the document alongwith time of presentation. A receipt is required to be given to the presenter by the Registering Officer. In case the document is in a language, Ors. than the one known to the Registering Officer, a translation thereof is required to be supplied by virtue of Section 62 of the Act. Subject to this provision, every document admitted for registration is required to be copied, without any delay, in an appropriate book, in accordance with its admission. Section 58 requires various particulars to be endorsed on every document, admitted for registration, which are to be signed and dated by the Registering Officer (see Section 59). After doing the needful, certificate of registration is to be endorsed thereon by the Registering Officer alongwith his signatures, date and seal. After copying in the margin of register book, such of the endorsements, as have been made under Sections 59 and 60, the document is to be returned to the presenter or his

nominee.

5. While there is a duty to register a document imposed on a Sub-Registrar, he is equally competent to refuse registration also on valid grounds. In case of refusal, he is bound to record his reasons on the document (Section 71). The order of Sub-Registrar is appealable to the Registrar u/s 72. On reversal of the order, Sub-Registrar is bound to register the document when presented to him for this purpose. In certain eventualities, the Registrar has the power to order registration of documents, when the Sub-Registrar has refused to register a document on the grounds stated in Section 73 of the Act. When a Registrar refuses to order registration of document, either u/s 72 or u/s 76, the remedy of the person aggrieved is to institute a suit in a competent court of civil jurisdiction.

6. In this case neither the Sub-Registrar nor the Registrar have discharged their statutory obligation of making the required endorsements. It amounts to neglect in the discharge of duty enjoined on them in accordance with law. In action on their part has led the Petitioner in approaching in this Court. The original document, which admittedly was presented for registration has been shown to us. It has been returned without any endorsement, which is not permissible in law. The reason now assigned in reply is that clarification or guidance was sought by Respondents 2 and 3 from the Inspector General of Registration and/or from the State Government, in view of the decision of this Court. As a matter of fact, it appears to us to be a case of total non-application of mind.

7. The object and purpose of Registration Act, amongst Ors. s, is to provide a method of public registration of documents so as to give information to the word that such a document has been executed affecting the legal rights and obligations arising or affecting a particular property. This is to prevent fraud and forgery and to secure a reliable and complete account of all the transactions effecting title to the property. This will be evident in case reference is made to Sections 47 - 50 in Part X of the Act. A document, which in law is required to be compulsorily registered, if not registered, cannot affect any immovable property or does not confer any power to adopt. It can, by virtue of Section 49 of the Act can neither be received in evidence, nor affect any immovable property or confer power to adopt. Judicial Committee of the Privy Council in two decisions, viz. Hemanta Kumari Debi v. Midnapur Zamindari Co. AIR 1919 PC 79 and AIR 1921 112 (Privy Council) highlighted the objects of the Act. Keeping in view the object by which the Act has been enacted, the authorities appointed under the Act must discharge their legal obligations in accordance with law and cannot decline to perform their functions. The document in this case is required to be compulsorily registered by virtue of Section 17 of the Act.

8. In Nirmal Singh's case (supra), the definition of land within the ambit of Section 118 of the Tenancy Act came to be interpreted wherein it was held that:

Reading of the three clauses collectively along with Clause (7) of Section 2 of the Act would make it clear that all types of land situate in Himachal Pradesh

including sites and Ors. structures on such lands, whether let for agricultural purposes or for the purpose of subservient to agriculture including orchards, Ghasnis, Banjar lands and private forests are included within the expression "land", for the purposes of Section 118 of the Act. The only category of land, which is excluded from the operation of Section 118 is that land or area which is constructed but which is not subservient to agriculture. Even an area, if recorded in revenue records as "Gair-mumkin" or "Gair-mumkin Makaan", the same would be included in the expression of land irrespective of the purpose for which the same is occupied or let out, except a constructed area which is not subservient to agriculture. In Ors. words, prohibition contained in Section 118 of the Act will not apply to a constructed area which is not subservient to agriculture.

Applying the ratio of the aforesaid judgment, there is no manner of doubt that the property transferred is not "land" as defined in Section 118 of the Tenancy Act. It appears that Respondents 2 and 3 further failed to apply their minds to the facts of the present case, wherein, even if it be presumed that the property transferred was covered by the definition of "land", as contained in Section 118 of the Tenancy Act, even in that case it is a transfer made by a mOrs. in favour of her son. Since the mOrs. held the property, she will be deemed to be an agriculturist under the provisions of the Tenancy Act (in case the property is land), and by virtue of the deeming provisions contained in Section 2, Sub-Clauses (2), (4) and (5) of the Act, the son would also be covered by the definition of "agriculturist".

9. On the question whether a document is or is not to be registered, the decision has to be by the office before whom document is presented and not by his superior officer, as has been done in this case. The power of superintendence and control, which a Registrar can exercise over Sub- Registrar is enumerated in Section 68 and that of Inspector General is detailed in Section 69 of the Act. None of these can be said to be controlling the discretion to be exercised by a Sub-Registrar. As such, the action of Respondents 2 and 3 cannot be sustained in law.

10. In these circumstances, Respondents 2 and 3 having failed to discharge their statutory obligation, there is no option left except to allow the writ petition, which accordingly is allowed. Respondent No. 3 is directed to admit for registration the deed of conveyance (copy of which is Annexure P-I), on the day, when it is presented for registration before him by the Petitioner and then register it in accordance with law. In the facts and circumstances of the case, Respondents 2 and 3 are burdened with the costs of the Petitioner, which are quantified at Rs. 500.

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