
(2018) 04 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : CWP No. 3730 of 2010

Sohan Lal and others

APPELLANT

Vs

State of H.P. & others

RESPONDENT

Date of Decision : 26-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 2 Rule 2

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104

Citation : (2018) 04 SHI CK 0006

Hon'ble Judges : SURESHWAR THAKUR

Bench : Single Bench

Advocate : Y. P. Sood, Hemant Vaid, Y.S.??Thakur, Dy. .G, Arush Matlotia

Final Decision : Allowed

Judgement

Sureshwar Thakur, J.

1.The petitioners herein, who, are legal heirs of one Riharu Ram, through, the instant petition hence cast a challenge, upon, the validity of the orders,

borne in Annexure P-5, whereunder, the authority concerned hence rescinded, the allotment of land, made vis-a-vis, one, Riharu Ram in the year 1978,

while its exercising powers under the Himachal Pradesh Village Common Lands Vesting and Utilization Scheme, 1975 (hereinafter referred as the

scheme of 1975) .

2.All the averments, made, by the petitioners, in their petition, stand contested by the respondents, by the latter meteing(s) reply(ies) thereto. The

respondents in their reply, rather validate the orders, borne, in Annexure P-5, whereas, contrarily, the counsel for the petitioner, vehemently contended

qua it being ingrained, with, a pervasive gross illegality.

3.Apparently, upon, civil suit No. 25 of 2001, wherein, one Riharu Ram, qua whom grant of land, was made, under, the aforesaid scheme, stood arrayed as co-defendant No.2 also wherein, the State of Himachal Pradesh, was impleaded as a party in the array of co-defendants, a pronouncement of dismissal of the plaintiff's aforesaid suit hence emanated, on 29.08.2003, from, the learned Senior Sub Judge, Kangra at Dharamshala. The aforesaid verdict, was challenged, before the learned Appellate Court, by the aggrieved plaintiff, one, Rikhi Ram, and, significantly no challenge thereon was cast, by the State of Himachal Pradesh, (a) thereupon with no material being placed on record in personification, of, the concurrent verdict(s) hence dismissing, the suit of, one, Rikhu Ram, rather standing reversed in a second appeal, instituted before this Court(s), (b) thereupon conclusivity, besides finality is to be bestowed, upon, the concurrent verdicts recorded, upon, Civil Suit No. 25 of 2001. The apt portion of the concurrent verdicts, occurring in paragraph No.32 of the verdict pronounced, by the learned trial Court in C.S. No. 25 of 2001, is extracted hereinafter:

â??32. So the bare perusal of section 3 of the Act clearly provides that the suit land which vested in the Panchayat Deh earlier vested in State Govt.

of H.P. free from all encumbrances. Thus, the suit land was legally transferred from ownership of Panchayat Deh to State Govt. of H.P. . Hence this

issue is decided against the plaintiff in favour of defendants.â??

4.The aforesaid paragraph, does make, a vivid disclosure, of the learned trial Court, making, a conclusion qua, hence, a legal transfer of ownership,

occurring, from Panchayat Deh, to the State of H.P., besides in apt portion of paragraph No.33, the apt portion whereof stands extracted hereinafter:-

â??33. Therefore, under these facts and circumstances of the case the land bearing Khasra No.606/2, measuring 0-07-14 hecets. Was legally allotted

in favour of defendant No.2, Riharu vide mutation No.65 dated 27.6.1978, Ex.P-6 and similarly the land bearing Khasra No.606/1, measuring 0-03-06

hecets. Was legally allotted by State of H.P. in favour of defendant No.3, Roshan Lal vide mutation No.68 dated 27.6.1978, Ex.P-7. So keeping in view

entire facts and circumstances of the case, the allotment of suit land by State of H.P. in favour of defendants No.2 and 3 is legal and valid allotment

under the provisions of H.P. Village Common Lands (Vesting and Utilization) Act,

1974.....â??a firm conclusion, is, recorded of a valid allotment, being made vis-a-vis one Riharu, by the authority concerned, while, its, exercising the apt powers under the scheme.

5.The effects of the aforesaid conclusivity(ies) being hence acquired, by the verdict rendered in Civil Suit No.25 of 2001, is of thereupon, respondent

No.1, being now estopped to rather contend, that the afore referred conclusion(s), being either being ill-founded or infirm. The reasons, for forming the

aforesaid conclusion, arises, from the further factum, (a) the authority pronouncing, Annexure P-5, and, it thereunder hence annulling, the grant, its,

rather proceeding to take into consideration, certain apposite material both germane, and, apposite vis-a-vis the mandate, of, the proviso occurring in

Section 2(c), (b) conspicuously, despite, the insertion of the proviso thereto, visibly occurring prior to the institution of the suit, and, also despite,

respondent No.1 herein, evidently arrayed as co-defendant No.1, in the aforestated civil suit, (c) AND, obviously, despite, its, holding awareness vis-a-

vis it, though rather was enjoined, by the mandate of Order 2, Rule of the CPC, provisions whereof, stand extracted hereinafter, to hence in

consonance therewith, rear pleas for invalidating the grant, made, vis-a-vis one Riharu, whereas apparently, it, not previously rearing the aforesaid

plea, (d) thereupon the apposite non rearings thereat, now, estopped the authority concerned to pronounce Annexure P-5, (e) given its hence untenably

invalidating the concurrent pronouncements, made by civil court(s). Provisions of Order 2, Rule 2 of the CPC read as under:-

â??2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause

of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2)Relinquishment of part of claimâ?"Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not

afterwards sue in respect of the portion so omitted or relinquished.

(3)Omission to sue for one of several reliefsâ?"A person entitled to more than one relief in respect of the same cause of action may sue for all or any

of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so

omitted.â?(e)Even when respondent No.1, was not arrayed as a party therein, nonetheless, its, palpable omission(s) to earlier in its written statement, furnished, vis-a-vis Civil Suit No.25 of 2001, rather rear them therein, also hence bars, respondent No.1, to make any espousals, for validating the orders borne, in Annexure P-5. Reiteratedly, hence, with conclusivity being acquired vis-a-vis the aforesaid apt paragraphs of the judgment recorded, by the learned trial Court, upon, Civil Suit No.25 of 2001, thereupon, the authority concerned, was, disabled to pronounce Annexure P-5, and, also was hence interdicted, to, infract the mandate thereof, besides, was, forbiddento go behind the decree, rendered by the Civil Court(s) concerned. Nowat with authority, in pronouncing, Annexure P-5, hence, visibly going behind the conclusive, and, binding verdict recorded by the civil Courts, has thereupon transgressed the trite expostulation of law, of, judgments and decrees recorded by Civil Courts, being binding, upon, the statutory authority, and, despite theirs 'operating', as, res judicata besides operating, as statutory estoppel, (a) whereupon though, hence, it stood, disabled, to subsequent thereto, rather untenably proceed, to reverse the mandate recorded, in the conclusive judgment, and, decree pronounced by civil court(s) concerned. Apparently when hence the aforesaid trite expostulation of law is infringed, thereupon, this Court obviously deprecates, the apposite infringement, made, by the authority concerned, who pronounced Annexure P-5.

6.Be that as it may, the learned counsel appearing for the respondents, contend with vigour (i) that when, on a harmonious reading, of the provisions borne in clause 4, and, in clause 5 of the scheme of 1975, clauses whereof stand extracted hereinafter:-

â??4. 4. Enquiry preparation of statement of land available for allotment. - When application is made under paragraph 3 or when the Tehsil Revenue

Officer suo-moto initiates proceedings under the proviso of paragraph 3, he shall after giving the persons seeking allotment or being considered for

allotment, an opportunity of being heard and after making such summary inquiry as he may consider necessary, prepare a statement for Revenue

estate, indicating-

(1)particulars of each eligible person;

(2)the land, if any, owned or held by such person;

(3)the area which can be allotted to such person under the Act; and

(4) the revenue estate or estates for which such person indicates preference for allotment of land in case no area is available for allotment in the revenue estate where he holds land.

5. Procedure for allotment of land from the allottable pool. â?

(1) After the procedure prescribed in paragraph 4 has been followed, the Tehsil Revenue Officer shall prepare a list of all eligible persons for each

revenue estate in such a manner that the persons who do not own any land and the persons who own or hold less than one acre of land are placed

according to the area possessed by each in an ascending order.

(2) The Tehsil Revenue Officer shall also prepare a list of Khasra Numbers (with area) of the land comprised in the allottable pool area available for

allotment in a revenue estate mentioning such numbers in the numerical order. Where there are killas and rectangles, the numerical order of the

rectangle shall be observed first and then of killas in each rectangle.

(3) The record of each case alongwith the lists referred to in sub-paras (1) and (2) above shall be forwarded to the Collector who shall proceed to allot

the land to eligible persons in the following order of reference:-

(a) member of Scheduled castes/Scheduled tribes, ex-servicemen, freedom fighters and Ex-INA personnel, covered under the Government of India

scheme and also those freedom fighters who have been awarded commendation certificates by the State Government.

(b) Landowners or tenants whose holdings as a result of implementation of section 104 of the Himachal Pradesh Tenancy and Land Reforms Act,

1972 are reduced below one acre;â? hence apparent unfoldings rather emerge of the apposite enshrined eligibility criteria, innately borne therein,

hence being constituted in (a) the aspirant concerned, for eligibising himself, for the apposite grant, being hence made vis-a-vis him, his evidently, at

the stage contemporaneous to the grant, apparently not, holding any land or holding, land, less than one acre; (b) whereupon alone his being construed

to be landless. The learned counsel appearing for the contesting respondents, hence, espoused,

(i) that with the father of the original grantee, being evidently alive, at the stage contemporaneous, to the grant besides when he thereat, held, land

measuring 34-1 bighas,

(ii) and, thereafter, on his demise, the grantee along with his brother, both, in equal shares, evidently inheriting the estate of their predecessor-in-interest,

(iii) hence, the salutary purpose, of the grant being made vis-a-vis a person, who, at the relevant stage, being either landless or holding, land, less than

one acre, being visibly hence scuttled. The aforesaid contention reared by the counsel, for the contesting respondents, cannot be validated, for the

reasons ascribed hereinafter, (a) the introduction of hereinafter extracted proviso vis-a-vis the substantive provisions borne, in, clause (dd) to Section 2

of the Act, rather occurring, in the year 1987, provisions whereof reads as under:
â??Provided that a person whose father is alive and whose annual

income from all sources exceeds Rs.3,000/- shall not be deemed to be a landless persons; and (d)â??landownerâ? means a person having a share in

the shamilat land as recorded in the land records and includes a panchayat; original grantee being dis-entitled, to seek the making, of, the apposite

grant. However, at the time contemporaneous to the grant, obviously, hence, there was no explicit, disabling apposite mandate aforestated, hence

occurring in the relevant scheme, whereunder the grant was made vis-a-vis, the original grantee, (d) rather when the apposite proviso, with a loud

communication borne therein, whereunder, the apt legal disability was incurred, upon, the original grantee against his seeking grant, upon evident

apposite prevalence thereat, of, an apposite disability, comprised in, his father being alive or the grantee's annual income, from, all sources exceeding

Rs.3,000/-, when, as aforestated stood inserted, therein, through an amendment carried subsequent thereto, in the Act, thereupon, hence, begets

inference, of, (e) of the legislature explicitly intending, qua only, in the year 1987, the aforesaid disability being created, vis-a-vis the apposite grantee,

and, its omitting to create, it, at the time of the apposite grant, being made, vis-a-vis the grantee. The contention of the learned counsel, for the

contesting respondent, qua the aforesaid disability, yet, prevailing at the time of grant, is, obviously unamenable to acceptance nor hence it can be

concluded, that even if the original grantee's father, was alive at the time contemporaneous to the grant, (f) AND evidently, also with the latter holding

land, land whereof on his demise, being likely to be inherited by the original grantee, as has evidently occurred hereat, thereupon, also per se hence the

original grantee, would not render himself to be hence encumbered with the apposite disability. Also assumingly, if the aforesaid prohibition is to be concluded, to, exist/occur at the time contemporaneous to the grant, thereupon, the right, title or interest, if any, inhering in the grantee, vis-a-vis the estate of his father, would, only be construable to be a mere spes successionis or an obstructed heritage, (g) apparently when any contrary thereto inference would tantamount, to rearing a untenable inference, of the predecessor-in-interest, of the original grantee being untenably concluded, to stand forestalled, to execute any testamentary disposition vis-a-vis his estate, whereunder, he may ultimately, chose, to disinherit the original grantee.

The aforesaid conclusion may stand blunted, by evident material rather existing on record, in display of the predecessor-in-interest, of the original grantee, rather holding land, carrying the trait(s) of ancestral coparcenary property, and, hence thereupon the acquisition thereto, by the grantee vis-a-vis the estate of his deceased father, being a mere fait accompli, besides thereupon alone the contentions reared, by the counsel for the contesting parties, would hold grave solemn vigour. However, the aforesaid material is not existing on record, thereupon, this Court is led to conclude, with reinforced vigour, of, despite the father of the original grantee, surviving, at the time contemporaneous to the grant, and, his holding an area of land, beyond the prescribed limit, for hence de-eligibilising the grant being made vis-a-vis his son, not per se attracting, the rigour of, any prohibitive clause existing therein, rather, the apt thereat prevalent clauses being merely hence a spes sucessionis, of, the grantee vis-a-vis the estate of his father, whereupon, the rigor, of, the purported disability also cannot be encumbered upon the grantee.

7. Furthermore, vigour vis-a-vis the aforesaid conclusion, is also gathered by the factum of this Court, for reasons aforestated, concluding, that with the legislature only, through an amendment made in the year 1987, creating the aforesaid eligibility, and, when hence the aforesaid eligibility, also, hence, is concluded, to be not existing at the relevant stage, (i) thereupon, the mere factum of the father of the grantee being alive, at the time of the apposite grant, is wholly unworthwhile. The Hon'ble Apex Court, in a judgement, rendered, in a case titled as Commissioner of Income Tax (Central)-1, New Delhi vs. Vatika Township Private Limited reported in (2015)1 SCC 1, relevant paragraph No.28 whereof stand extracted hereinafter:-

31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips vs. Eyre*, (1870)LR 6 QB, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law. It has made candid expostulation, therein, that the apposite disability clause or the apt prohibition clause, holding prospective force, rather than retrospective force, unless, by explicit mandate, retrospectivity hence stands bestowed vis-a-vis the apposite disability clause. However, when hereat the insertion, of, the apposite proviso aforestated, occurred in the year 1987, hence, subsequent, to the apposite grant, and, when no explicit retrospectivity is bestowed thereto, rather hence renders open an inference, of, attraction((s) of the mandate, of, apposite proviso, being vis-a-vis only those grants made subsequent to 1987, and, all disabling, fettering effects thereof, being unattractable vis-a-vis any grant made prior thereto, especially in the year 1978.

8. For the foregoing reasons, the instant petition is allowed and the order impugned before this Court, borne in Annexure P-5, is quashed and set aside.

All pending applications also stand disposed of. Records be sent back forthwith.